

SUNCORP INSURANCE AND FINANCE AMENDMENT BILL 1996

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The Bill seeks to amend the *Suncorp Insurance and Finance Act 1985* (the “Suncorp Act”), which provides for the establishment of Suncorp Insurance and Finance (“Suncorp”) to:

1. Enable the Suncorp Board to effect a restructuring of its business, and in particular its Life Insurance and Superannuation business, subject to the Treasurer’s approval.
2. Allow for independent prudential supervision of Suncorp’s insurance operations by the Insurance and Superannuation Commission (“ISC”) by referral of certain State legislative powers over insurance to the Commonwealth Parliament.
3. Allow for the State Tax Equivalent Regime (“TER”) to apply to Suncorp wholly-owned subsidiaries.

Reasons for the Bill

The Suncorp Act was given assent in 1985.

The Bill will allow Suncorp to effect a restructuring that will establish the general insurance business and life insurance and superannuation business in separate subsidiaries of Suncorp. In addition, the Bill allows Suncorp to effect a restructuring of its funds within these subsidiaries, and in particular to recognise an amount no greater than \$70 million as the shareholder’s capital and retained earnings in the subsidiary which will conduct the life insurance and superannuation business. This amount is derived from an injection of funds provided by the General Insurance Fund in 1990, plus earnings on those funds.

The terms of the proposed restructure have been reviewed and supported

by an independent actuarial assessment made on behalf of the Government by Tillinghast.

The Bill will also allow for the independent prudential supervision of Suncorp's insurance businesses by the Insurance and Superannuation Commission ("ISC"). Currently, Suncorp voluntarily complies with the requirements of various Commonwealth legislation overseen by the ISC.

The formal prudential supervision of Suncorp's insurance business by the ISC is necessary for two major reasons:

- it provides additional comfort for policyholders and the Government as shareholder that Suncorp's business operations are being conducted in a manner that is prudentially sound; and
- it will facilitate Suncorp's interstate expansion by allowing it to sell life insurance and superannuation products interstate. Currently, Suncorp's ability to sell these products is restricted to Queensland.

To achieve this, the Bill refers certain constitutional legislative powers of the State in respect of State insurance to the Commonwealth. Precedent for this lies in the referral of powers over State banking to the Commonwealth in the *QIDC Act 1994* to allow QIDC to be formally prudentially supervised by the Reserve Bank of Australia.

The Bill allows for the application of the tax equivalents regimes ("TER") to Suncorp's wholly-owned subsidiaries. At the 1994 Premiers' Conference the Commonwealth and all the States and Territories reached an agreement whereby in return for the Commonwealth amending federal tax legislation to ensure that State Trading Entities ("STE"s) were exempt from Commonwealth taxes, the States and Territories would impose TER on their STEs. The Commonwealth has now passed this legislation and Queensland has issued the *Treasurer's Tax Equivalents Manual* which imposes tax equivalents on its STEs (ie Government Owned Corporations ("GOCs")) under the authority of section 155 of the *Government Owned Corporations Act 1993*. (the "GOC Act").

On the enactment of the Commonwealth amendments, all Suncorp's 55 wholly-owned subsidiaries became exempt from Commonwealth income tax. However, as Suncorp and its wholly-owned subsidiaries are not GOCs or GOC subsidiaries they can not be taxed under the Queensland TER. It is proposed to amend the Suncorp Act to enable Suncorp and its wholly-owned subsidiaries to be subject to the TER as if they were GOCs and GOC subsidiaries. This will enable Queensland to meet the undertaking it gave at the 1994 Premiers' Conference.

Estimated Cost for Government Implementation

There will be no cost for the Government as a result of these amendments.

Consistency with Fundamental Legislative Principles

The Bill has adequate regard to Fundamental Legislative Principles. The restructuring of Suncorp's funds under the proposed provisions has been supported by an independent actuarial evaluation which has concluded that the proposed restructure:

1. Provides adequate protection for policyholders;
2. Is fair in the initial allocation of capital between policyholders and Suncorp;
3. Is fair in terms of the allocation of future profits between policyholders and Suncorp; and
4. Is appropriate and viable from a shareholder's perspective.

Consultation

The Suncorp Board, the ISC, and Commonwealth Treasury have been consulted. In addition, an independent actuary, Tillinghast has been appointed by the Government to ensure that the proposed restructuring has no negative impact upon policyholder interests.

NOTES ON PROVISIONS**PRELIMINARY**

Clause 1 sets out the short title of the Act.

Clause 2 identifies the Act being amended as the *Suncorp Insurance and Finance Act 1985*.

Clause 3 provides for the commencement of sections 8 to 10 and 16 on the day to be fixed by proclamation. The remainder of the Act is effective on assent.

AMENDMENT OF SUNCORP INSURANCE AND FINANCE ACT 1985

Clause 4(1) amends section 8(3) to apply it to Suncorp's subsidiaries which enter into policies or contracts of insurance or indemnity. Section 8(3) requires regard to be had to public interest in obtaining indemnity insurance cover at reasonable cost and to meet that interest consistently with prudent conduct of its insurance business.

Clause 4(2) inserts section 8(4) to provide that Suncorp may exercise any of its powers and authorities by permitting subsidiaries to exercise the like powers and authorities, to the exclusion of Suncorp.

Clause 5 omits section 11(1) which provided a State guarantee for Suncorp's liabilities in respect of any policy, contract of insurance and indemnity. This will be replaced by sections 37A and 37B which are inserted by *clause 6* of the Bill.

Clause 6 provides that Part 3A—Guarantee by State—is to be inserted after section 37.

GUARANTEE BY STATE

Section 37A provides that the State guarantees any amount payable by Suncorp and its wholly-owned subsidiaries that carry on life insurance, superannuation and general insurance business, under a policy or contract of insurance or indemnity issued or entered into by Suncorp and its subsidiaries after the commencement of section 37A.

Section 37B provides that the State is liable to pay any amounts which it would have been liable for under existing obligations of Suncorp and its subsidiaries as if the omission of section 11(1) had not been made.

Section 37C empowers the Treasurer to discharge the State's obligations associated with the guarantee by paying amounts from consolidated revenue without further appropriation.

Section 37D(1) authorises the Treasurer to obtain a guarantee fee from Suncorp, or any wholly-owned subsidiary carrying on life insurance, superannuation and general insurance business, in consideration of the

State guarantee outlined in sections 37A and 37B.

Section 37D(2) gives the Treasurer the discretion in terms of the quantum of guarantee fee, how, when and by whom it is to be paid.

Clause 7 inserts Division 1—Taxation—before section 38.

Section 37E(1) defines “subsidiary” as a subsidiary of Suncorp.

Section 37E(2) provides that Suncorp is not exempt from State tax because Suncorp represents the Crown or has immunities, rights or privileges of the Crown.

Section 37E(3) provides that Suncorp subsidiaries are not exempt from State tax because Suncorp represents the Crown or has immunities, rights or privileges of the Crown.

Section 37E(4) provides that all business conducted by Suncorp and its subsidiaries is subject to State tax pursuant to the *Stamp Act 1894* or any other Act which imposes State tax.

Section 37E(5) allows scope for Suncorp or its subsidiaries to be exempted from State tax, in whole or part, by regulation.

Section 37F(1) defines “subsidiary” as a subsidiary of Suncorp and “tax equivalents manual” as the tax equivalents manual issued under section 155 of the *Government Owned Corporations Act 1993*.

Section 37F(2) requires Suncorp and its subsidiaries to pay income tax equivalents to the Treasurer as per the tax equivalents manual.

Section 37F(3)(a) provides that the tax equivalents manual applies as if Suncorp were a GOC; a Suncorp subsidiary is a subsidiary of a GOC; and the Treasurer is the GOC Minister of Suncorp and its subsidiaries. Section 37F(3)(b) enables the Treasurer to apply the manual with all necessary and additional changes.

Section 37F(4) provides that section 37F is to apply to the financial year commencing 1 July 1995 and all later financial years.

Section 37F(5) provides that sections 37F(4) and 37F(5) expire on 1 January 1997.

Clause 8 omits section 38 which requires Suncorp to keep certain separate and distinct funds.

Clause 9 omits section 39 which allows Suncorp Board to invest its funds.

Clause 10 omits section 40 which requires Suncorp to prepare and furnish balance sheets and statements of account for its life assurance, superannuation, general insurance and other insurance related businesses. The matters referred to in *clause 10* are dealt with by *clause 23* of the Schedule which provides that Suncorp is a statutory body under the *Financial Administration and Audit Act 1977*.

Clause 11 inserts Part 4A—Reference of Power to Commonwealth Parliament—after section 42.

REFERENCE OF POWER TO COMMONWEALTH PARLIAMENT

Section 42A outlines the objective of Part 4A, which is to remove the constitutional barrier preventing the Commonwealth Parliament from legislating with respect to State insurance carried out within the limits of Queensland by Suncorp or its subsidiaries.

Section 42B(1) provides that the intention of the Queensland Parliament is that Suncorp and its subsidiaries comply with the requirements under Commonwealth law governing insurance and superannuation. This will allow formal prudential supervision of Suncorp's insurance activities by the Insurance and Superannuation Commission.

Section 42B(2) provides that the intention as set out in section 42B(1) does not limit the objective of Part 4A or the reference of power made under the Part.

Section 42C(1) refers section 51 (xiv) of the Commonwealth Constitution, which deals with State insurance, to the Commonwealth Parliament.

Section 42C(2) limits the referral of section 51 (xiv) to the Commonwealth only:

- so far as it applies to Suncorp and its subsidiaries;
- to the extent that it is not otherwise included in the legislative powers of the Commonwealth Parliament; and
- from commencement of this section to a date fixed under section 42C(3).

Section 42C(3) provides that the date at which this referral of power

ends, in respect of section 51 (xiv), may be determined by regulation.

Clause 12 omits Section 44 which deems the life insurance activities of Suncorp to be subject to the application of sections 18 to 26 and 38 to 44 of the *Life Assurance Companies Act 1901*.

Clause 13 omits section 45 which deals with taxation. This is now dealt with under new Division 1—Taxation—inserted by *clause 7*.

Clause 14 inserts sections 46A.

Section 46A(1) requires Suncorp to obtain the Treasurer’s prior written approval before it can change the status of a successor subsidiary from that of a wholly-owned subsidiary. A successor subsidiary is defined in section 48D(1)(a) and (3) as a wholly-owned subsidiary of Suncorp that is the transferee from Suncorp of its life assurance, superannuation or general insurance businesses.

Section 46A(2) requires Suncorp or its successor subsidiaries to obtain the Treasurer’s prior written approval before it can dispose of any of its main undertakings.

Clause 15 inserts Parts 5A—Transfer of Certain Business of Corporation—and 5B—Transitional Provisions—after section 47.

TRANSFER OF CERTAIN BUSINESS OF CORPORATION

Section 48A outlines the objective of Part 5A which is to provide for the restructure of Suncorp’s insurance activities (the “scheme of transfer”). Suncorp’s proprietary life insurance, superannuation and general insurance businesses are to be transferred (in whole or in part) to wholly-owned subsidiaries of Suncorp that are to be regulated under Commonwealth law.

Section 48B states that it is the intention of Parliament that Part 5A will not operate to cause anyone to be liable, or to increase such liability, for any Commonwealth or State tax which the person would not have been liable if not for Part 5A.

Section 48C defines an “asset” of the fund to include an investment of the fund; “instrument” as per section 3 of the *Government Owned*

Corporations Act 1993; and “liability” of a fund to include a policy, contract or indemnity liability of the fund.

Section 48D(1) details the matters that must be included in the scheme of transfer.

Section 48D(2) specifies that \$70 million is the maximum amount that Suncorp may reclassify as shareholder’s capital and retained profits in the subsidiary to which Suncorp’s life insurance and superannuation funds are to be transferred.

Section 48D(3) provides for the scheme of transfer to include details of the transfer of all or part of Suncorp’s general insurance fund.

Section 48D(4) provides that the scheme of transfer must identify the assets and liabilities of each of Suncorp’s funds to be transferred under the scheme.

Section 48D(5) provides that the scheme of transfer must specify the date when the scheme, or parts of the scheme, are to operate.

Section 48D(6) provides that section 48D does not limit the matters to be included in the scheme of transfer.

Section 48D(7) provides that the definition of “fund” in section 48D includes the assets and liabilities of the fund.

Section 48E(1) provides that the board must prepare a draft of the scheme of transfer and submit it to the Treasurer for agreement.

Section 48E(2) allows the Treasurer to specify a time by which the draft scheme is to be submitted.

Section 48E(3) provides that the board and the Treasurer must endeavour to reach agreement on the draft of the scheme as soon as possible but not later than a time specified by the Treasurer.

Section 48F(1) allows the Treasurer to return the draft scheme to the board to further consider any matter and revise the draft in the light of these considerations.

Section 48F(2) requires that the board comply with the request described in section 48F(1) as a matter of urgency.

Section 48F(3) outlines the powers of the Treasurer in the event that there is no agreement on the draft scheme of transfer between the Suncorp Board and Treasurer within a reasonable period. The Treasurer is empowered to

direct the Suncorp Board in writing to take certain steps in relation to the draft scheme of transfer or make changes to the draft scheme of transfer.

Section 48F(4) requires the Suncorp Board to immediately comply with the Treasurer's direction pursuant to Section 48F(3).

Section 48G(1) provides that when the Treasurer agrees to the draft of the scheme of transfer (which includes any changes directed by the Treasurer under section 48F(3)), it becomes the scheme of transfer.

Section 48G(2) provides that the scheme of transfer is binding on all persons (including third parties), and must be given effect to by Suncorp and each successor subsidiary.

Section 48G(3) empowers Suncorp and each successor subsidiary to do anything necessary or convenient to give effect to the scheme of transfer.

Section 48G(4) provides that other provisions of Part 5A do not limit sections 48F(2) and (3).

Section 48H gives effect to the transfer of liabilities of a fund to a successor subsidiary under the scheme of transfer.

Section 48I(1) provides that a successor subsidiary is the successor in law of Suncorp in relation to a fund transferred to the subsidiary under the scheme of transfer.

Section 48I(2) provides that policies of Suncorp become the policies of the successor subsidiaries without implication that amounts have been paid, received or re-invested.

Section 48J provides that instruments transferred under the scheme of transfer, which would have applied to Suncorp in relation to a fund, apply to a successor subsidiary in place of Suncorp.

Section 48K(1) provides that any legal proceedings by or against Suncorp in relation to a fund transferred, pursuant to the scheme of transfer, may be continued or finished by or against the successor subsidiary.

Section 48L(1)(a) provides that nothing done under the scheme of transfer or Part 5A which includes anything done under the scheme of transfer should place Suncorp or anyone else in breach of contract or confidence or in any way guilty of a civil wrong.

Section 48L(1)(b) provides that nothing done under the scheme of transfer or Part 5A should place Suncorp or anyone else in breach of any

instrument. This includes an instrument prohibiting, restricting or regulating the assignment or transfer of any right or liability or the disclosure of any information.

Section 48L(1)(c)(i) provides that nothing done under the scheme of transfer or Part 5A allows a person to terminate an instrument or obligation or change the operation or effect of an instrument or obligation.

Section 48L(1)(c)(ii) provides that nothing done under the scheme of transfer or Part 5A requires an amount to be paid before its stated maturity.

Section 48L(1)(d) provides that nothing done under the scheme of transfer or Part 5A releases a surety or other obligee (in whole or in part) from an obligation.

Section 48L(2) provides that if the advice or consent of a person is required under an instrument to give effect to Part 5A, this subsection deems the advice to have been obtained or consent to have been given.

Section 48M(1) exempts anything that is done in relation to Part 5A (which would include anything done under the scheme of transfer) from State tax (including stamp duty).

Section 48M(2) empowers the Treasurer to certify that a stated matter, instrument, transaction or thing is exempt under section 48M(1) from any State tax.

Section 48M(3) provides that, to the extent that the legislative power of the Queensland State Parliament permits, reference to State tax includes a reference to tax imposed under an Act of another State.

Section 48M(4) provides that section 48M does not limit the intention of Parliament as stated in section 48B.

Section 48N(1) provides that a certificate signed by the Treasurer stating that a stated document is a copy of the scheme of transfer, or a stated part of the scheme of transfer, is evidence of the matter stated in the certificate.

Section 48N(2) provides for a certificate be signed by the Suncorp chief executive officer to be evidence of the matters set out in paragraphs (a) to (c) of section 48N(2).

TRANSITIONAL PROVISIONS

Section 48O(1) outlines the purposes of this section which is to enable the provisions of the Commonwealth law regarding insurance or superannuation to be applied to Suncorp and its subsidiaries as State law until the Commonwealth law applies by way of the referral of power to the Commonwealth Parliament under Part 4A.

Section 48O(2) provides that a regulation may apply provisions of a Commonwealth law about insurance or superannuation to Suncorp or its subsidiaries.

Section 48O(3) provides that the provisions of Commonwealth law apply, with all necessary changes and any changes stated in the regulation, as a State Act.

Section 48O(4) provides that for the purposes of this section, Commonwealth law about insurance or superannuation includes (but is not limited to) any of the following Commonwealth Acts:

- *Insurance Act 1973*
- *Life Insurance Act 1995*
- *Insurance (Agents and Brokers) Act 1984*
- *Insurance Contracts Act 1984*
- *Insurance Acquisitions and Takeovers Act 1991*
- *Superannuation Industry (Supervision) Act 1993.*

Section 48P(1) provides that a regulation may make provision for any matter which is necessary or convenient to assist in the transition from the operation of the Act before its amendment by this amending Act to its operation after amendment by this amending Act. A regulation can also be utilised if this amending Act does not make provision or sufficient provision to give effect to the implementation of the objective of this Act.

Section 48P(2) allows a regulation to have retrospective operation to a date not earlier than the commencement of the amending Act.

Section 48P(3) provides that a regulation made under section 48P may have effect despite any provision of this Act other than this section.

Section 48Q provides that Part 5B expires 2 years after it commences, or an earlier date if so prescribed under regulation.

Clause 16 omits Part 6 which regulated Suncorp's insurance business by subjecting Suncorp to certain provisions of the *Insurance Contracts Act 1984 (Commonwealth)* and the *Insurance (Agents and Brokers) Act 1984 (Commonwealth)*.

Clause 17 repeals the *Life Assurance Companies Act 1901*.

SCHEDULE

MINOR AND CONSEQUENTIAL AMENDMENTS

This schedule makes minor amendments to the *Suncorp Insurance and Finance Act 1985* (“the Act”) to reflect the effect of the amendments and bring it into line with current drafting practice.

Clause 1 replaces the long title to more accurately the Act as amended.

Clause 2 replaces the heading of section 5 with “Definitions”.

Clause 3 omits the definitions of “board” and “corporation” in section 5.

Clause 4 inserts in section 5 the definitions of “appointed day”, “board”, “Commonwealth tax”, “corporation”, “scheme of transfer”, “State”, “State tax”, “subsidiary”, “successor subsidiary”, “tax”, and “wholly-owned subsidiary”.

Clause 5 omits section 6 which defines “appointed day” in the Act as 1 January 1986.

Clause 6 omits ‘and authorities’ and ‘or authority’ from section 8.

Clause 7 replaces ‘Companies (Queensland) Code or that Code as amended’ in section 8(1)(n) with ‘Corporations Law’.

Clause 8 omits ‘and authorities’ from section 11(2).

Clause 9 replaces ‘the Governor in Council, by order in council’ in section 11(2) with ‘a regulation’.

Clause 10 omits section 11(3) which deems Suncorp as a statutory body within the meaning of the *Financial Administration and Audit Act 1977-1985*. This is replaced by section 41 as outlined in *clause 23* of the Schedule.

Clause 11 omits ‘and authorities’ and ‘and duties’ from section 15(1).

Clause 12 replaces ‘contract’ from section 15(2) with ‘contract,’.

Clause 13 omits sections 15(3) to (3C) which are transitional provisions regarding employees at the time the Act came into force in 1985.

Clause 14 omits sections 21 and 22 which contain transitional arrangements associated with the establishment of Suncorp.

Clause 15 omits ‘by notification published in the gazette’ in section 23(2)(a).

Clause 16 replaces ‘authority, function or duty’ in section 27 with ‘or function’.

Clause 17 omits ‘and authorities’ and ‘and duties’ from section 29(1) and (2)(d).

Clause 18 omits ‘and authorities’, ‘and duties’ and ‘or imposed’ from section 32.

Clause 19 omits ‘and authorities’ and ‘and duties’ from section 33.

Clause 20 omits part of section 34(2A) which outlines Suncorp Board procedures. This amendment allows the election of a director to preside over a meeting in the event that both chairperson and deputy chairperson are absent from that meeting.

Clause 21 omits ‘and authorities’ and ‘and duties’ from section 34(2B).

Clause 22 omits ‘or authorities’ and ‘or duty’ from section 35(1).

Clause 23 replaces section 41 to provide that the Suncorp is a statutory body under the *Financial Administration and Audit Act 1977*.

Clause 24 omits ‘and authorities’ and ‘and duties’ from section 42(1).

Clause 25 replaces section 43 with a modernised version of a power of delegation.

Clause 26 replaces the specific regulation making power in section 47 with a more general regulation making power.