

BANK INTEGRATION ACT 1992 No. 80

NEW SOUTH WALES



TABLE OF PROVISIONS

PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Purpose
4. Crown to be bound
5. Definitions
6. Extra-territorial operation

PART 2—BANK REORGANISATIONS

7. Consequence of succession day
8. Assets and liabilities
9. Translated instruments
10. Places of business
11. Legal proceedings and evidence
12. Permitted business names
13. Employment unaffected
14. Receiving bank to do what is necessary to carry out reorganisation

PART 3—TAXATION MATTERS

15. Exemptions from certain taxes and charges

PART 4—MISCELLANEOUS

16. Certificates evidencing operation of Act etc.
17. Interest in land
18. Certificates in relation to land and interests in land
19. Certificates in relation to other assets

Bank Integration Act 1992 No. 80

20. Documents purporting to be certificates
 21. Evidence
 22. Act to have effect despite other laws
 23. Regulations
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BANK INTEGRATION ACT 1992 No. 80

NEW SOUTH WALES



Act No. 80, 1992

An Act to facilitate the integration of certain banks; and for other purposes. [Assented to 27 November 1992]

The Legislature of New South Wales enacts:**PART I—PRELIMINARY****Short title**

1. This Act may be cited as the Bank Integration Act 1992.

Commencement

2. This Act commences on a day to be appointed by proclamation.

Purpose

3. The purpose of this Act is to facilitate the integration of Westpac Savings Bank Limited into Westpac Banking Corporation.

Crown to be bound

4. This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Definitions

5. (1) In this Act:

“**asset**” means property, or a right, of any kind, and includes:

- (a) any legal or equitable estate or interest (whether present or future, vested or contingent, tangible or intangible, in real or personal property) of any kind; and
- (b) any chose in action; and
- (c) any right, interest or claim of any kind, including rights, interests or claims in or in relation to property (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing); and
- (d) any asset within the meaning of Part IIIA of the Income Tax Assessment Act 1936 of the Commonwealth;

“**authorised person**”, in relation to a particular provision, the receiving bank and the transferring bank, means:

- (a) the Treasurer; or

Bank Integration Act 1992 No. 80

(b) if the Treasurer designates, in writing:

- (i) the chief executive officer or another senior executive of the receiving bank; or
- (ii) a member of the Chief Executive Service or the Senior Executive Service of the Public Service,

as an authorised officer in relation to that provision and those banks—the officer so designated;

"business", in relation to a bank, includes the assets and liabilities of the bank;

"chief executive officer", in relation to the receiving bank, means the officer having the day to day management of the affairs of the bank and includes an officer acting from time to time in that capacity;

"Commonwealth Act" means the Bank Integration Act 1991 of the Commonwealth or, if that Act is amended, that Act as amended and in force for the time being;

"instrument" includes a document and an oral agreement;

"interest", in relation to land, includes:

- (a) a legal or equitable estate or interest in the land; or
- (b) a right, power or privilege over, or in relation to, the land;

"liability" includes a duty or obligation of any kind (whether arising under an instrument or otherwise, and whether actual, contingent or prospective);

"receiving bank" means the Westpac Banking Corporation;

"succession day" means the day fixed under section 9 of the Commonwealth Act as the succession day for the receiving bank and the transferring bank;

"tax" includes:

- (a) stamp duty; and
- (b) any other tax, duty, levy or charge; and
- (c) any fee (however described) that is not a tax;

"transferred asset", in relation to the receiving bank, means an asset that has become, under this Act or the Commonwealth Act, an asset of the receiving bank;

"transferred liability", in relation to the receiving bank, means a liability that has become, under this Act or the Commonwealth Act, a liability of the receiving bank;

"transferring bank" means the Westpac Savings Bank Limited;

“translated instrument”, in relation to the transferring bank, means an instrument (including a legislative instrument other than this Act or the Commonwealth Act) subsisting immediately before the succession day for that bank and the receiving bank:

- (a) to which the transferring bank is a party; or
- (b) that was given to, by or in favour of, the transferring bank; or
- (c) that refers to the transferring bank; or
- (d) under which money is, or may become, payable, or other property is, or may become, liable to be transferred, to or by the transferring bank.

(2) Where reference is made in this Act to anything done for a purpose connected with, or arising out of, the operation or effect of this Act, that reference is taken to include any transaction entered into, or any instrument or document made, executed, lodged or given, for that purpose.

Extra-territorial operation

6. It is the intention of Parliament that the operation of this Act should, as far as possible, include operation in relation to the following:

- (a) land situated outside New South Wales, whether in or outside Australia;
- (b) things situated outside New South Wales, whether in or outside Australia;
- (c) acts, transactions and matters done, entered into or occurring outside New South Wales, whether in or outside Australia;
- (d) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of a foreign country.

PART 2—BANK REORGANISATIONS

Consequence of succession day

7. On the succession day:

- (a) the receiving bank becomes the successor in law of the transferring bank; and
- (b) the transferring bank is dissolved.

Assets and liabilities

8. Without limiting, by implication, the operation of section 7, on the succession day:

- (a) all assets of the transferring bank, wherever located, vest in, or are otherwise available for the use of, the receiving bank; and
- (b) all liabilities of the transferring bank, wherever located, become liabilities of the receiving bank.

Translated instruments

9. Each translated instrument in respect of the transferring bank continues to have effect, according to its tenor, on and after the succession day, as if a reference in the instrument to the transferring bank were a reference to the receiving bank.

Places of business

10. On and after the succession day, a place that, immediately before that day, was a place of business for the transferring bank is taken to be a place of business for the receiving bank.

Legal proceedings and evidence

11. (1) Where, immediately before the succession day, proceedings (including arbitration proceedings) to which the transferring bank was a party were pending or existing in any court or tribunal, the receiving bank is, on that day, substituted for the transferring bank as a party to the proceedings and has the same rights in the proceedings as the transferring bank had.

(2) Where, before the succession day, documentary or other evidence would have been admissible for or against the interests of the transferring bank, that evidence is admissible, on or at any time after that day, for or against the interests of the receiving bank.

Permitted business names

12. (1) For a period of 6 months beginning on the succession day, the receiving bank may operate in New South Wales under the name "Westpac Savings Bank" (in this section called the "**permitted business name**" in relation to the receiving bank).

(2) This section does not prevent the receiving bank from:

- (a) operating in New South Wales under a name other than the permitted business name; or
- (b) registering a name under the Business Names Act 1962.

(3) In this section, a reference to operating under a name includes a reference to engaging in any conduct in respect of which, for the purpose

of the Business Names Act 1962, that name would (but for subsection (1)) have been required to be registered.

Employment unaffected

13. (1) This section applies to every person who, immediately before the succession day, was performing duty in the transferring bank.

(2) The terms and conditions of employment (including any accrued entitlement to employment benefits) of each person to whom this section applies are not affected by the operation or effect of this Act.

Receiving bank to do what is necessary to carry out reorganisation

14. The receiving bank must do whatever is necessary to ensure that this Part is fully effective, particularly in relation to its business outside New South Wales, whether within or outside Australia.

PART 3—TAXATION MATTERS**Exemptions from certain taxes and charges**

15. (1) Tax is not payable under a law of New South Wales in respect of:

- (a) the operation or effect of this Act or the Commonwealth Act in its application to the vesting of the business of the transferring bank in the receiving bank; or
- (b) anything done for a purpose connected with, or arising out of, that operation or effect.

(2) In subsection (1), “tax” does not include any fee or tax prescribed by the Corporations Regulations.

PART 4—MISCELLANEOUS**Certificates evidencing operation of Act etc.**

16. (1) An authorised person may, by certificate signed by that person, certify any matter in relation to the operation or effect of this Act and, in particular, may certify that:

- (a) a specified matter or thing relevant to the receiving bank is an aspect of the operation or effect of this Act; or
- (b) a specified thing was done for a purpose connected with, or arising out of, the operation or effect of this Act in relation to the receiving bank; or

- (c) a specified asset of the transferring bank has become a transferred asset of the receiving bank; or
- (d) a specified liability of the transferring bank has become a transferred liability of the receiving bank.

(2) For all purposes and in all proceedings, a certificate under subsection (1) is conclusive evidence of the matters certified, except to the extent that the contrary is established.

Interest in land

17. Without prejudice to the generality of this Act and despite anything to the contrary in any other Act or law, if, immediately before the succession day, the transferring bank is, or is to be taken to be, the registered proprietor of an interest in land under the Real Property Act 1900, on and after the succession day:

- (a) the receiving bank is to be taken to be the registered proprietor of that interest in land; and
- (b) the receiving bank has the same rights and remedies in respect of that interest as the transferring bank had.

Certificates in relation to land and interests in land

18. Where:

- (a) the receiving bank becomes, under this Act or the Commonwealth Act, the owner of land, or of an interest in land; and
- (b) there is lodged with the Registrar-General a certificate that:
 - (i) is signed by an authorised person; and
 - (ii) identifies the land or interest; and
 - (iii) states that the receiving bank has, under this Act or the Commonwealth Act, become the owner of that land or interest,

the Registrar-General must:

- (c) register the matter in the same manner as dealings in land or interests in land of that kind are registered; and
- (d) deal with, and give effect to, the certificate.

Certificates in relation to other assets

19. (1) Where:

- (a) an asset (other than an interest in land to which section 17 applies) becomes, under this Act or the Commonwealth Act, an asset of the receiving bank; and

Bank Integration Act 1992 No. 80

- (b) there is lodged with the person or authority who has, under a law of New South Wales, responsibility for keeping a register in respect of assets of that kind a certificate that:
 - (i) is signed by an authorised person; and
 - (ii) identifies the asset; and
 - (iii) states that the asset has, under this Act or the Commonwealth Act, become an asset of the receiving bank,

that person or authority must:

- (c) register the matter in the same manner as transactions in relation to assets of that kind are registered; and
 - (d) deal with, and give effect to, the certificate.
- (2) This section does not affect the operation of the Corporations Law.

Documents purporting to be certificates

20. A document purporting to be a certificate given under this Part is, unless the contrary is established, taken to be such a certificate and to have been properly given.

Evidence

21. (1) Part 4 of the Evidence Act 1898 continues to apply with respect to bankers' books of the 'transferring bank and to entries made in those books before the succession day.

(2) In subsection (1), "**bankers' books**" has the same meaning as in the Evidence Act 1898.

Act to have effect despite other laws

22. (1) This Act has effect in spite of anything in any contract, deed, undertaking, agreement or other instrument.

(2) Nothing done by or under this Act:

- (a) places the receiving bank, the transferring bank or another person in breach of contract or confidence or otherwise makes any of them guilty of a civil wrong; or
- (b) places the receiving bank, the transferring bank or another person in breach of:
 - (i) any law of New South Wales; or
 - (ii) any contractual provision prohibiting, restricting or regulating the assignment or transfer of any asset or liability or the disclosure of any information; or

Bank Integration Act 1992 No. 80

(c) releases any surety, wholly or partly, from all or any of the surety's obligations.

(3) Without limiting subsection (1), where, apart from this section, the advice or consent of a person would be necessary in a particular respect, the advice is taken to have been obtained or the consent is taken to have been given, as the case requires.

Regulations

23. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*[Minister's second reading speech made in—
Legislative Assembly on 15 October 1992
Legislative Council on 19 November 1992]*