

The Commercial Bank of Australia Limited (Merger) Act 1982 No 33

[1982-33]



New South Wales

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The Commercial Bank of Australia Limited (Merger) Act 1982 No 33



New South Wales

An Act to make provision for the transfer to Bank of New South Wales of the undertaking of The Commercial Bank of Australia Limited, and for the transfer to Bank of New South Wales Savings Bank Limited of the undertaking of The Commercial Savings Bank of Australia Limited; and for other purposes.

WHEREAS:

- (1) By the [Bank of New South Wales Act of 1850](#) there was incorporated a body politic and corporate in name and in deed by the name “Bank of New South Wales”:
- (2) The Commercial Bank of Australia Limited became on or about 12 February 1982 a wholly owned subsidiary of Bank of New South Wales in consequence of action under Part VIB of the *Companies Act 1961* of Victoria:
- (3) The Commercial Savings Bank of Australia Limited is a wholly owned subsidiary of The Commercial Bank of Australia Limited and Bank of New South Wales Savings Bank Limited is a wholly owned subsidiary of Bank of New South Wales:
- (4) It is expedient in the interests of banking efficiency that the banking business conducted by The Commercial Bank of Australia Limited should be transferred to Bank of New South Wales and that the banking business conducted by The Commercial Savings Bank of Australia Limited should be transferred to Bank of New South Wales Savings Bank Limited and that the transfers be effected by Act of Parliament:
- (5) To vest the undertakings of The Commercial Bank of Australia Limited and The Commercial Savings Bank of Australia Limited carried on in New South Wales in Bank of New South Wales and Bank of New South Wales 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:

1 Name of Act

This Act may be cited as *The Commercial Bank of Australia Limited (Merger) Act 1982*.

2 Commencement

- (1) This section and section 1 shall commence on the date of assent to this Act.
- (2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3 Definitions

In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

appointed day means the day appointed and notified under section 2 (2).

CBA means The Commercial Bank of Australia Limited.

CBA Savings Bank means The Commercial Savings Bank of Australia Limited.

continuing bank means the body politic and corporate constituted by the *Bank of New South Wales Act of 1850*.

continuing savings bank means the corporation incorporated under the name “Bank of New South Wales Savings Bank Limited”.

excluded assets means:

- (a) documents required by law to be kept by CBA or CBA Savings Bank,
- (b) prescribed securities held, immediately before the appointed day, by or on behalf of CBA or CBA Savings Bank otherwise than by way of security,
- (c) land held, immediately before the appointed day, by or on behalf of CBA or CBA Savings Bank otherwise than by way of security,
- (d) property held, immediately before the appointed day, by CBA upon trust pursuant to section 180X (11) of the *Companies Act 1961* of Victoria, and
- (e) property held, immediately before the appointed day, by CBA for the trustees of the CBA Staff Superannuation Fund, the CBA Female Staff Superannuation Fund or the CBA Wages Staff Superannuation Fund.

instrument means an instrument (other than this Act) which creates, evidences, modifies or extinguishes rights or liabilities or would do so if it or a copy thereof were lodged, filed or registered under any Act or other law and includes any judgment, order and process of a court.

land includes any estate or interest in land, and any interest in respect of land.

legal proceedings includes an arbitration.

liabilities means all liabilities, duties and obligations, whether actual, contingent or prospective.

prescribed securities means securities within the meaning of the *Securities Industry (New South Wales) Code*.

property means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal, and without limiting the generality of the foregoing includes choses in action, goodwill, rights, interests and claims of every kind in or to property, whether arising from, accruing under, created or evidenced by or the subject of an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective.

rights means all rights, powers, privileges and immunities, whether actual, contingent or prospective.

security means a mortgage or charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, indemnity, lien, pledge or other security for the payment of money or for the discharge of any other liability, and includes an agreement or undertaking to give or execute any of the foregoing whether upon demand or otherwise.

subsidiary has the same meaning as in the [Companies Act 1961](#).

transferred employee means an employee of CBA who becomes an employee of the continuing bank in pursuance of this Act.

undertaking, in relation to CBA or CBA Savings Bank, means:

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

4 Savings relating to certain property etc

Nothing in this Act applies to or in respect of:

- (a) any property, rights and liabilities arising from, accruing under, created or evidenced by or the subject of any of the instruments described in the Schedule, or
- (b) any of those instruments.

5 Crown to be bound

This Act binds the Crown.

6 Vesting of undertakings of merging bank and savings bank

(1) On the appointed day:

- (a) the undertaking of CBA is vested in the continuing bank, and
- (b) the undertaking of CBA Savings Bank is vested in the continuing savings bank.

(2) On and after the appointed day:

- (a) a reference to CBA in any instrument made, passed or executed before that day shall (except to the extent, if any, that the instrument relates to an excluded asset and unless the context otherwise requires) be read and construed as a reference to the continuing bank,
- (b) a reference to CBA Savings Bank in any instrument made, passed or executed before that day shall (except to the extent, if any, that the instrument relates to an excluded asset and unless the context otherwise requires) be read and construed as a reference to the continuing savings bank, and
- (c) a reference to the holder for the time being of a particular office (other than the office of a director, secretary or auditor) within CBA or CBA Savings Bank in any instrument made or executed before that day shall be read and construed as a reference to the person for the time being holding office as Chief General Manager of the continuing bank or such other officer of the continuing bank or the continuing savings bank as is designated from time to time by the Chief General Manager of the continuing bank or by any other officer acting under delegation from him.

(3) On and after the appointed day:

- (a) any place of business of CBA wherever located shall be deemed to be a place of business of the continuing bank, and
- (b) any place of business of CBA Savings Bank wherever located shall be deemed to be a place of business of the continuing savings bank.

(4) Where for any reason:

- (a) a liability to CBA immediately before the appointed day remains a liability to CBA on or after that day, or
- (b) a liability to CBA Savings Bank immediately before the appointed day remains a liability to CBA Savings Bank on or after that day,

CBA or CBA Savings Bank, as the case may be, shall have and may enforce the same rights in respect of that liability (including rights under any security relating thereto) as if this Act had not been passed.

7 Transitional provision—CBA

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, order, direction, mandate or authority given to CBA and subsisting immediately before the appointed day (not being one relating to an excluded asset) shall be deemed to have been given to the continuing bank,
- (b) an instrument given or addressed to CBA on or after the appointed day (not being one relating to an excluded asset) shall be deemed to have been given or addressed to the continuing bank,
- (c) a security held by CBA as security for a debt or other liability to CBA incurred before the appointed day shall be available to the continuing bank as security for the discharge of that debt or liability and, where the security extends to future or prospective debts or liabilities, shall be available as security for the discharge of debts owed to or liabilities to the continuing bank which are incurred on or after the appointed day; and in relation to a security the continuing bank shall be entitled to all the rights and priorities (howsoever rising) and shall be subject to all liabilities to which CBA would have been entitled or subject if this Act had not been passed,
- (d) all the rights and liabilities of CBA as bailee of documents or chattels shall be transferred to and assumed by the continuing bank,
- (e) a negotiable instrument or order for payment of money which before, on or after the appointed day is drawn on or given to or accepted or endorsed by CBA or payable at a place of business of CBA 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 the continuing bank instead of CBA or was payable at the place of business of the continuing bank which the firstmentioned place of business is by this Act deemed to be,
- (f) the relationship between CBA and a customer or depositor shall become the same relationship between the continuing bank and the customer or depositor and the same rights and liabilities including rights of set-off shall exist between the continuing bank and the customer or depositor as existed immediately before the appointed day between CBA and the customer or depositor,
- (g) all contracts, agreements, conveyances, deeds, leases, licences, instruments, undertakings and notices (whether or not in writing) entered into by, made with, given to or by or addressed to CBA (whether alone or with any other person) before the appointed day and in effect immediately before the appointed day (except to the

extent that they relate to an excluded asset) shall, to the extent that they were previously binding on and enforceable by, against or in favour of CBA, be binding on and enforceable by, against or in favour of the continuing bank as fully and effectually in every respect as if, instead of CBA, the continuing bank had been the person by whom they were entered into, with whom they were made, to or by whom they were given or to whom they were addressed, as the case may be,

(h) no legal proceedings commenced before the appointed day by, against or in favour of CBA shall abate or be otherwise prejudiced by reason of this Act,

(i) nothing effected by this Act:

(i) shall be regarded as placing CBA or the continuing bank in breach of contract or confidence or as otherwise making either of them guilty of a civil wrong,

(ii) shall be regarded as placing either of them in breach of any Act or other law or contractual provision prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information, or

(iii) shall release any surety wholly or in part from all or any of his obligations, and

(j) nothing done or suffered by CBA or the continuing bank pursuant to this Act (not being something effected by this Act):

(i) shall be regarded as a breach of contract or confidence or otherwise as a civil wrong,

(ii) shall be regarded as a breach of any Act or other law or contractual provision prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information, or

(iii) shall release any surety wholly or in part from all or any of his obligations,

if it would not have had that effect had it been done or suffered by CBA in the absence of this Act.

8 Transitional provision—CBA Savings Bank

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, order, direction, mandate or authority given to CBA Savings Bank and subsisting immediately before the appointed day (not being one relating to an excluded asset) shall be deemed to have been given to the continuing savings bank,

(b) an instrument given or addressed to CBA Savings Bank on or after the appointed day (not being one relating to an excluded asset) shall be deemed to have been given or addressed to the continuing savings bank,

- (c) a security held by CBA Savings Bank as security for a debt or other liability to CBA Savings Bank incurred before the appointed day shall be available to the continuing savings bank as security for the discharge of that debt or liability and, where the security extends to future or prospective debts or liabilities, shall be available as security for the discharge of debts owed to or liabilities to the continuing savings bank which are incurred on or after the appointed day; and in relation to a security the continuing savings bank shall be entitled to all the rights and priorities (howsoever arising) and shall be subject to all liabilities to which CBA Savings Bank would have been entitled or subject if this Act had not been passed,
- (d) all the rights and liabilities of CBA Savings Bank as bailee of documents or chattels shall be transferred to and assumed by the continuing savings bank,
- (e) a negotiable instrument or order for payment of money which before, on or after the appointed day is drawn on or given to or accepted or endorsed by CBA Savings Bank or payable at a place of business of CBA 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 the continuing savings bank instead of CBA Savings Bank or was payable at the place of business of the continuing savings bank which the firstmentioned place of business is by this Act deemed to be,
- (f) the relationship between CBA Savings Bank and a customer or depositor shall become the same relationship between the continuing savings bank and the customer or depositor and the same rights and liabilities including rights of set-off shall exist between the continuing savings bank and the customer or depositor as existed immediately before the appointed day between CBA Savings Bank and the customer or depositor,
- (g) all contracts, agreements, conveyances, deeds, leases, licences, instruments, undertakings and notices (whether or not in writing) entered into by, made with, given to or by or addressed to CBA Savings Bank (whether alone or with any other person) before the appointed day and in effect immediately before the appointed day (except to the extent that they relate to an excluded asset) shall, to the extent that they were previously binding on and enforceable by, against or in favour of CBA Savings Bank, be binding on and enforceable by, against or in favour of the continuing savings bank as fully and effectually in every respect as if, instead of CBA Savings Bank, the continuing savings bank had been the person by whom they were entered into, with whom they were made, to or by whom they were given or to whom they were addressed, as the case may be,
- (h) no legal proceedings commenced before the appointed day by, against or in favour of CBA Savings Bank shall abate or be otherwise prejudiced by reason of this Act,
- (i) nothing effected by this Act:
 - (i) shall be regarded as placing CBA Savings Bank or the continuing savings bank in

breach of contract or confidence or as otherwise making either of them guilty of a civil wrong,

(ii) shall be regarded as placing either of them in breach of any Act or other law or contractual provision prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information, or

(iii) shall release any surety wholly or in part from all or any of his obligations, and

(j) nothing done or suffered by CBA Savings Bank or the continuing savings bank pursuant to this Act (not being something effected by this Act):

(i) shall be regarded as a breach of contract or confidence or otherwise as a civil wrong,

(ii) shall be regarded as a breach of any Act or other law or contractual provision prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information, or

(iii) shall release any surety wholly or in part from all or any of his obligations,

if it would not have had that effect had it been done or suffered by CBA Savings Bank in the absence of this Act.

9 Assignment and subletting of leases

(1) Where, under the provisions of a lease, licence or other contract or agreement, CBA or CBA Savings Bank has rights in respect of the occupation or use of land, being an excluded asset, those rights may, notwithstanding that there has been no assignment, transfer, underletting or other disposition by CBA or CBA Savings Bank, be exercised by the continuing bank or the continuing savings bank, as the case may be.

(2) For the purposes of a lease, licence or other contract or agreement relating to the occupation or use of land, CBA or CBA Savings Bank does not part with possession of land by permitting the continuing bank or the continuing savings bank, as the case may be, to exercise rights under subsection (1) in respect of the land.

10 Continuity of legal proceedings

(1) Legal proceedings to which CBA or CBA Savings Bank was a party immediately before the appointed day may be continued by or against the continuing bank or the continuing savings bank, as the case may be.

(2) A judgment, order or award obtained by or against CBA or CBA Savings Bank in legal proceedings commenced before the appointed day may be enforced by or against the continuing bank or the continuing savings bank, as the case may be.

11 Evidence

- (1) Documentary or other evidence which would have been admissible for or against the interests of CBA or CBA Savings Bank if this Act had not been passed shall be admissible for or against the interests of the continuing bank or the continuing savings bank, as the case may be.
- (2) Notwithstanding the transfer of the undertakings of CBA and CBA Savings Bank to the continuing bank and the continuing savings bank, the provisions of Part 4 of the [Evidence Act 1898](#) shall continue to apply with respect to the bankers' books of CBA and CBA Savings Bank and to entries made in those bankers' books before the appointed day.
- (3) In subsection (2), **bankers' books** has the same meaning as in Part 4 of the [Evidence Act 1898](#).

12 Employees

Notwithstanding any other provision of this Act:

- (a) on the appointed day each employee of CBA shall cease to be an employee of CBA and shall become an employee of the continuing bank, but for the purposes of every Act and other law, award, determination, contract and agreement relating to the employment of each such employee his contract of employment shall be deemed to be unbroken and the period of his service with CBA shall be deemed to have been a period of service with the continuing bank,
- (b) the terms and conditions of the employment of each transferred employee with the continuing bank shall:
 - (i) on the appointed day (and thereafter until varied) be identical with the terms and conditions of his employment with CBA immediately before the appointed day and be capable of variation in the same manner as they were immediately before that day, and
 - (ii) subject to any Act or other law, award or determination relating to those terms and conditions, also be capable of variation in the same manner as the general terms and conditions of employment of other persons employed by the continuing bank are capable of variation,
- (c) a transferred employee shall not be entitled to receive any payment or other benefit by reason only of his ceasing by virtue of this Act to be an employee of CBA,
- (d) nothing in this Act, other than paragraph (c), affects rights or liabilities under any provident, benefit, superannuation or retirement fund or scheme relating to employees of CBA, and
- (e) a director, secretary or auditor of CBA or CBA Savings Bank does not, by virtue of this

Act, become a director, secretary or auditor of the continuing bank or the continuing savings bank.

13 Appointment of new trustees

- (1) The continuing bank may at any time, within 3 months after the appointed day, by instrument executed under its seal declare that a corporation which is a subsidiary of the continuing bank and is named in the instrument as new trustee of such trusts subsisting immediately before the appointed day as are specified in the instrument is appointed in the place of another corporation which was, immediately before that day, a subsidiary of CBA and is named in the instrument as the retiring trustee of those trusts.
- (2) Upon any such instrument being so executed and notice thereof being published in the Gazette:
 - (a) the corporation named therein as the retiring trustee shall be wholly discharged from the trusts therein specified,
 - (b) the corporation named therein as new trustee shall be trustee of those trusts in the place of the corporation named therein as retiring trustee and shall have the same powers, authorities and discretions in relation to each such trust as the retiring trustee had immediately before being discharged, and
 - (c) all property subject to the said trusts and vested in the retiring trustee shall be vested in the corporation named therein as new trustee.
- (3) Any discharge or appointment of a trustee and any vesting of property by virtue of this section shall have effect notwithstanding anything to the contrary in any instrument or in any other Act or law.
- (4) In this section, **trustee** has the same meaning as in the [Trustee Act 1925](#), but extends to a nominee, a custodian trustee and a person charged with the management or administration of property.

14 Transfer of certain shares etc

- (1) Where prescribed securities are by virtue of this Act vested in the continuing bank, the continuing savings bank or a subsidiary of the continuing bank, a certificate signed by the Chief General Manager of the continuing bank or by an officer acting under delegation from him stating that the prescribed securities have so vested shall, notwithstanding any other Act or law or the provisions of any instrument, be deemed to be a sufficient duly stamped instrument of transfer of those prescribed securities.
- (2) Subsection (1) applies only to and in respect of prescribed securities:
 - (a) which, when vested in the continuing bank or the continuing savings bank, will be held by way of security, or

- (b) which are vested in a subsidiary of the continuing bank by the operation of section 13.

15 Company charges

If the provisions of section 206 (1) of the [Companies Act 1981](#) of the Parliament of the Commonwealth apply as laws of New South Wales on the appointed day, those provisions shall be deemed to have been complied with in respect of all charges of which the continuing bank or the continuing savings bank becomes the holder by virtue of this Act if there is lodged in the manner specified in paragraph (a) of that subsection a certificate signed by the Chief General Manager of the continuing bank or by an officer acting under delegation from him stating that by virtue of this Act the undertaking of CBA has become vested in the continuing bank and the undertaking of CBA Savings Bank has become vested in the continuing savings bank.

16 Crown lands

- (1) Where any property subject to the provisions of the Closer Settlement Acts, the [Western Lands Act 1901](#), the [Crown Lands Consolidation Act 1913](#), or any other Act relating to Crown lands or the [Mining Act 1973](#), or the [Coal Mining Act 1973](#) is by virtue of this Act vested in the continuing bank or the continuing savings bank or a subsidiary of the continuing bank, the proper officer is hereby authorised to make all such entries as may be necessary to give effect to or recognise the vesting of that property.
- (2) Subsection (1) applies only to and in respect of property referred to in that subsection which, when vested in the continuing bank, the continuing savings bank or a subsidiary of the continuing bank, will be held by way of security.

17 Protection of persons in respect of dealings with certain assets

- (1) No person dealing:
 - (a) with the continuing bank or CBA (in any capacity whatsoever), or
 - (b) with the continuing savings bank or CBA Savings Bank (in any capacity whatsoever),

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 the continuing bank, the continuing savings bank, CBA or CBA 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 or is not an excluded asset, or be affected by any notice, express, implied or constructive, that any such property is or is not an excluded asset.

- (2) If any dealing or transaction is entered into by the continuing bank or the continuing savings bank with any person, in relation to or in connection with an excluded asset, it shall be deemed in favour of that person and any person claiming through or under him that the continuing bank or the continuing 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 the continuing bank or the continuing savings bank, as the case may be, under this Act.
- (3) If any dealing or transaction is entered into by CBA or CBA Savings Bank with any person, in relation to or in connection with any property which has vested in the continuing bank or the continuing savings bank, as the case may be, under this Act, it shall be deemed in favour of that person and any person claiming through or under him that CBA or CBA Savings Bank, as the case may be, has full power and authority to enter into that dealing or transaction as if the property were an excluded asset.
- (4) Nothing in this section affects the liability of the continuing bank, the continuing savings bank, CBA or CBA Savings Bank to any other of them in respect of anything done, or purporting to have been done, by the continuing bank, the continuing savings bank, CBA or CBA Savings Bank, as the case may be, in relation to or in connection with an excluded asset or any other property.

18 Stamp duty

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](#):

- (a) by the continuing bank in respect of any part of the undertaking of CBA to which that section is applicable which is vested in the continuing bank by this Act, or
- (b) by the continuing savings bank in respect of any part of the undertaking of CBA Savings Bank to which that section is applicable which is vested in the continuing savings bank by this Act.

Schedule

(Section 4)

Deed dated 27 June 1978, made between the continuing bank of the one part and CBA of the other part entitled "Equity Participants' Deed".

Agreement dated 27 June 1978, made between the continuing bank and CBA of the one part and Chase-N.B.A. Group Limited of the other part entitled "Management Agreement".

Agreement dated 27 June 1978, made between Qantas Airways Limited of the one part and the continuing bank and CBA of the other part entitled "Equipment Purchase Agreement".

Deed of Assignment dated 27 June 1978, made between Qantas Airways Limited of the one part and the continuing bank and CBA of the other part.

Agreement dated 27 June 1978, made between the continuing bank and CBA of the first part, Government Insurance Office of New South Wales of the second part and Qantas Airways Limited of the third part entitled "Loan Agreement".

Deed of Lease dated 27 June 1978, made between the continuing bank and CBA of the one part and Qantas Airways Limited of the other part.