



State Financial Institutions and Metway Merger Act 1996

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Queensland

State Financial Institutions and Metway Merger Act 1996

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State Financial Institutions and Metway Merger Act 1996

An Act to provide for particular requirements about the establishment of a major Queensland-based financial institution, and for other purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *State Financial Institutions and Metway Merger Act 1996*.

3 Definitions and dictionary

The dictionary in schedule 3 defines particular words used in this Act.

Part 2 Object and basic concepts

Division 1 Object

4 Object of this Act

The object of this Act is to provide for particular requirements about the merger of the State financial institutions mentioned in section 5 and Metway.

Note—

Repealed parts 3 to 5 of this Act facilitated the restructure of the State financial institutions to enable them to merge with Metway.

Division 2 Basic concepts

5 What is a State financial institution

For this Act each of the following is a State financial institution (*SFI*)—

- (a) QIDC as a company registered under the Corporations Law, part 2.2, division 3;

Editor's note—

Corporations Law, part 2.2 (Registration of companies), division 3 (Registering non-companies as companies) (rep 1998 sch 1 item 1 (Cwlth) effective 1 July 1998)

- (b) SIF as a company registered under the Corporations Law, part 2.2, division 3;
- (c) Suncorp Finance Limited (A.C.N. 009 705 417);
- (d) SBS;
- (e) a wholly-owned subsidiary of an entity mentioned in paragraph (a), (b), (c) or (d);
- (f) a company formed for holding some or all of the issued share capital, assets or liabilities of 1 or more of the entities mentioned in paragraphs (a) to (e).

6 What is the Metway scheme of arrangement

- (1) The *Metway scheme of arrangement* is the scheme or schemes of arrangement under the Corporations Law, part 5.1—
 - (a) between 1 or more SFIs and their members; and
 - (b) if a regulation declares another entity (a *scheme entity*) to be an entity for the Metway scheme of arrangement—between the scheme entity and its members;

under which 1 or both of the following happen—

- (c) all, or substantially all, of the assets and liabilities of 1 or more SFIs, and the scheme entity (if any), are transferred to Metway;
 - (d) 1 or more SFIs, and the scheme entity (if any), become wholly-owned subsidiaries of Metway.
- (2) Subsection (1) does not, by implication, limit the matters that may be included in the Metway scheme of arrangement.

Part 6 **Mandatory requirements regarding Metway group companies' articles**

63 **Application of pt 6**

This part applies on and from the Metway amalgamation day.

64 **Metway group companies' articles to include certain provisions**

- (1) The articles of each Metway group company must, at all times, require—
- (a) the head office of the company to be located in Queensland; and
 - (b) the managing director to be ordinarily resident in Queensland.
- (2) For subsection (1) and the articles, the head office of the company is located in Queensland only if—
- (a) the principal operational offices of the following company personnel, however described, are located in Queensland—
 - (i) chairperson;

- (ii) chief executive officer;
- (iii) chief financial officer;
- (iv) chief operating officer; and
- (b) the principal operational offices for the following company services, however described, are located in Queensland—
 - (i) treasury operations;
 - (ii) information technology management;
 - (iii) marketing management;
 - (iv) credit control operations;
 - (v) human resource management;
 - (vi) account processing;
 - (vii) corporate services department;
 - (viii) purchasing department; and
- (c) the usual location for the holding of company board meetings is in Queensland.

65 Inconsistent alterations to Metway group companies' articles have no effect

- (1) A special resolution of a Metway group company that would, apart from this subsection, have the effect of altering the company's articles so that the articles would not comply with section 64 has no effect.
- (2) A special resolution or resolution of the company has no effect if the resolution would—
 - (a) if acted on and apart from this subsection—result in a contravention of the mandatory articles; or
 - (b) apart from this subsection—ratify an act or omission contravening the mandatory articles.

66 Injunctions

- (1) Subsection (2) applies if a Metway group company or another person has engaged, is engaging or is proposing to engage in conduct constituting—
 - (a) a contravention of the mandatory articles; or
 - (b) attempting to contravene the mandatory articles; or
 - (c) aiding, abetting, counselling or procuring a person to contravene the mandatory articles; or
 - (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene the mandatory articles; or
 - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of the mandatory articles; or
 - (f) conspiring with others to contravene the mandatory articles.
- (2) The Supreme Court may, on the application of the Treasurer, grant an injunction, on the terms the court considers appropriate, restraining the company or other person from engaging in the conduct and, if the court considers it appropriate, requiring the company or other person to do something.
- (3) If a Metway group company or another person has failed, is failing or is proposing to fail to do something that the company or other person is required by the mandatory articles to do, the Supreme Court may, on the application of the Treasurer, grant an injunction, on the terms the court considers appropriate, requiring the company or other person to do the thing.
- (4) On an application for an injunction under subsection (2) or (3), the Supreme Court may, if the court considers it appropriate, grant an injunction by consent of all the parties to the proceeding, whether or not the court is satisfied subsection (2) or (3) applies.

- (5) If the Supreme Court considers it appropriate, the court may grant an interim injunction pending a decision on an application under subsection (2) or (3).
- (6) The Supreme Court may discharge or vary an injunction granted under this section.
- (7) The power of the Supreme Court to grant an injunction restraining a Metway group company or another person from engaging in conduct may be exercised—
 - (a) whether or not it appears to the court that the company or other person intends to engage again, or to continue to engage, in conduct of that kind; and
 - (b) whether or not the company or other person has previously engaged in conduct of that kind; and
 - (c) whether or not there is an imminent danger of substantial damage to a person if the company or other person engages in conduct of that kind.
- (8) The power of the Supreme Court to grant an injunction requiring a Metway group company or another person to do something may be exercised—
 - (a) whether or not it appears to the court that the company or other person intends to fail again, or to continue to fail, to do the thing; and
 - (b) whether or not the company or other person has previously failed to do the thing; and
 - (c) whether or not there is an imminent danger of substantial damage to a person if the company or other person fails to do the thing.
- (9) If the Treasurer applies to the Supreme Court for the grant of an injunction under this section, the court must not require the Treasurer, as a condition of granting an interim injunction, to give an undertaking as to damages.
- (10) If the Supreme Court has power under this section to grant an injunction restraining a Metway group company or another person from engaging in particular conduct, or requiring the company or another person to do a particular thing, the court

may, either in addition to, or in substitution for, the grant of the injunction, make any other order it considers appropriate against the company or the other person who engaged in the conduct or a person who was involved in the contravention.

67 Delegation by Treasurer

The Treasurer may delegate the Treasurer's powers under this part to the chief executive of the department.

68 Jurisdiction of Supreme Court

The Supreme Court of Queensland has jurisdiction for matters arising under this part and that jurisdiction is exclusive of the jurisdiction of all other courts, other than the jurisdiction of the High Court under the Commonwealth Constitution, section 75.

69 Part 6 overrides Corporations Act

- (1) This part has effect despite the Corporations Act.
- (2) Without limiting subsection (1), 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

70 Obligation for existing QIDC liabilities

- (1) This section applies only to matters done or not done by QIDC under the QIDC Act before the Metway amalgamation day.
- (2) If QIDC becomes liable to pay an amount because of something done or not done for a matter mentioned in

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subsection (1), the State has the same obligation for payment of the amount as it would have had under the QIDC Act if this Act had not been enacted.

- (3) This section does not apply to a liability of an SFI transferred to QIDC under repealed part 4 or 5 except to the extent QIDC becomes liable to pay an amount because of something done, or not done, by it under the QIDC Act after the transfer but before the Metway amalgamation day.

71 Obligation for existing insurance liabilities

- (1) This section applies only to policies or contracts of insurance or indemnity issued or entered into by SIF, or a wholly-owned subsidiary of SIF, under the Suncorp Act before the Metway amalgamation day.
- (2) Subject to subsection (3), if SIF, or a wholly-owned subsidiary of SIF, becomes liable to pay an amount for a policy or contract of insurance or indemnity mentioned in subsection (1), the State has the same obligation to pay the amount as it would have had under the Suncorp Act if this Act had not been enacted.
- (3) The State's obligation applies only to the amount that was, on the Metway amalgamation day, the maximum actual or contingent liability of SIF, or a wholly-owned subsidiary of SIF, for a policy or contract of insurance or indemnity mentioned in subsection (1).

72 Obligation for liabilities transferred from QIDC, SIF or a wholly-owned subsidiary of SIF

- (1) This section applies if the State has an obligation mentioned in section 70 or 71 to pay an amount and the liability in relation to the amount was transferred under repealed part 4 or 5 or the Metway scheme of arrangement from QIDC, SIF, or a wholly-owned subsidiary of SIF to another entity on or before the Metway amalgamation day.
- (2) The State has the same obligation to pay the amount as it would have had if the amount were payable under—

- (a) section 70; or
- (b) section 71.

73 No guarantee for future liabilities

To remove any doubt, on and from the Metway amalgamation day the State does not guarantee the payment of an amount, in relation to a liability of QIDC, SIF or a wholly-owned subsidiary of SIF, not mentioned in section 70, 71 or 72.

74 Appropriation of guaranteed amounts

- (1) This section applies if an amount becomes payable by the State because of section 70, 71 or 72.
- (2) The Treasurer may pay the amount from the consolidated fund without further appropriation.

75 Guarantee fee

- (1) If the State has an obligation to pay an amount under section 70 or 72(2)(a), the Treasurer may require QIDC, or the entity to whom the liability in relation to the amount was transferred under repealed part 4 or 5 or the Metway scheme of arrangement, to pay fees to the State in relation to the State's obligation to pay the amount.
- (2) The Treasurer may also require Metway, or a wholly-owned subsidiary of Metway, to pay fees to the State in relation to an amount owed by Metway, or a wholly-owned subsidiary of Metway, to Queensland Treasury Corporation.
- (3) The fees mentioned in subsections (1) and (2) must be calculated at the rates of—
 - (a) for an amount that becomes due and payable within 1 year of the liability to repay the amount being incurred—0.05% per annum of the amount; and

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- (b) for an amount that becomes due and payable more than 1 year after the liability to repay the amount was incurred—0.20% per annum of the amount.
- (4) How and when the fees are to be paid is to be decided by the Treasurer.
- (5) A fee required to be paid under this section is a debt due to the State.

Schedule 3 Dictionary

section 3

articles means articles of association.

assets includes rights and powers of any description, including rights and powers that are of a personal character and are incapable under the general law of being assigned or performed vicariously.

company means a company incorporated under the Corporations Law.

holding company see Corporations Law, section 9.

Editor's note—

Corporations Law, section 9—

holding company, in relation to a body corporate, means a body corporate of which the first body corporate is a subsidiary.

liabilities includes duties of any description, including duties that are of a personal character or are incapable under the general law of being assigned or performed vicariously.

mandatory articles means a Metway group company's articles required by section 64(1).

memorandum means memorandum of association.

Metway means Metway Bank Limited (ACN 010 831 722).

Metway amalgamation day means the day notified by a Treasurer's gazette notice as the day the Metway scheme of arrangement takes effect.

Editor's note—

The Metway amalgamation day is 1 December 1996 (see notice publ gaz 29 November 1996 p 1257).

Metway group company means—

- (a) Metway; or
- (b) any holding company of Metway; or

- (c) a wholly-owned subsidiary of Metway that is the principal operating, banking or insurance company in the group of companies consisting of Metway and any related body corporate of Metway.

Metway scheme of arrangement see section 6.

QIDC means Queensland Industry Development Corporation.

QIDC Act means the *Queensland Industry Development Corporation Act 1994*.

related body corporate see Corporations Law, section 9.

Editor's note—

Corporations Law, section 9—

related body corporate, in relation to a body corporate, means a body corporate that is related to the first-mentioned body by virtue of section 50.

Corporations Law, section 50—

Related bodies corporate

Where a body corporate is:

- (a) a holding company of another body corporate;
- (b) a subsidiary of another body corporate; or
- (c) a subsidiary of a holding company of another body corporate;

the first-mentioned body and the other body are related to each other.

repealed part 4 or 5, means part 4 or 5 as in force before the commencement of the *Treasury and Trade and Other Legislation Amendment Act 2013*, chapter 2, part 5.

resolution, of a Metway group company, see the Corporations Law, section 9.

Editor's note—

Corporations Law, section 9—

resolution, in relation to creditors or contributories, means a resolution passed at a meeting of the creditors or contributories.

SBS means Suncorp Building Society Limited.

SFI see section 5.

SIF means Suncorp Insurance and Finance.

special resolution, of a Metway group company, see the Corporations Law, section 9.

Editor's note—

Corporations Law, section 9—

special resolution means:

- (a) in relation to a company, a resolution:
 - (i) of which notice as set out in paragraph 249L(c) has been given; and
 - (ii) that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution; or
- (b) in relation to a registered scheme, a resolution:
 - (i) of which notice as set out in paragraph 252J(c) has been given; and
 - (ii) that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution.

subsidiary see the Corporations Law, section 9.

Editor's note—

Corporations Law, section 9—

subsidiary, in relation to a body corporate, means a body corporate that is a subsidiary of the first-mentioned body by virtue of Division 6.

Suncorp Act means the *Suncorp Insurance and Finance Act 1985*.

Treasurer's gazette notice means a notice by the Treasurer published in the gazette.

wholly-owned subsidiary—

- (a) of an SFI—includes a subsidiary of the SFI none of whose members is a person other than the SFI or a trustee for the SFI; and
- (b) in any other case—see Corporations Law, section 9.

Editor's note—

Corporations Law, section 9—

wholly-owned subsidiary, in relation to a body corporate, means a body corporate none of whose members is a person other than:

- (a) the first-mentioned body;

Schedule 3

- (b) a nominee of the first-mentioned body;
- (c) a subsidiary of the first-mentioned body, being a subsidiary none of whose members is a person other than:
 - (i) the first-mentioned body; or
 - (ii) a nominee of the first-mentioned body; or
- (d) a nominee of such a subsidiary.