1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

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

SUPPLEMENTARY EXPLANATORY MEMORANDUM

(Amendments, new clauses and new Parts to be moved on behalf of the Government)

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

53991 Cat. No. 94 4433 2

9 780644 300391

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

(Amendments, new clauses and new Parts to be moved on behalf of the Government)

GENERAL OUTLINE

The proposed amendments to the Banking (State Bank of South Australia and Other Matters) Bill 1994 clarify provisions in the Bill relating to the transfer of customer tax file number (TFN) information and records of accounts between the State Bank of South Australia (SBSA) and its subsidiaries and the Bank of South Australia Limited (BSAL). The proposed amendments also put beyond doubt that the depreciation, development allowance and general investment allowance provisions of the Bill will operate as intended.

The proposed amendments to the TFN re-transfer provisions of the Bill will allow TFN information to be transferred back to SBSA subsidiaries and change the method of communication with investors for purposes of the proposed re-transfers. In particular, the amendments will require that notices of the proposed transfer be provided directly to affected investors rather than through the use of newspaper advertisements. This will provide for a more efficient and effective means of notifying account holders of the re-transfers.

The *Financial Transactions Reports (FTR) Act 1988* and the *Proceeds of Crime (PoC) Act 1987* impose an obligation on banks and other financial institutions to maintain records relating to the opening and operation of accounts. The proposed amendments to these Acts provide for the transfer of this obligation where accounts are transferred from one bank to another. In the absence of the proposed amendments, the SBSA would be criminally liable for not complying with the provisions of these Acts where it transferred such records of accounts to BSAL.

FINANCIAL IMPACT OF AMENDMENTS

The proposed amendments will not alter the financial impact of the original measures. The amendments affecting income tax deductions allowable to BSAL are designed to ensure that the provisions apply as originally intended.

ABBREVIATIONS

The following abbreviations are used in this supplementary memorandum:

SBSA	State Bank of South Australia
BSAL	Bank of South Australia Limited
TFN	Tax File Number
FTR Act	*Financial Transactions Reports Act 1988*
PoC Act	*Proceeds of Crime Act 1987*

NOTES ON AMENDMENTS TO CLAUSES AND NEW CLAUSES

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

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

Background to the Legislation

The proposed amendments modify the operation of the TFN re-transfer provisions of the Bill. The amendments will allow TFN information to be transferred back to subsidiaries of the SBSA and change the method of communication with investors for proposed re-transfers of TFN information. The amendments will require that notice of the proposed transfer must be provided directly to affected investors rather than by the use of newspaper advertisements. The amendments will also put beyond doubt that the depreciation, development allowance and general investment allowance provisions will operate as intended.

Division 1 - Preliminary

Clause 36 - Re-transfer of TFN information - definition of re-transfer provision

The term "re-transfer provision" has been used in Part 2.4 but it has not been defined in the Part. The amendment will insert a definition of the term in clause 36 of Part 2.4. The definition will provide that a "re-transfer" takes the same meaning as a re-transfer of assets and/or liabilities made under the *State Bank (Corporatisation) Act 1994* or a similar provision of a State or Territory law.

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

Clause 37 - Depreciation - method of acquisition

This amendment will put beyond any doubt that the transfer of assets from the SBSA and subsidiaries to BSAL under a transfer provision amounts to an acquisition under a contract by BSAL for the purposes of the post-26 February 1992 depreciation regime. This will ensure that BSAL may be entitled, as was originally intended, to depreciate assets transferred to it from SBSA or a subsidiary of SBSA, under the post-26 February 1992 depreciation regime.

Division 3 - Development allowance and general investment allowance

Clause 38A - Development and investment allowance

This new clause will remove any doubt that BSAL may be entitled to development and investment allowance provisions on property transferred to BSAL from SBSA or a subsidiary of SBSA, in the form of rights under an uncompleted contract for the acquisition of property, where BSAL completes the contract and acquires the property. In these circumstances BSAL will be treated as though it had entered into the contract to acquire the property, rather than SBSA or its subsidiaries. BSAL will be entitled to development and investment allowance for property acquired under such a contract on the same basis as SBSA or subsidiaries would have been entitled had they completed the contract.

Division 4 - Transfer of tax file number information

Clause 45 - Substitution of name of bank

This amendment will correct an error to give effect to the intended operation of the clause by substituting the reference to SBSA in paragraph 45(c) to BSAL. This will ensure that the provision will deem, because of clause 43, that BSAL has been quoted the TFN information by investors immediately before the transfer of the information to SBSA or a subsidiary of SBSA.

Clause 46 - Re-transmission of TFN information to SBSA

This amendment will extend from 15 to 22 days the time period that BSAL must wait before re-transferring TFN information to SBSA. The extension of the period is to accommodate the alteration in the method of communication of proposed TFN re-transfers to investors.

Clause 46A - Re-transmission of TFN information to SBSA subsidiaries

This new clause will provide that TFN information transferred to BSAL can, subject to objection by affected investors, be re-transferred to a subsidiary of SBSA. This provision will operate in a similar way to clause 46. However it will ensure that where TFN information is transmitted in error to BSAL from subsidiaries of SBSA, then the position that existed prior to the incorrect transfer can be reinstated. The clause will provide that BSAL must, at least 22 days before the proposed disclosure of TFN information to a subsidiary or subsidiaries of SBSA, send a notice to affected investors about the intended disclosure.

Consequential Amendment - paragraph 45(a) and clause 48

As a consequence of the introduction of clause 46A it is necessary to make consequential amendments to paragraph 45(a) and clause 48 to include a reference not only to SBSA but also to a subsidiary of SBSA. These amendments give effect to the operation of clause 46A, which provides for the re-transfer of TFN information to a subsidiary of SBSA.

Clause 47 - Communication method for re-transfer

This amendment will alter the method of communication with investors that is required before TFN information may be re-transferred to SBSA. Rather than notification by placing advertisements in appropriate newspapers, notification will take place by notice directly to affected investors. The amendment will also increase the time period that an investor can object to a TFN information transfer from 14 to 21 days. This recognises the additional time that it will take for notices to be provided to investors.

The clause provides that the investor's objection period will commence on the date the notice is posted, or if the notice is delivered personally, on the day of delivery or if the notice is left at the person's place of residence, then the day of leaving the notice.

Clause 49 - Modification to TFN provisions of the Income Tax Assessment Act

This amendment is required as a consequence of the introduction of clause 46A, which will enable TFN information to be re-transmitted to a subsidiary of SBSA. It will extend the operation of the provision to a subsidiary of SBSA.

CHAPTER 3 - OTHER MATTERS

PART 3.1A - AMENDMENT OF THE FINANCIAL TRANSACTION REPORTS ACT 1988

Background to the Legislation

Section 23 of the FTR Act requires cash dealers (including banks) to retain records about accounts and signatories to accounts for seven years after the account is closed. In the case where accounts are transferred from one bank to another bank, provision needs to be made for the transfer of the obligation to retain records relating to those accounts and signatories to those accounts. Section 20A of the FTR Act explains the requirements of an identification record in relation to a signatory to an account. The identification record forms part of the signatory information, and a cash dealer has an identification record if it has an identification reference or, if it is an identifying cash dealer, it has carried out certain verification procedures.

Clause 60A - Object of Part

The objects of this Part are to facilitate the transferring of accounts from one bank to another by requiring the transfer of certain records relating to those accounts, and to authorise the transfer of other records.

Clause 60B - Principal Act

This clause is self-explanatory.

Clause 60C - Insertion of new sections

This Clause inserts new sections 23A and 23B which set out the obligations of banks in relation to records when active and closed accounts are transferred from one bank to another bank.

Proposed subsection 23A(1) makes it clear that this new section applies when records are held by a bank because of the obligation to retain them created by subsections 23(1) or 23(7) and relate to an active account which has been or is intended to be transferred to another bank under law or by agreement between the banks.

Proposed subsection 23A(2) sets out how the records are to be transferred. It requires the transferor bank to give the record to the transferee bank within 120 days (beginning 30 days before the transfer), if the record relates only to the transferred account. If the record relates partly to the transferred account and partly to an account that is not being transferred, the transferor bank must, within 120 days (beginning 30 days before the transfer), give the transferee bank a copy of the record and keep the original.

Proposed subsection 23A(3) makes it an offence punishable by 10 penalty units to fail intentionally or recklessly to comply with proposed subsection 23A(2). This is a continuing offence and in accordance with section 4K of the *Crimes Act 1914*, a new offence occurs each day there is a failure to comply with subsection 23A(2) and is punishable by a maximum of 10 penalty units.

Proposed subsection 23A(4) exempts a transferor bank which transfers a record in accordance with proposed subsection 23A(2) from compliance with section 23.

Proposed subsection 23A(5) makes it clear that if a transferee bank is given a record in accordance with proposed subsection 23A(2) the transferee bank is subject to section 23 as if the record had been made by the transferee bank itself. As a result of this provision the transferee bank will be required to retain the record in accordance with the terms of section 23.

Proposed subsection 23A(6) deems a record transferred in accordance with proposed subsection 23A(2) to be an identification record, as set out in section 20A, in the hands of the transferee bank.

Proposed subsection 23A(7) is self-explanatory.

Proposed subsection 23B(1) makes it clear that this new section applies only if a document relating to an active account is transferred in accordance with proposed subsection 23A(2). In that circumstance, when a document relating to a closed account is held by a bank because of the obligation created by subsections 23(1) or 23(7), the banks may agree in writing to the transfer of a record relating to a closed account in accordance with this section.

Proposed subsection 23B(2) sets out how the records are to be transferred in the circumstance that the section applies. If the record relates only to the closed account it is to be given to the transferee bank, and if it relates only partly to the closed account, the transferor bank is to copy the record and give the copy to the transferee bank.

Proposed subsection 23B(3) exempts the transferor bank from the operation of section 23 if the transferor bank transfers a record in accordance with proposed subsection 23B(2). If the transferor bank does not transfer a record in accordance with proposed subsection 23B(2) it remains subject to section 23.

Proposed subsection 23B(4) makes it clear that if a transferee bank is given a record in accordance with proposed subsection 23B(2) the transferee bank is subject to section 23 as if the record had been made by the transferee bank itself. As a result of this provision the transferee bank will be required to retain the record in accordance with the terms of section 23.

Proposed subsection 23B(5) deems a record transferred in accordance with proposed subsection 23B(2) to be an identification record, as set out in section 20A, in the hands of the transferee bank.

Proposed subsection 23B(6) is self-explanatory.

PART 3.1B - AMENDMENT OF THE PROCEEDS OF CRIME ACT 1987

Background to the Legislation

Section 77 of the PoC Act requires financial institutions, including banks, to retain certain documents relating to the opening or the operation of an account for seven years after the date of the transaction or the closing of the account. Section 78 of the PoC Act provides for the circumstance where a financial institution is required by law to release certain documents. The financial institution is required to keep a copy of the document. In the case where accounts are transferred from one bank to another, provision needs to be made for the transfer of the obligation to retain documents relating to the opening or operation of these accounts.

Clause 60D - Object of Part

The objects of this Part are to facilitate the transferring of accounts from one bank to another by requiring the transfer of certain documents relating to those accounts, and to authorise the transfer of other documents.

Clause 60E - Principal Act

This clause is self-explanatory.

Clause 60F - Insertion of new sections

This clause inserts new sections 78A and 78B which set out the obligations of banks in relation to documents when active and closed accounts are transferred from one bank to another.

Proposed subsection 78A(1) makes it clear that this new section applies when documents are held by a bank because of the obligation created by subsections 77(1), 77(2), 77(3) or 78(1) and relate to an active account which has been or is intended to be transferred to another bank under law or by agreement between the banks.

Proposed subsection 78A(2)) requires the transferor bank to give the document to the transferee bank within 120 days (beginning 30 days before the transfer).

Proposed subsection 78A(3) makes it an offence punishable by 10 penalty units to fail intentionally or recklessly to comply with proposed subsection 78A(2). This is a continuing offence and in accordance with section 4K of the *Crimes Act 1914*, a new offence occurs each day there is a failure to comply with subsection 78A(2) and is punishable by a maximum of 10 penalty units.

Proposed subsection 78A(4) exempts the transferor bank which transfers a document in accordance with proposed subsection 78A(2) from compliance with sections 77 and 78.

Proposed subsection 78A(5) makes it clear that if a transferee bank is given a document in accordance with proposed subsection 78A(2) the transferee bank is subject to sections 77 and 78 as if the document had been created in relation to that transferee bank. As a result of this provision the transferee bank will be required to retain the document in accordance with the terms of sections 77 and 78.

Proposed subsection 78A(6) is self-explanatory.

Proposed subsection 78B(1) makes it clear that this new section applies only if a document relating to an active account is transferred in accordance with proposed subsection 78A(2). In that circumstance, when a document relating to a closed account is held by a bank because of the obligation created by sections 77 or 78, the banks may agree in writing to the transfer of a document relating to a closed account in accordance with this section.

Proposed subsection 78B(2) allows the transferor bank, in the circumstance to which the section applies, to transfer the document to the transferee bank.

Proposed subsection 78B(3) exempts the transferor bank from the operation of sections 77 and 78 if the transferor bank transfers a document in accordance with proposed subsection 78B(2). If the transferor bank does not transfer a document in accordance with proposed subsection 78B(2) it remains subject to sections 77 and 78.

Proposed subsection 78B(4) makes it clear that if a transferee is given a document in accordance with proposed subsection 78B(2), the transferee bank is subject to sections 77 and 78 as if the document had been created in relation to that transferee bank. As a result of this provision the transferee bank will be required to retain the document in accordance with the terms of sections 77 and 78.

Proposed subsection 78B(5) is self-explanatory.

Printed by Authority by the Commonwealth Government Printer