

State Financial Institutions and Metway Merger Amendment Bill 2024

Explanatory Notes

Short title

The short title of the Bill is the State Financial Institutions and Metway Merger Amendment Bill 2024.

Policy objectives and the reasons for them

The primary objective of the Bill is to ensure certain conditions under part 6 of the *State Financial Institutions and Metway Merger Act 1996* (Act) continue to apply to Suncorp Group Limited (Suncorp) once Suncorp bank is removed from the application of part 6.

On 18 July 2022, Suncorp announced the proposed acquisition of its banking business (Suncorp Bank) by the Australia and New Zealand Banking Group Limited (ANZ) (Transaction). The Transaction will enable Suncorp to be a dedicated insurance business, focusing on providing competitive market insurance offerings to Australian individuals and businesses. It will also allow ANZ to further participate in the economic growth of Queensland.

In 1996, the Act facilitated the merger of Suncorp, Queensland Industry Development Corporation (QIDC) and Metway Bank. The policy intent of the Act when it was enacted was to allow for a major Queensland-based financial institution. The Act applied to all companies in the Metway group, including the banking business and the insurance business.

The Suncorp group was restructured in 2010. The practical effect of the restructure was that the Act only applied to the banking operations (carried out by the entity Suncorp-Metway Limited) (that is, Suncorp Bank) and its wholly owned subsidiaries and Suncorp.

Suncorp and ANZ have agreed three conditions precedent for the Transaction:

- obtaining a merger authorisation from the Australian Competition and Consumer Commission (ACCC) under the *Competition and Consumer Act 2010* (Cth) (section 50);
- obtaining the approval of the Federal Treasurer under the *Financial Sector (Shareholdings) Act 1998* (Cth) for ANZ to acquire ownership of 100% of the shares; and
- amending the Act so that it does not apply to Suncorp Bank or ANZ.

Since the announcement of the Transaction, Suncorp has made public statements reinforcing its commitment to maintain a Queensland headquartered business. Queensland Treasury has negotiated with Suncorp and ANZ to ensure the Act is amended to continue to apply to Suncorp, despite the sale of Suncorp Bank.

The amendments are therefore needed to ensure the mandatory articles (now constitution) conditions continue to apply to Suncorp under the Act once Suncorp Bank is removed from the application of part 6 the Act.

Achievement of policy objectives

To achieve its objective, the Bill will make the following amendments.

Suncorp's constitution

Clause 7 of the Bill amends section 64 of the Act to specify that the constitution of Suncorp must at all times require:

- the registered office of Suncorp to be located in Queensland;
- at least one member of the board of directors to be ordinarily resident in Queensland; and
- the head office of Suncorp to be located in Queensland.

The head office of Suncorp is located in Queensland only if:

- the principal operational office of the chief executive officer is located in Queensland and the chief executive officer performs their role primarily in Queensland;
- the chairperson has an office in Queensland;
- each group corporate services activity is wholly or partly performed in Queensland; and
- the usual location for the holding of Suncorp board meetings is in Queensland.

A group corporate services activity means each of the following activities (however described) carried out in relation to Suncorp's Australian business:

- activities of the chief executive's office;
- financial reporting, business development (including in relation to supporting mergers and acquisitions) and management of capital, investments and financial performance;
- risk management and compliance;
- legal and company secretariat;
- internal audit;
- technology and transformation strategy and management, including data analytics, digital enablement, cloud services, and information technology infrastructure and security;
- human resources;
- corporate affairs and government relations.

Suncorp's Australian business means the insurance business carried on in Australia by Suncorp or a related body corporate of Suncorp other than the offering or underwriting of insurance outside of Australia. (Clause 13(2))

Clause 8 of the Bill also amends section 65 to replace references to Metway Group company with Suncorp. Section 65(1) will provide that a special resolution of Suncorp that would, apart from this subsection, have the effect of altering Suncorp's constitution so that the constitution would not comply with section 64 has no effect.

Clause 10 inserts new section 69A, which will provide that Suncorp must at all times act in a manner that is consistent with the mandatory constitution provisions, whether or not Suncorp has modified its constitution to include the mandatory constitution provisions.

Importantly, clause 12 inserts a transitional provision (new section 76) to make clear that Suncorp is not required to comply with the obligation under section 64 until the day that is 6 months after the commencement. This provision is designed to allow Suncorp sufficient time to comply with the requirements in section 64.

New certification requirement

Clause 9 inserts new section 66A, which will require the chief executive officer of Suncorp to give the Treasurer a certificate no later than 31 July each year stating that:

- throughout the 12-month period ending on the previous 30 June, Suncorp complied with section 64 and part 6A; and
- throughout the 12-month period ending on the next 30 June, Suncorp does not propose to act in a way that would contravene section 64 or part 6A.

Obligation to maintain registration

Clause 10 inserts new section 69B, which will require that Suncorp maintains its status as a company registered with ASIC and to refrain from doing any act or making any omission that would result in Suncorp ceasing to be registered as a company with ASIC.

Obligation to notify Treasurer of non-compliance

New section 69C imposes an obligation on Suncorp to immediately give the Treasurer written notice if it becomes aware of an act or omission, or of a proposed act or omission, that is or would be inconsistent with an obligation under part 6A. (Clause 10)

New acquiring entity

Clause 10 also inserts new section 69D (in new part 6B), which will apply parts 6 and 6A to an entity that acquires all, or substantially all, of Suncorp's Australian business. Parts 6 and 6A will apply to the entity as if a reference to Suncorp were a reference to the acquiring entity.

Other amendments

The Bill will also make other amendments to:

- section 4 to insert the following new objects of the Act:
 - to provide for particular requirements about the merger of the State financial institutions mentioned in section 5 and Metway; and
 - to provide for particular requirements in relation to Suncorp's constitution and general obligations of Suncorp. (Clause 4)

- sections 66, 69 and the Schedule 3 definitions as a result of substituting references from Metway group company to Suncorp (Schedule 1 and clause 13); and
- section 75 to specify that the obligation under subsection (1) to pay fees to the State in relation to the State's obligations to pay an amount under sections 70 or 72(2)(a) do not apply if the entity to whom the liability was transferred is Metway or a related body corporate of Metway. (Clause 11)

Alternative ways of achieving policy objectives

Legislative amendment is the only way to continue to apply the mandatory constitutional provisions to Suncorp once Suncorp Bank is removed from the application of part 6 of the Act.

Estimated cost for government implementation

There are no administrative costs to government in implementing the amendments.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles, aside from the breach of fundamental legislative principles outlined below.

Legislation should have sufficient regard to the rights and liberties of individuals—*Legislative Standards Act 1992, section 4(2)(a)*

Under section 4(2)(a) of the *Legislative Standards Act 1992* (LSA), legislation must have sufficient regard to the rights and liberties of individuals. This includes the right to freedom of movement, which extends to the freedom to choose where to live.

Clause 7 of the Bill proposes to reconfirm a mandatory requirement already existing in the Act that the constitution of Suncorp must at all times require that at least one member of the board of directors be ordinarily resident in Queensland. The effect of this requirement is that, to comply with its constitution, Suncorp will be required to ensure at least one member of Suncorp's board is a person who is ordinarily resident in Queensland. This is inconsistent with the right of that individual to choose where to live.

The inconsistency with fundamental legislative principles is considered to be justified in this instance on the basis that a key objective of the Bill is to ensure Suncorp continues to be Queensland-based, promoting board opportunities, and delivering employment and economic activity in Queensland.

In addition, the proposed requirement is considered justified on the basis that having a 'locally-based' director with a greater appreciation of the increasing impacts of natural disasters on Queenslanders is a matter of legitimate relevance to the State.

Consultation

An exposure draft of the Bill was released for targeted consultation with Suncorp and ANZ in July 2023. The departments of Premier and Cabinet and Justice and Attorney-General were consulted.

An Impact Analysis Statement has been completed in accordance with the Queensland Government Better Regulation Policy, which identifies that the proposal is minor in nature as it does not involve substantive regulatory or policy change. Accordingly, no further regulatory impact analysis was required.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another State.

Notes on provisions

Clause 1 provides that this Act may be cited as the *State Financial Institutions and Metway Merger Amendment Act 2024*.

Clause 2 provides that the Act commences a day to be fixed by proclamation.

Clause 3 states that this Act amends the *State Financial Institutions and Metway Merger Act 1996*.

Clause 4 amends the objects clause to include a new objective to reflect the current amendments; that is, to provide for requirements in relation to Suncorp's constitution and general obligations of Suncorp.

Clause 5 amends the heading of part 6 of the Act to substitute the reference to Metway Group companies' articles with Suncorp's constitution.

Clause 6 omits section 63 as it is no longer required. However, see new section 76 below (clause 12), which provides when section 64 applies to Suncorp.

Clause 7 omits and replaces section 64 to provide that Suncorp's constitution must at all times require:

- the registered office of Suncorp to be located in Queensland;
- at least one member of the board of directors to be ordinarily resident in Queensland; and
- the head office of Suncorp to be located in Queensland.

The latter requirement for the head office of Suncorp to be located in Queensland is further defined in subsection 64(2), to mean that:

- the principal operational office of the chief executive officer is located in Queensland and the chief executive officer performs their role primarily in Queensland; and
- the chairperson has an office in Queensland; and
- each group corporate services activity is wholly or partly performed in Queensland; and
- the usual location for the holding of Suncorp board meetings is in Queensland.

Group corporate services activity means each of the following activities (however described) carried out in relation to Suncorp's Australian business:

- activities of the chief executive's office;
- financial reporting, business development (including in relation to supporting mergers and acquisitions) and management of capital, investments and financial performance;
- risk management and compliance;
- legal and company secretariat;
- internal audit;
- technology and transformation strategy and management, including data analytics, digital enablement, cloud services, and information technology infrastructure and security;
- human resources; and
- corporate affairs and government relations.

Suncorp's Australian business is defined in schedule 3 (see clause 13(2)) to mean the insurance business carried out in Australia by Suncorp or a related body corporate of Suncorp other than the offering or underwriting of insurance outside of Australia.

Clause 8 makes a consequential amendment to section 65 to substitute the references to Metway group companies and articles with Suncorp and constitution respectively. Section 65(1) will therefore provide that a special resolution of Suncorp that would, apart from this subsection, have the effect of altering Suncorp's constitution so that the constitution would not comply with section 64 has no effect.

Clause 9 inserts new section 66A, to require the chief executive officer of Suncorp to give the Treasurer a certificate no later than 31 July each year stating that:

- throughout the 12-month period ending on the previous 30 June, Suncorp complied with section 64 and part 6A of the Act; and
- throughout the 12-month period ending on the next 30 June, Suncorp does not propose to act in a way that would contravene section 64 or part 6A of the Act.

Clause 10 inserts a new part 6A to impose three additional obligations on Suncorp, and a new part 6B to apply particular provisions to an acquiring entity.

Firstly, in new part 6A, new section 69A will require Suncorp to, at all times, act in a manner that is consistent with the mandatory constitution provisions, whether or not Suncorp has modified its constitution to include the mandatory constitution provisions. Secondly, new section 69B imposes an obligation on Suncorp to maintain its status as a company registered with ASIC and to refrain from doing any act or making any omission that would result in Suncorp ceasing to be registered as a company with ASIC. Finally, section 69C imposes an obligation on Suncorp to give notice to the Treasurer immediately if it becomes aware of an act or omission, or of a proposed act or omission, that is or would be inconsistent with an obligation under part 6A.

In new part 6B, new section 69D provides that parts 6 and 6A of the Act apply to an entity, that acquires all or substantially all of Suncorp's Australian business.

Clause 11 amends section 75(2) to specify that the obligation under subsection (1) to pay fees to the State in relation to the State's obligations to pay an amount under sections 70 or 72(2)(a) do not apply if the entity to whom the liability was transferred is Metway or a related body corporate of Metway.

Clause 12 inserts a new part 8 to provide for a transitional provision. The provision clarifies that Suncorp is not required to comply with the obligations under section 64 until the day that is 6 months after the commencement. Subsection (2) further clarifies that references in other provisions to compliance with or contravention of section 64 or to the mandatory constitution provisions must be read subject to this section. Subsection (3) makes it clear that the section does not limit section 69A.

Clause 13 makes consequential amendments to various definitions in schedule 3.

Schedule 1

Item 1 makes consequential amendments to section 66 to substitute references to Metway group company with Suncorp, as part 6 will no longer apply to Suncorp Bank.

Item 2 makes consequential amendments to section 66 to update references to mandatory articles with mandatory constitutional provisions.

Item 3 makes consequential amendments to section 66 to substitute references to company or other person with 'Suncorp or the other person'.

Item 4 makes similar consequential amendments to section 66(10) to substitute the reference to company with Suncorp.

Item 5 makes consequential amendments to section 69(2) to substitute references to Metway group company's memorandum or articles with Suncorp's constitution.