

Banks and Bank Holidays Act 1912 No 43

[1912-43]



New South Wales

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **See also**
[Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2008](#)

Authorisation

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Banks and Bank Holidays Act 1912 No 43



New South Wales

An Act to consolidate the laws relating to banks and bank holidays.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Banks and Bank Holidays Act 1912*.

2 Repeal of Acts, First Schedule

The Acts mentioned in the First Schedule are to the extent therein expressed hereby repealed.

3 Definition

In Part 2, the word **bank** means:

- (a) any company, firm, or individual engaged in New South Wales in the discounting and issuing of bills and notes, lending money on securities and cash credit accounts, and other matters relating to the ordinary business of banking; or in the ordinary business of banking by receiving deposits and issuing bills or notes payable to the bearer at sight or on demand, and
- (b) any company, firm, or association receiving money on deposit in New South Wales and trading under limited liability, although such company, firm, or association does not issue bills or notes payable to the bearer at sight or on demand.

Part 2 Publication of statements and registration of banks

Division 1 Publication of statements

Editorial note—

See also (Commonwealth) *Banking Act 1959*, Part VI.

4 Statements of weekly average liabilities and assets to be kept

Every bank shall, at the close of business on Monday of every week, prepare and make up a full and correct account and statement in writing exhibiting:

- (a) the assets, property, credits, and securities belonging to every such bank, and
- (b) the respective debts, engagements, and liabilities of such bank, in the form set forth in the Second Schedule.

5 Quarterly abstracts to be published

- (1) From such weekly accounts and statements every bank shall, on the last Monday of each quarter ending on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, and the thirty-first day of December in every year, prepare a general abstract in writing, showing:
 - (a) the average amount during such quarter of the assets, property, credits, and securities of every such bank, and
 - (b) the debts, engagements, and liabilities of such bank,in the form set forth in the Third Schedule.
- (2) To every such quarterly abstract shall be subjoined a statement exhibiting:
 - (a) the amount of the capital stock of the bank preparing such abstract, paid up at the close of the quarter for which such abstract is prepared, and
 - (b) the rate and amount of the last dividend declared by such bank to its shareholders or proprietors, and
 - (c) the amount of the reserved profit of such bank at the time of declaring such dividend.
- (3) Every such respective quarterly abstract and statement shall be verified upon the oath of the managing director, manager, chief cashier, or clerk of the bank making the same; and shall, within one month after the close of every such quarter, or so soon thereafter as may be practicable, be delivered to the Chief Secretary to be laid before the Legislative Council and Legislative Assembly, and published in the Gazette.

6 Penalty for neglecting to keep or make such returns

- (1) If any such bank:
 - (a) neglects to keep such weekly accounts, or
 - (b) neglects to make out or to return or deliver to the Chief Secretary such quarterly abstracts as aforesaid,it shall forfeit for every such offence the sum of one thousand dollars.
- (2) If any managing director, manager, chief cashier, or clerk verifying such abstract, delivers or returns to the Chief Secretary any false account or abstract of such

averages, the bank making such false account or abstract shall forfeit for every such offence the sum of one thousand dollars; and the managing director, manager, chief cashier, or clerk so offending shall also forfeit for every such offence the sum of two hundred dollars.

- (3) Such penalties may be recovered respectively by action of debt in any court of competent jurisdiction.

Division 2 Registration

Editorial note—

See also (Commonwealth) [Banking Act 1959](#), Part II.

7 Copy of charter or deed of settlement to be registered

Where any bank is now carrying on business under a charter or a deed of co-partnership and settlement, a copy of such charter or deed, attested by the managing director, manager, chief cashier, or clerk of such bank, to be a true transcript of the original shall be registered, if not already registered, in the office of the Registrar-General, by the managing director, manager, chief cashier, or clerk of such bank as soon as may be practicable, and the same shall be open for inspection at all reasonable times by any person requiring to inspect the same, on payment of a fee of ten cents for each inspection.

8 Copy of new charter or deed to be registered

- (1) Whenever:

- (a) any new bank is established, having a charter or a deed of co-partnership and settlement, or
- (b) any new charter or deed of co-partnership and settlement of any bank issues or is entered into,

a copy of such charter, or of such deed of co-partnership and settlement, attested as aforesaid, shall in like manner be registered for the purposes aforesaid.

- (2) If any managing director, manager, chief cashier, or clerk omits or neglects so to register such attested copy as aforesaid, that person shall be liable to a penalty of two hundred dollars, to be recovered by an action of debt in any court of competent jurisdiction by any person who sues for the same.

9 Names of proprietors to be also registered

- (1) The managing director, manager, chief cashier, or clerk of every bank shall, within thirty days after the first day of January in each year, or as soon thereafter as may be practicable, cause a true and correct list of the names of all the persons who then are existing proprietors or members of such bank, with their respective places of abode

and descriptions, to be recorded on oath in the office of the Registrar-General, and the same shall be open for inspection at all reasonable times by any person requiring to inspect the same on payment of a fee of ten cents for each such inspection.

- (2) Any such managing director, manager, chief cashier, or clerk who omits or neglects to cause such list to be recorded in manner aforesaid, or wilfully falsifies any such list, shall be liable to a penalty of two hundred dollars, to be recovered by an action of debt in any court of competent jurisdiction by any person who sues for the same.

10 Liability of such proprietors to be sued

Every person whose name is so recorded as aforesaid shall be taken to be a member or proprietor of the banking company or firm in which the person's name is so recorded as aforesaid, and shall be liable to be sued as such until a new list of the names of the members or proprietors of such bank shall be recorded as aforesaid, or until the person has given notice in the Gazette of the person's retirement from such bank:

Provided that nothing herein contained shall be deemed:

- (a) to absolve any person from liability on account of any debts incurred by any such bank during the time such person remained a proprietor or member thereof, or
- (b) to render any individual proprietor or member of any bank established by royal charter or letters patent liable for any debts incurred by the same, except so far as the proprietor or member is liable under the provisions of such charter or letters patent.

10A Last four sections not to apply to certain banks

The last four preceding sections shall not apply to any bank which is incorporated, and has a capital divided into shares.

Division 3 Miscellaneous provisions

11 Oaths may be taken before justice of the peace

- (1) Every oath required to be taken under the provisions of this Part may be taken before and administered by any justice of the peace.
- (2) Any managing director, manager, chief cashier, or clerk who takes any false oath as to any quarterly abstract of averages or other matter or thing under the provisions of this Part shall be deemed to be guilty of perjury.

12 Limitation of actions

No action shall lie against any person for any offence committed against the provisions of this Part unless the same is commenced within two years from the time the offence is alleged to have been committed.

13 Proof of inability to comply with Act in given time to lie in party

If in any case any matter or thing required to be done or performed under the provisions of this Part within any given period is not so done or performed, the proof that it was not practicable to do so shall lie upon the party required to do or perform the same:

Provided that no excuse shall be allowed for any such failure or neglect unless it is clearly shown that the matter or thing required to be done or performed was done or performed as soon as was practicable.

13A Power to lend money on certain securities

Any bank notwithstanding anything to the contrary contained in any Act in force in New South Wales relating or applicable to such bank or in the charter or deed of settlement of such bank shall be and shall be deemed to have at all times been empowered to advance or lend money on the security of lands, houses, ships, or pledges of merchandise.

Part 3 Bank holidays

14 Application of Part 3

Nothing in this Part shall apply to bills of exchange, cheques, or promissory notes drawn or made after the first day of February, one thousand nine hundred and ten.

14A Definition

In this Part, **bank** means an authorised deposit-taking institution (within the meaning of the [Banking Act 1959](#) of the Commonwealth) that is authorised under that Act to use in its name:

- (a) the word **bank**, or
- (b) any other word or expression (whether or not in English) that is of like import to the word **bank**,

but does not include any such institution that is excluded from this definition by the regulations.

15 Bank holidays

The several days in the Fourth Schedule (and which days are in this Act hereinafter referred to as bank holidays) shall be kept as close holidays in all banks in New South Wales.

15A Saturdays and Sundays to be bank holidays

- (1) Every Saturday and Sunday that is not a bank holiday under another provision of this Act is declared to be a bank holiday under this section and is to be kept as a close holiday in all banks in New South Wales.

- (2) Subsection (1) does not prevent a bank opening (or one or more of its branches opening) in accordance with an approval granted under Schedule 6.
- (3) This section does not apply to an agency of a bank unless the agency is a subsidiary of the bank (within the meaning of the *Corporations Act 2001* of the Commonwealth) or the bank controls the agency (within the meaning of section 50AA of that Act).

16, 17 (Repealed)

18 As to payments on bank holidays

No person shall be compellable to make any payment or do any act upon such bank holidays which the person would not be compellable to do or make on Sunday and the obligation to make such payment and to do such act shall apply to the day following such bank holiday; and the making of such payment and doing such act on such following day shall be equivalent to payment of the money or performance of the act on the holiday.

Editorial note—

But see (Commonwealth) *Bills of Exchange Act 1909*, s 7 and First Schedule. See also (Commonwealth) *Banking Act 1959*, s 68.

19 Appointment of special bank holidays

- (1) The Governor may, by proclamation published in the Gazette, appoint a special day or part of a special day to be observed as a public holiday or half-holiday throughout New South Wales.
- (2) The proclamation is to be published at least 7 days before the public holiday or half-holiday is to be observed.
- (3) The Minister may, by notice published in the Gazette, appoint a special day or part of a special day to be observed as a public holiday or half-holiday in any local government area, part of a local government area or other part of New South Wales.
- (4) The notice is to be published at least 7 days before the public holiday or half-holiday is to be observed.
- (5) If it appears to the Minister that circumstances have arisen making it impractical or inconvenient for a special day or part of a special day appointed by the Minister to be observed as a public holiday or half-holiday, the Minister may, by notice published in the Gazette or in a newspaper circulating in the part of New South Wales in which the holiday is to be observed, cancel the appointment and may, if it is appropriate, appoint instead another special day or part of a special day to be observed as a public holiday or half-holiday in the area concerned.
- (6) A notice published under subsection (5) is to give as much notice as is practicable in the circumstances.

- (7) Any special day or part of a special day appointed to be observed as a public holiday or half-holiday is to be kept as a close holiday or half-holiday in all banks within the area mentioned in the proclamation or notice and, in relation to bills of exchange and promissory-notes payable on the special day or part of a special day so appointed, is to be regarded as a bank holiday or half-holiday in the area.

20 Day appointed for bank holiday may be vetoed by proclamation

Where in any special case it is made to appear to the Governor that in any year it is inexpedient that a day by this Act appointed for a bank holiday should be a bank holiday, the Governor may declare by proclamation in the Gazette, published not less than one week before the day appointed for such holiday, that such day shall not in such year be a bank holiday, and may appoint such other day as the Governor may think fit to be a bank holiday instead of such day, and thereupon the day so appointed shall in such year be substituted for the day so appointed by this Act.

21 Interpretation of references in certain agreements to public holidays

When in any industrial agreement, or in any agreement relating to work, made either before or after the commencement of this Act, reference is made to a public or bank holiday, such reference shall be deemed to relate to the day on which such holiday is publicly observed.

22 Half-holidays

- (1) Every bank on obtaining permission in writing of the Treasurer, and on giving the public notice hereinafter mentioned, may close the bank, or any branch of the bank, to business on any day after noon. The bank shall give public notice of such closing by advertisement published between the third and the fourteenth day before the day of such closing in at least two issues of some newspapers published and circulating in the neighbourhood of such bank or branch.
- (2) On any day on which any bank or branch may be closed under this section as aforesaid, no time after noon shall in respect of any business at such bank or branch be a reasonable hour within the meaning of the *Bills of Exchange Act 1887*, or shall be within banking or business hours within any law, practice, or custom relating to banks or bankers.

Editorial note—

But see (Commonwealth) *Bills of Exchange Act 1909*, s 7 and First Schedule.

Part 4 Miscellaneous

23 Regulations

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.

24 Savings, transitional and other provisions

Schedule 5 has effect.

First Schedule

(Section 2)

Reference to Act	Title or Short Title	Extent of Repeal
Act No 9, 1898	<i>Banks and Bank Holidays Act 1898</i>	The whole
Act No 30, 1899	<i>Banks and Bank Holidays Act (Amendment) Act 1899</i>	The whole
Act No 80, 1900	<i>Banks Half-Holiday Act 1900</i>	The whole
Act No 15, 1906	<i>Banks and Bank Holidays Further Amendment Act 1906</i>	The whole

Second Schedule

(Section 4)

Weekly Statement showing the amount and nature of the Debts, Engagements, and Liabilities, and of the Assets and Property or Securities of the Bank of _____ from the _____ to the _____ 19 .

Liabilities	Amount Totals		Assets	Amount Totals	
	\$ c	\$ c		\$ c	\$ c
Notes in circulation	{ Not bearing interest Bearing interest		Coined gold and silver, and other coined metals		
Bills in circulation					
Balance due to other banks			Landed property		
Deposits	{ Not bearing interest Bearing interest		Notes and bill of other Banks		
					Balances due from other Banks

		Amount of all debts due to the Bank, including notes, bills of exchange, and all stock and funded debts of every description, excepting notes, bills, and balances due to the said Bank from other Banks		
Total amount of Liabilities	\$		Total amount of Assets	\$

Managing Director.

Place and date.

Chief Cashier or Clerk.

Third Schedule

(Section 5)

General Abstract showing the average amount of the Liabilities and Assets of the Bank of taken from the several Weekly Statements during the quarter, from the _____ to the _____, 19__.

Liabilities	Amount Totals		Assets	Amount Totals	
	\$ c	\$ c		\$ c	\$ c
Notes in circulation	}	Not bearing interest	Coined gold and silver, and other coined metals		
		Bearing interest			
Bills in circulation	}	Not bearing interest	Gold and silver, in bullion or bars		
		Bearing interest			
Balances due to other Banks			Landed property		
			Notes and bills of other Banks		
Deposits	}	Not bearing interest	Balances due from other Banks		
		Bearing interest			

Easter Monday.

The twenty-fifth day of April (Anzac Day).

Christmas Day.

The twenty-sixth day of December.

When the first day of January, or the twenty-sixth day of January, or the twenty-fifth day of April (Anzac Day), or Christmas Day, or the twenty-sixth day of December falls upon a Sunday, the next following Monday shall be a Bank Holiday; and whenever the twenty-sixth day of December falls upon a Monday, the day following shall be a Bank Holiday.

Part 2

The Anniversary of the Birthday of the Sovereign.

The first day of August.

When any of the above days falls upon any day of the week other than Monday, that day shall not be a Bank Holiday, but the following Monday shall be a Bank Holiday in lieu thereof, unless otherwise proclaimed by notice in the Gazette.

Schedule 5 Savings, transitional and other provisions

(Section 24)

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

[Bank Holidays Legislation Amendment Act 2002](#)

[Shop Trading Act 2008](#)

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of **Bank Holidays**

Legislation Amendment Act 2002

2 Existing references to bank holidays

(1) In this clause:

amending Act means the *Bank Holidays Legislation Amendment Act 2002*.

existing industrial instrument means an industrial instrument as defined in the *Industrial Relations Act 1996* that was made before the commencement of this clause.

(2) An amendment made to Part 3 of this Act by the amending Act does not affect the meaning of any reference in any existing industrial instrument to a bank holiday or public holiday.

3 Opening hours for banks

A bank that was opening on any Saturday or Sunday, or both, during the period of 12 months immediately before the commencement of this clause may continue to so open without the need for an approval under Part 2 of the *Shops and Industries Act 1962*:

- (a) until the expiration of the period of 6 months from the commencement of this clause, or
- (b) if the bank makes an application for an approval under that Part before the expiration of that 6-month period, until the application is finally determined (taking into account any proceedings for a review by the Administrative Decisions Tribunal of a decision to refuse the application or to impose conditions of approval).

Part 3 Provisions consequent on appointment of APEC public holiday

4 Definition

In this Part, **the APEC public holiday** means 7 September 2007, being the day appointed by the notice published under section 19 (3) in Gazette No 36 of 2 March 2007 as a day to be observed as a public holiday in the local government areas specified in the Schedule to the notice.

5 Regulations concerning APEC public holiday

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the appointment of the APEC public holiday.
- (2) Without limiting subclause (1), the regulations may provide that, for the purposes of any Act or any statutory instrument (or any provision of any Act or any statutory instrument) specified in the regulations, the APEC public holiday:
 - (a) is taken to be a business day, or

- (b) is taken not to be a business day, or
- (c) is taken to be a public holiday, or
- (d) is taken not to be a public holiday, or
- (e) is taken to be a working day, or
- (f) is taken not to be a working day.

(3) Any such regulation may, if made after 7 September 2007, provide that, for the purposes of the Act, instrument or provision concerned, the APEC public holiday is taken always to have been, or not to have been, a business day, public holiday or working day (as the case may require).

6 Compensation not payable in respect of APEC-related matters

(1) Compensation is not payable by or on behalf of:

- (a) the State or an authority of the State, or
- (b) a local council, or
- (c) an officer, employee or agent of the State, an authority of the State or a local council,

for an act or omission that is an APEC-related matter or that arises (directly or indirectly) from an APEC-related matter.

(2) Subclause (1):

- (a) applies only in respect of acts done or omitted to be done in good faith, and
- (b) does not apply to acts or omissions that cause personal injury to a person or the death of a person.

(3) In this clause:

APEC-related matter means the following:

- (a) the appointment of the APEC public holiday,
- (b) the holding of any Asia-Pacific Economic Cooperation meeting during the period commencing at the beginning of 30 August 2007 and ending at the end of 12 September 2007,
- (c) the exercise of functions under the [APEC Meeting \(Police Powers\) Act 2007](#).

compensation includes damages and any other form of monetary compensation.

Schedule 6 Opening of banks on weekends

(Section 15A (2))

1 Banks may apply to open on weekends

- (1) A bank may apply to the Director-General of the Department of Commerce for approval to open the bank, or one or more branches of the bank, in New South Wales on Saturdays or Sundays, or both, that are declared to be bank holidays under section 15A.
- (2) An application is:
 - (a) to be made in writing to the Director-General, and
 - (b) to be accompanied by such information as the Director-General requires to determine the application, and
 - (c) to be accompanied by the fee set out in subclause (13) or such other fee as may be prescribed by the regulations.
- (3) The Director-General may:
 - (a) grant an approval unconditionally or subject to conditions, or
 - (b) refuse to grant an approval.
- (4) In determining an application for an approval, the Director-General is to consider whether granting the approval would be in the interests of the public, taking into account the likely effect of granting the approval on particular sections of the public, including customers of the bank concerned in any particular area (whether or not an area the subject of the application) and persons employed or engaged (whether or not by the bank) to perform services for the bank.
- (5) Nothing in subclause (4) limits the matters that the Director-General may consider in determining an application for approval.
- (6) For the purposes of determining an application for approval, the Director-General may request the applicant to provide such further information as the Director-General considers relevant to the determination of the application.
- (7) The Director-General may refuse to grant an approval if the applicant for approval does not comply with a request under subclause (6).
- (8) The Director-General may prepare guidelines relating to the type of information that may be required in connection with an application under this Schedule.
- (9) In preparing any such guidelines, the Director-General may consult with the banking industry.

- (10) If the Director-General grants an approval, the Director-General must issue the applicant with a written approval that sets out any conditions to which the approval is subject.
- (11) If the Director-General refuses an application for approval, the Director-General must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.
- (12) If the Director-General has not determined an application for approval before the expiration of the period of 40 days after the application was made to the Director-General (or such longer period as the Director-General determines with the consent in writing of the applicant), the Director-General is taken to have made a decision to refuse to grant the approval.
- (13) The fee to accompany an application by a bank under this clause is:
 - (a) if the application relates to specified branches of the bank—\$50 for each specified branch up to a maximum fee of \$2,500, or
 - (b) if the application relates to all of the branches of the bank from time to time—\$2,500.

2 Duration of approval

Except during any period of suspension, an approval under this Schedule remains in force for the period specified in the approval or, if no period is so specified, until the approval is cancelled.

3 Variation, suspension or cancellation of approval

- (1) The Director-General of the Department of Commerce may, at the request of the bank that holds the approval or on the Director-General's own initiative, vary the conditions of, or suspend or cancel, an approval under this Schedule.
- (2) An approval may be suspended or cancelled only if:
 - (a) the bank that holds the approval has contravened a condition of the approval, or
 - (b) the Director-General considers that it is no longer in the interests of the public for the approval to remain in force, or
 - (c) the bank has requested the suspension or cancellation.
- (3) The Director-General may only vary the conditions of, or suspend or cancel, an approval under this Schedule:
 - (a) after having given the bank concerned written reasons for the Director-General's intention to vary, suspend or cancel and an opportunity to make submissions, and

- (b) after having considered any submissions duly made by the bank.
- (4) Subclause (3) does not apply to a variation of a condition of, or the suspension or cancellation of, an approval at the request of the bank that holds the approval.
- (5) A variation of the conditions of, or a suspension or cancellation of, an approval:
 - (a) must be made by notice in writing served on the bank that holds the approval, and
 - (b) takes effect at the time at which the notice is served or at a later time specified in the notice.
- (6) Before determining to take action under this clause in relation to an approval, the Director-General may (but need not) determine that the approval will be subject to a period of review.
- (7) The Director-General is to give written notice of a determination under subclause (6) to the bank that holds the approval concerned and is to include in the notice written reasons for the determination.

4 Review of decisions by Administrative Decisions Tribunal

- (1) A bank that is the applicant for an approval under this Schedule or the holder of such an approval may apply to the Administrative Decisions Tribunal for a review of any of the following decisions under this Schedule:
 - (a) a decision of the Director-General to refuse to grant the approval,
 - (b) a decision of the Director-General to impose conditions on the approval,
 - (c) a decision of the Director-General to vary the conditions of the approval,
 - (d) a decision of the Director-General to suspend or cancel the approval.
- (2) A representative of an industrial organisation of which persons employed or engaged to perform services for a bank are entitled or eligible to belong may apply to the Administrative Decisions Tribunal for a review of any of the following decisions under this Schedule:
 - (a) a decision of the Director-General to grant an approval under this Schedule to the bank (whether with or without conditions),
 - (b) a decision of the Director-General to vary the conditions of an approval granted to the bank under this Schedule.
- (3) In this clause, **industrial organisation** means an industrial organisation within the meaning of the [Industrial Relations Act 1996](#), or an organisation registered under the [Workplace Relations Act 1996](#) of the Commonwealth.

5 Existing approvals

An approval in force under Part 2 of the *Shops and Industries Act 1962* and clause 4 of the *Shops and Industries Regulation 2007* immediately before the commencement of this Schedule is taken to have been granted under this Schedule.