

THE BANK OF ADELAIDE (MERGER) ACT, 1980

New South Wales



ANNO VICESIMO NONO

ELIZABETHÆ II REGINÆ

An Act to supplement by legislation of the State of New South Wales The Bank of Adelaide (Merger) Act, 1980, of the State of South Australia, which provides for the transfer to Australia and New Zealand Banking Group Limited of the undertaking of The Bank of Adelaide, and for the transfer to Australia and New Zealand Savings Bank Limited of the undertaking of The Bank of Adelaide Savings Bank Limited; and for other purposes connected therewith. [Assented to, 30th September, 1980.]

The Bank of Adelaide (Merger).

Preamble. WHEREAS:

- (1) The Bank of Adelaide became a wholly owned subsidiary of the Australia and New Zealand Banking Group Limited in pursuance of a scheme of arrangement under the provisions of the Companies Act, 1962 (as amended) of the State of South Australia having effect from 30th November, 1979:
- (2) The Bank of Adelaide Savings Bank Limited is a wholly owned subsidiary of The Bank of Adelaide and Australia and New Zealand Savings Bank Limited is a wholly owned subsidiary of Australia and New Zealand Banking Group Limited:
- (3) It is expedient in the interests of banking efficiency that the banking business conducted by The Bank of Adelaide should be transferred to Australia and New Zealand Banking Group Limited and the banking business conducted by The Bank of Adelaide Savings Bank Limited should be transferred to the Australia and New Zealand Savings Bank Limited and that the transfers be effected by Act of Parliament:
- (4) By The Bank of Adelaide (Merger) Act, 1980, of the State of South Australia, provision is made for the vesting in Australia and New Zealand Banking Group Limited of the undertaking of The Bank of Adelaide and for the vesting in Australia and New Zealand Savings Bank Limited of the undertaking of The Bank of Adelaide Savings Bank Limited:
- (5) To vest the undertakings of The Bank of Adelaide and of The Bank of Adelaide Savings Bank Limited carried on in New South Wales in Australia and New Zealand Banking Group Limited and Australia and New Zealand Savings Bank Limited respectively, it is expedient to enact the provisions set out herein:

BE it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title. 1. This Act may be cited as "The Bank of Adelaide (Merger) Act, 1980".

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2. This Act shall commence on 1st October, 1980.

Commence-
ment.

3. In this Act, unless the contrary intention appears—

Inter-
pretation.

“the appointed day” means the day of coming into operation of this Act;

“ANZ” means Australia and New Zealand Banking Group Limited;

“ANZ Savings Bank” means Australia and New Zealand Savings Bank Limited;

“BOA” means The Bank of Adelaide;

“BOA Savings Bank” means The Bank of Adelaide Savings Bank Limited;

“excluded assets” means—

(a) documents required to be kept by BOA or BOA Savings Bank pursuant to the Companies Act, 1961, or otherwise by law;

(b) land held, immediately before the appointed day, by BOA or BOA Savings Bank otherwise than by way of security;

“instrument” means an instrument (other than this Act) that creates, evidences, modifies, or extinguishes rights or liabilities and includes any judgment, order or process of a court;

“land” includes an estate or interest in land, or an interest in respect of land;

“legal proceedings” includes an arbitration;

“liabilities” includes duties and obligations;

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“the merging trading banks” means BOA and ANZ;

“the merging savings banks” means BOA Savings Bank and ANZ Savings Bank;

“property” means real and personal property;

“rights” includes powers and privileges;

“security” means a mortgage or charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, lien, pledge or other security for the payment of money or for the discharge of an actual or contingent obligation or liability;

“transferred employee” means an officer or employee of BOA who becomes an officer or employee of ANZ in pursuance of this Act;

“undertaking” in relation to BOA or BOA Savings Bank means—

- (a) all property of the relevant bank (apart from excluded assets);
- (b) all rights and liabilities of the relevant bank (apart from rights and liabilities relating to excluded assets).

Act binds Crown.

4. This Act binds the Crown.

Vesting of undertakings of merging bank and savings bank.

5. (1) On the appointed day—

- (a) the undertaking of BOA is vested in ANZ; and
- (b) the undertaking of BOA Savings Bank is vested in ANZ Savings Bank.

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(2) On and after the appointed day—

- (a) a reference to BOA in any instrument made or executed before that day shall (except to the extent that the instrument relates to an excluded asset and unless the context otherwise requires) be read and construed as a reference to ANZ; and
- (b) a reference to BOA Savings Bank in any instrument made or executed before that day shall (except to the extent that the instrument relates to an excluded asset and unless the context otherwise requires) be read and construed as a reference to ANZ Savings Bank.

6. Without prejudice to the generality of other provisions of this Act, the following provisions shall have effect on and after the appointed day— ^{Trans-}
^{sitional}
^{provision.}

- (a) an instruction, mandate or authority given to BOA and subsisting on the appointed day shall be deemed to have been given to ANZ;
- (b) a security held by BOA as security for a debt or other liability owed to BOA shall be available to ANZ as security for the discharge of that debt or liability and, where the security extends to future debts or liabilities, shall be available as security for the discharge of debts or liabilities owed to ANZ and incurred on or after the appointed day; and in relation to a security ANZ shall be entitled to all the rights and priorities and shall be subject to all liabilities to which BOA would have been entitled or subject if this Act had not been passed;
- (c) all the rights and obligations of BOA as bailee of documents or chattels shall be transferred to and assumed by ANZ;
- (d) a negotiable instrument or order for payment of money which is drawn on or given to or accepted or endorsed by BOA or payable at any place of business of BOA

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shall have the same effect on and after the appointed day as if it had been drawn on or given to or accepted or endorsed by ANZ or was payable at the place of business of ANZ nearest to the place at which it would have been payable if this Act had not been passed;

- (e) no legal proceedings commenced before the appointed day by or against BOA shall abate or be otherwise prejudiced by reason of this Act.

Further
tran-
sitional
provision.

7. Without prejudice to the generality of other provisions of this Act, the following provisions shall have effect on and after the appointed day—

- (a) an instruction, mandate or authority given to BOA Savings Bank and subsisting on the appointed day shall be deemed to have been given to ANZ Savings Bank;
- (b) a security held by BOA Savings Bank as security for a debt or other liability owed to BOA Savings Bank shall be available to ANZ Savings Bank as security for the discharge of that debt or liability and, where the security extends to future debts or liabilities, shall be available as security for the discharge of debts or liabilities owed to ANZ Savings Bank and incurred on or after the appointed day; and in relation to a security ANZ Savings Bank shall be entitled to all the rights and priorities and shall be subject to all liabilities to which BOA Savings Bank would have been entitled or subject if this Act had not been passed;
- (c) all the rights and obligations of BOA Savings Bank as bailee of documents or chattels shall be transferred to and assumed by ANZ Savings Bank;
- (d) a negotiable instrument or order for payment of money which is drawn on or given to or accepted or endorsed by BOA Savings Bank or payable at any place of business of BOA Savings Bank shall have the same effect on and after the appointed day as if it had been drawn on or given to or accepted or endorsed by ANZ Savings

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Bank or was payable at the place of business of ANZ Savings Bank nearest to the place at which it would have been payable if this Act had not been passed;

- (e) no legal proceedings commenced before the appointed day by or against BOA Savings Bank shall abate or be otherwise prejudiced by reason of this Act.

8. (1) Where, under the provisions of a lease, licence or other agreement, BOA or BOA Savings Bank has rights in respect of the occupation or use of land, those rights may, notwithstanding that there has been no assignment, transfer, underletting or other disposition by BOA or BOA Savings Bank, be exercised by ANZ or ANZ Savings Bank. Assignment and subletting of leases.

(2) For the purposes of a lease, licence or other agreement relating to the occupation or use of land, BOA or BOA Savings Bank does not part with possession of land by permitting ANZ or ANZ Savings Bank to exercise rights under subsection (1) in respect of the land.

9. (1) While BOA remains a subsidiary of ANZ—

- (a) where either of the merging trading banks is served with a document the other shall be deemed to have been served as well;
- (b) legal proceedings that have been commenced by or against either of the merging trading banks may be continued by or against the other; and
- (c) a judgment or order obtained by or against either of the merging trading banks may be enforced by or against the other.

Continuity of legal proceedings.

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(2) While BOA Savings Bank remains a subsidiary of ANZ—

- (a) where either of the merging savings banks is served with a document the other shall be deemed to have been served as well;
- (b) legal proceedings that have been commenced by or against either of the merging savings banks may be continued by or against the other; and
- (c) a judgment or order obtained by or against either of the merging savings banks may be enforced by or against the other.

Evidence. **10.** A document that could, before the appointed day, have been given in evidence for or against the interests of BOA or BOA Savings Bank may, on or after the appointed day, be given in evidence for or against the interests of ANZ or ANZ Savings Bank.

**Officers
and
employees.**

11. Notwithstanding any other provision of this Act—

- (a) on the appointed day each employee of BOA shall become an employee of ANZ on terms and conditions identical with the terms and conditions of his former employment with BOA and with the benefit of all rights accrued in respect of his employment;
- (b) The Bank of Adelaide Provident Fund established pursuant to deed of trust dated 25th July, 1918, shall continue in existence for the benefit of transferred employees and their dependants until it is terminated pursuant to the rules governing the fund;
- (c) a transferred employee acquires no rights in respect of a pension scheme provident fund or officer guarantee fund of ANZ existing before the appointed day;

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- (d) a director, secretary or auditor of BOA or BOA Savings Bank does not by virtue of this Act become a director, secretary or auditor of ANZ or ANZ Savings Bank.

12. (1) No person dealing—

- (a) with ANZ or BOA (in any capacity whatsoever); or
- (b) with ANZ Savings Bank or BOA Savings Bank (in any capacity whatsoever),

Protection
of persons
in respect
of dealings
with
excluded
assets.

nor the Registrar-General, nor any other person registering or certifying title to land or having the power or duty to examine or receive evidence as to title to land, shall, in respect of any dealing or transaction entered into or purporting to be entered into by ANZ, BOA, ANZ Savings Bank or BOA Savings Bank be concerned to see or enquire into whether any property the subject of the dealing or transaction (whether or not that property is land) is an excluded asset, or be affected by any notice, express, implied or constructive, that any such property is an excluded asset.

(2) If any dealing or transaction is entered into by ANZ or ANZ Savings Bank with any person, in relation to or in connection with an excluded asset, it shall be deemed in favour of that person that ANZ or ANZ Savings Bank, as the case may be, has full power and authority to enter into that dealing or transaction as if the excluded asset had vested in ANZ or ANZ Savings Bank, as the case may be, under this Act.

13. The provisions of the Stamp Duties Act, 1920, shall not apply to any written request made pursuant to section 46C of the Real Property Act, 1900—

Application
of Stamp
Duties Act,
1920.

- (a) by ANZ in respect of any part of the undertaking of BOA to which such section is applicable which is vested in ANZ by this Act; or

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- (b) by ANZ Savings Bank in respect of any part of the undertaking of BOA Savings Bank to which such section is applicable which is vested in ANZ Savings Bank by this Act.
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