

STATE FINANCIAL INSTITUTIONS AND METWAY MERGER FACILITATION BILL 1996

EXPLANATORY NOTE

Short Title

The short title of the Bill is the *State Financial Institutions and Metway Merger Facilitation Bill 1996*.

Policy objectives of the Bill and the reasons for those objectives

The primary objective of the legislation is to facilitate the restructuring of some or all of the State Financial Institutions (“SFIs”) to enable them and Metway Bank Limited to merge and become a major Queensland-based financial institution.

The SFIs include the following financial entities owned or controlled by the State:

- Queensland Industry Development Corporation (QIDC)
- SUNCORP Building Society (SBS)
- SUNCORP Finance Limited (SFL)
- SUNCORP Insurance and Finance (SIF).

The Government’s current objectives in respect of both SUNCORP and QIDC are fundamentally commercial in that each organisation is required to provide an appropriate rate of return on the Government’s equity, and there is no clear or specific policy objective served through continuing to wholly own and control these entities.

Merging these entities with a private sector financial institution is a logical extension of the corporatisation process, exposing them more fully to the rigours of the market and allowing them to access private capital markets to fund growth and diversification. The merger also ensures that a major financial institution remains headquartered in Queensland.

The way these policy objectives will be achieved by the Bill and why this way of achieving the policy objectives is reasonable and appropriate

The legislation provides for the restructuring of the SFIs prior to their merger with Metway.

In particular, the legislation empowers QIDC and SIF to become Company GOCs registered under the *Corporations Law*. SBS is empowered either to become registered as a company under the *Corporations Law* or to transfer all or part of its undertaking to QIDC.

Any two or more SFIs then are empowered to amalgamate some or all of their assets by way of a scheme or schemes of amalgamation, with the resulting amalgamated entity or entities enabled to merge with Metway by way of a scheme or schemes of arrangement under the *Corporations Law*.

Alternative way of achieving the policy objectives

The alternatives for achieving the policy objectives could have included sale of the entities by trade sale or individual share floats. It is expected that these alternatives would not have maximised the value of these assets to the Government or ensured the retention of a major financial institution headquartered in Queensland.

Administrative costs for Government implementation of the Bill

Any costs associated with the implementation of the Bill will be recovered from the proceeds of the public offering of the Government's shares in the merged entity.

Consistency with fundamental legislative principles

Care has been taken in drafting this Bill to ensure that no aspects of the Bill infringe upon fundamental legislative principles.

Consultation

Extensive consultation has taken place with the Reserve Bank of Australia, Insurance and Superannuation Commission, Ministerial Council

for Financial Institutions, Commonwealth Treasury, all other State and Territory Treasuries, Registrar of Titles, Department of Justice, Australian Financial Institutions Commission, Queensland Office of Financial Supervision, SUNCORP, QIDC and Metway.

PART 1—PRELIMINARY

Clause 1 specifies the short title.

Clause 2 provides for the commencement of the Act.

Clause 3 provides for a dictionary of particular words used in the Act.

PART 2—OBJECT AND BASIC CONCEPTS

Division 1—Object

Clause 4 sets out the object of the Act.

Division 2—Basic Concepts

Clause 5 provides for the particular meaning of “State financial institution (“SFI”)”, where that term is used in this Act.

Clause 6 provides for the particular meaning of “Metway scheme of arrangement”, where that term is used in this Act.

PART 3—TRANSFER OF THE INCORPORATION OF QIDC AND SIF TO CORPORATIONS LAW

Division 1—Definition

Clause 7 provides for the particular meaning of “candidate company”, where that term is used in this Part.

Division 2—QIDC not statutory GOC

Clause 8 provides for the Division to take effect from the day fixed by a Treasurer’s gazette notice.

Clause 9 provides that QIDC is no longer a statutory GOC.

Clause 10 provides for QIDC to have a share capital, which may be varied under clause 16 of the Bill.

Clause 11 provides that QIDC continues to have the powers it had as a statutory GOC until it becomes a company GOC, without limiting the powers QIDC has under any other Act.

Division 3—Facilitative mechanisms

Clause 12 empowers a candidate company to transfer its incorporation to and become registered under the *Corporations Law*, provided its members first consent to the transfer of incorporation. It also provides that the Treasurer is authorised to take action necessary to enable the candidate company to become registered under the *Corporations Law*.

Clause 13 provides for the Treasurer to adopt and amend the memorandum and articles of a candidate company, which must not be inconsistent with this Act or the *Corporations Law*.

Clause 14 provides that the memorandum and articles of a candidate company may change its name.

Clause 15 provides for a candidate company to be taken to have a share capital if it does not already have one and for the application of part of its capital to paying up in full, shares in itself, by a Treasurer's gazette notice.

Clause 16 provides that a Treasurer's gazette notice may vary (by way of issue, cancellation, consolidation or division) the share capital of a candidate company, but only until it becomes registered under the *Corporations Law*.

Clause 17 provides that shares in a candidate company are to be issued to a Minister and held on behalf of the State.

Division 4—Miscellaneous

Clause 18 provides that the *GOC Act* does not apply to a candidate company transferring its incorporation to the *Corporations Law*, but that upon becoming registered under the *Corporations Law*, it becomes a company GOC under the *GOC Act* and that Act applies with any necessary changes. It also provides that on the Metway amalgamation day the company GOC ceases to be a company GOC and the *GOC Act* no longer applies to it.

Clause 19 provides that this Part overrides the *Queensland Industry Development Corporation Act 1994* and the *SUNCORP Insurance and Finance Act 1985*.

Clause 20 provides for the Treasurer to notify by gazette, the day a candidate company is registered under the *Corporations Law*.

PART 4—TRANSFER OF THE UNDERTAKING AND INCORPORATION OF SBS

Division 1—Transfer of SBS's undertaking to QIDC

Clause 21 provides for certain definitions of terms used in this Division.

Clause 22 provides for the transfer of SBS's assets and liabilities to QIDC.

Clause 23 provides that SBS's members do not become members of or shareholders in QIDC upon the transfer.

Clause 24 provides that the Treasurer may by gazette notice exclude assets and liabilities from transfer, other than the SBS pre-conversion reserves.

Clause 25 provides that the Treasurer can, by gazette notice fix the terms upon which SBS's undertaking is transferred.

Clause 26 provides for a number of transitional provisions on a range of matters, including construction of instruments and substitution of references to SBS with references to QIDC.

Clause 27 provides that instructions for payments to be made to accounts at SBS are taken to be instructions to QIDC.

Clause 28 provides for the transfer of officers and employees of SBS to QIDC and that such transfer does not affect their remuneration, prejudice existing or accruing rights to recreation leave, sick leave, long service leave or superannuation, or interrupt continuity of service or constitute a retrenchment or redundancy.

Clause 29 provides that legal proceedings that might have been brought against SBS in relation to a transferred asset or transferred liability may be continued by or against QIDC.

Clause 30 provides for the establishment in QIDC on the transfer day of an amount equal to the pre-conversion reserve of SBS established under Rule 177(e) of SBS's rules.

Clause 31 provides that if QIDC is wound up, SBS's members' entitlements under its rules to participate in pre-conversion reserves will be recognised by QIDC.

Clause 32 provides that persons dealing with QIDC or SBS are not obliged to inquire whether assets or liabilities are those of QIDC or SBS.

Clause 33 provides that if all of the assets and liabilities of SBS are transferred, SBS's registration as a building society is cancelled under the *Financial Institutions (Queensland) Code*.

Clause 34 provides that upon a cancellation of registration pursuant to clause 33, SBS is dissolved without a winding up and there is no right to damages or compensation because of the dissolution because all rights will

have been transferred pursuant to clause 25, including the SBS pre-conversion reserves under clause 30.

Division 2—Transfer of incorporation of SBS to Corporations Law

Clause 35 empowers SBS, if directed to do so by the Treasurer and with the consent of the majority of its members entitled to vote under SBS's rules, to transfer its incorporation to and become registered under the *Corporations Law*.

Clause 36 provides for the Treasurer to adopt and amend the memorandum and articles of SBS, which must not be inconsistent with this Act or the *Corporations Law*.

Clause 37 provides that upon becoming registered under the *Corporations Law*, SBS must change its name and that its memorandum and articles must so provide, so that it will not contravene the *Financial Institutions (Queensland) Code*.

Division 3—Provisions applying if SBS becomes registered under Corporations Law

Subdivision 1—Application and expiry of division

Clause 38 provides that the Division is to apply if SBS becomes registered under the *Corporations Law*.

Clause 39 provides that this Division and Schedule 1 expire 2 years after the Metway amalgamation day.

Subdivision 2—SBS no longer building society

Clause 40 provides for SBS to cease to be a building society.

Clause 41 provides for the cancellation of SBS's registration as a building society.

Subdivision 3—Application of Financial Institutions (Queensland) Code

Clause 42 provides that this subdivision has effect while a regulation declares it has effect.

Clause 43 provides for the prudential supervision of SBS in the same manner as under the *Financial Institutions (Queensland) Code*, with consequential changes outlined in that clause and in Schedule 1, Part 1 of this Act.

Clause 44 provides that the *Financial Institutions (Queensland) Code* applied pursuant to clause 43, does not form part of the financial institutions legislation under the *AFIC (Queensland) Code* and that QOFS when acting does not act as the State supervisory authority.

Clause 45 provides for the Board of QOFS to make standards whether prudential or otherwise with respect to the matters listed in that clause.

Clause 46 provides for the making of transitional arrangements for the purpose of allowing additional time to comply with standards prescribed by QOFS.

Clause 47 provides that QOFS must publish its standards in the gazette.

Clause 48 provides that SBS's auditor is to give to QOFS the same information as is given to the ASC.

Clause 49 provides that QOFS may obtain copies of accounts from SBS in certain circumstances.

Subdivision 4—SBS as State instrumentality

Clause 50 provides that until the Metway amalgamation day, SBS is an instrumentality of the Crown in right of the State.

Division 4—Relationship of pt 4 to financial institutions legislation

Clause 51 provides that this Part applies despite the financial institutions legislation under the *AFIC Code*.

PART 5—AMALGAMATION OF CERTAIN STATE FINANCIAL INSTITUTIONS

Clause 52 provides for the object of the Part to provide for schemes of arrangement under which SFIs may be amalgamated.

Clause 53 provides for certain definitions of terms used in this Part.

Clause 54 provides that the Treasurer may cause the preparation of schemes of amalgamation.

Clause 55 provides that the Treasurer may by gazette notice approve a scheme of amalgamation which then has effect by force of this section.

Clause 56 provides for the matters a scheme of arrangement may provide for in order to facilitate the transfer of the undertakings of the SFIs.

Clause 57 provides that an asset transferred under a scheme of amalgamation may be transferred free from any charge (as defined in the *Corporations Law*).

Clause 58 provides for a number of transitional provisions on a range of matters, including construction of instruments and substitution of references to transferors with references to transferees.

Clause 59 excuses a person from having to inquire into the title to an asset or liability of a participating entity.

Clause 60 provides for the transfer of officers and employees between SFIs and provides for the same matters as clause 28.

Clause 61 provides that legal proceedings that might have been brought against a transferor SFI in relation to a transferred asset or transferred liability may be continued by or against the transferee SFI.

Clause 62 provides that this Part has effect despite the *Corporations Law*, the *AFIC (Queensland) Code*, the *Queensland Industry Development Corporation Act 1994* and the *SUNCORP Insurance and Finance Act 1985*.

PART 6—MANDATORY REQUIREMENTS REGARDING METWAY GROUP COMPANIES’ ARTICLES

Clause 63 provides the date from which this Part is to apply being the Metway amalgamation day.

Clause 64 provides for the articles of association of each Metway Group company to include provisions requiring the head office of the company to be located in Queensland.

Clause 65 provides that any inconsistent alteration to a Metway Group company’s articles do not have effect.

Clause 66 provides that the Treasurer may obtain an injunction to restrain a contravention by the Metway Group companies of the provisions of the articles requiring the headquarters of the bank to be located in Queensland.

Clause 67 provides that the Treasurer’s power to obtain an injunction may be delegated to the chief executive of the Department.

Clause 68 provide that the Supreme Court of Queensland has jurisdiction in relation to the obtaining of the injunctions exclusive of the jurisdiction of other courts other than the High Court.

Clause 69 provides that this Part has effect despite the *Corporations Law*. It also provides that if there is any conflict or inconsistency between this Part and a Metway Group company’s memorandum or articles this Part prevails.

PART 7—GUARANTEE OF EXISTING OBLIGATIONS

Clause 70 preserves the State guarantee for QIDC obligations undertaken before the Metway amalgamation day.

Clause 71 preserves the State guarantee in relation to policies or contracts of insurance or indemnity entered into before the Metway amalgamation day by SIF or its wholly owned subsidiaries.

Clause 72 provides that if the State has an obligation mentioned under clauses 70 or 71, that obligation continues under those sections despite the fact that the liability in relation to which the obligation arises has been transferred from QIDC, SIF or a wholly owned subsidiary of SIF on or before the Metway amalgamation day.

Clause 73 provides that on and from the Metway amalgamation day the State does not guarantee payment of an amount other than one mentioned in clauses 70, 71 or 72.

Clause 74 provides that if an amount becomes payable by the State under clauses 70, 71 or 72 the Treasurer may pay the amount from the consolidated fund without further appropriation.

Clause 75 provides that the Treasurer may require guarantee fees to be paid to the State in relation to the State's obligations under clauses 70 or 72(2)(a) as set out in that clause. It also provides that the Treasurer may require a fee to be paid in relation to debts owed to Queensland Treasury Corporation as set out in that clause.

PART 8—MISCELLANEOUS

Clause 76 provides that no State tax is payable in relation to any transaction connected with or arising out of this Act, or in relation to the transfer of an asset or liability held at the Metway amalgamation day by an SFI, Metway or their related bodies corporate, which is declared by regulation, within 2 years after that date, to be exempt. It also provides that to the extent it is empowered to do so such tax includes one imposed under an Act of another State.

Clause 77 provides that assets and liabilities of an SFI may, by regulation before the Metway amalgamation day, be transferred from the SFI to another government entity specified in the regulation.

Clause 78 provides that within six months of the Metway amalgamation day, certain assets and liabilities of Metway or a related body corporate of Metway held before that day by an SFI, which have been transferred to Metway or a related body corporate of Metway may, if the Treasurer and Metway agree, be re-transferred by regulation to a government entity.

Clause 79 provides for the transfer of officers and employees from an SFI to Metway and provides for the same matters as clauses 28 and 60.

Clause 80 provides that entities which transfer their incorporation to the *Corporations Law* retain their legal personality at law.

Clause 81 directs the Registrar of Titles to note transfers resulting from transactions contemplated under this Act.

Clause 82 provides that the Treasurer may direct the State financial institutions to facilitate the matters in Parts 3, 4 and 5 of this Act and under the Metway scheme of arrangement.

Clause 83 provides for the standard of care and diligence expected of directors of an SFI.

Clause 84 provides that despite anything in any instrument, this Act does not affect existing legal relationships or place the entity or the State, amongst other things, in breach of a contract, trust, or other instrument.

Clause 85 provides that this Act is facilitative and does not prevent things being done otherwise than under this Act.

Clause 86 provides that certain dealings with shares under the schemes of amalgamation or Metway scheme of arrangement in so far as they relate to SIF or QIDC, prevail if inconsistent with the *GOC Act*.

Clause 87 provides that protected information under the *Financial Administration and Audit Act 1977* may be disclosed for the purposes of the Act as set out in that section.

Clause 88 provides that Chapter 7 of the *Corporations Law* applies to a unit trust which may be promoted by or on behalf of the State to hold ordinary shares in Metway.

Clause 89 provides that a transfer of assets or liabilities under the Metway scheme of arrangement takes effect under the *Corporations Law*.

Clause 90 provides that a certificate purporting to be issued by the Treasurer is evidence that assets or liabilities have been transferred from one entity to another.

Clause 91 provides that it is Parliament's intent that this Act should as far as possible, apply extraterritorially.

Clause 92 provides that if an entity changes its name, references in an Act or other document to its former name are taken to include the entity by its new name.

Clause 93 provides that the Governor in Council may make regulations under this Act.

PART 9—TRANSITIONAL, REPEALS AND AMENDMENTS

Clause 94 provides for the making of regulations for the purposes of this Act.

Clause 95 provides for the repeal of some of the provisions of the *Queensland Industry Development Corporation Act 1994* before the Metway amalgamation day, and for the repeal of the Act on that day.

Clause 96 provides for the repeal of some of the provisions of the *SUNCORP Insurance and Finance Act 1985* before the Metway amalgamation day and for the repeal of the Act on that day.

Clause 97 provides for the amendment of the Acts listed in Schedule 2.

SCHEDULE 1

PART 1—CHANGES TO THE APPLIED FINANCIAL INSTITUTIONS (QUEENSLAND) CODE

This Part provides for the application of the *Financial Institutions (Queensland) Code* to SBS as provided in clauses 43(3) and (5) of the Bill.

PART 2—CHANGES TO BOOK 3, PRUDENTIAL STANDARDS FOR BUILDING SOCIETIES

This Part provides for changes to the Prudential Standards, consequent upon the modifications in Part 1.

SCHEDULE 2 AMENDMENTS

This Schedule provides for the amendment of the *Queensland Industry Development Corporation Act 1994*, the *Queensland Office of Financial Supervision Act 1992* and the *SUNCORP Insurance and Finance Act 1985*. It also provides for the amendment of the *Freedom of Information Act 1992* and the *Judicial Review Act 1991*, to omit references in those Acts to SIF and QIDC after the Metway amalgamation day.

SCHEDULE 3 DICTIONARY

This Schedule provides the dictionary, defining particular words used in the Act, referred to in clause 3 of the Bill.