

Canberra Advance Bank Limited (Merger) Act 1992 No 17

[1992-17]



New South Wales

Status Information

Currency of version

Current version for 7 July 2017 to date (accessed 14 October 2024 at 23:55)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

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

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File last modified 7 July 2017

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Canberra Advance Bank Limited (Merger) Act 1992 No 17



New South Wales

An Act to supplement the *Canberra Advance Bank Limited (Merger) Act 1992* of the Australian Capital Territory and to provide, in New South Wales, for the transfer of the undertaking of Canberra Advance Bank Limited to Advance Bank Limited and for other related purposes.

Preamble

1. Canberra Advance Bank Limited ACN 008 616 779 (“CAB”) is a company incorporated in the Australian Capital Territory, is a company within the meaning of the *Corporations Law* of the Australian Capital Territory and is a company limited by shares.
2. Advance Bank Australia Limited ACN 002 953 335 (“ABA”) is a company incorporated in New South Wales and is a company within the meaning of the *Corporations Law* of New South Wales and is a company limited by shares.
3. CAB is a wholly owned subsidiary of ABA.
4. ABA and CAB each carries on the business of banking in New South Wales and elsewhere in Australia.
5. It is expedient in the interests of banking efficiency that the banking business conducted by CAB should be transferred to ABA.
6. To vest the undertaking of CAB carried on in New South Wales in ABA it is expedient to enact the provisions set out below.

The Legislature of New South Wales therefore enacts

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Canberra Advance Bank Limited (Merger) Act 1992*.

2 Commencement

This Act commences on the date of assent.

3 Definitions

In this Act:

ABA means Advance Bank Australia Limited.

appointed day means the day appointed under section 5.

CAB means Canberra Advance Bank Limited.

Chief Executive Officer, in relation to ABA, means the officer in charge of the day to day management of the affairs of that bank or a person appointed by him or her in writing.

land includes any estate, interest or right (whether legal or equitable) in, over or under any real or leasehold property.

liabilities includes duties and obligations of every description, whether actual, contingent or prospective, but does not include any liability to the extent to which it is not related to the undertaking of CAB.

property means property and assets of every description, and includes securities, rights and powers of every description.

security includes a mortgage (whether legal or equitable), charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, indemnity, lien, pledge, bill of sale or other means of securing the payment of a debt, whether present or future, or the discharge of an obligation or liability, whether actual, contingent or prospective.

4 Undertaking of CAB

(1) Subject to subsection (2), for the purposes of this Act, the **undertaking of CAB** is so much of the property of CAB vested in or belonging to or held by CAB immediately before the appointed day as consists of:

(a) goodwill, and

(b) amounts which at law or in equity or by statute or otherwise:

- are payable to CAB, or
- are owing but not currently payable to CAB, or
- are contingently owing to CAB, or
- remain unpaid to CAB, or

- have been advanced or paid by CAB or any body referred to in Schedule 1 at the express or implied request of any person or on behalf of any person or by reason of any act or omission of any person, or
- CAB is liable to pay by reason of any act or omission,

in connection with any financial accommodation provided by CAB or any body referred to in Schedule 1, and

- (c) all the right, title and interest of CAB to and under any agreement (other than a security) relating directly or indirectly to any amount referred to in paragraph (b), and
- (d) all the right, title and interest of CAB to and under each security held by CAB for the payment of any amount referred to in paragraph (b) or the discharge of any liability to CAB, and
- (e) all the right, title and interest of CAB in relation to each current or savings or deposit account with CAB, other than a savings or deposit account which forms all or part of any security in favour of ABA, and
- (f) all the estate, interest and right of CAB as lessee, sub-lessee, under-lessee or licensee of any freehold or leasehold property,

and all the liabilities to which CAB is subject, immediately before the appointed day, relating to amounts, agreements or securities referred to in paragraphs (b), (c) and (d) or to any money deposited with CAB whether on current or savings or deposit account or to financial accommodation raised by CAB.

(2) The undertaking of CAB does not include:

- (a) any interest (whether capitalised or not) or any costs, fees or charges which, immediately before the appointed day, had accrued but were unpaid in respect of financial accommodation provided to any person by CAB or any body referred to in Schedule 1, or
- (b) any interest which, immediately before the appointed day, had accrued but was unpaid in respect of money on deposit with CAB, or
- (c) obligations of CAB relating to financial accommodation provided by ABA to CAB, or
- (d) any estate, interest and right of CAB as a lessee from the Crown.

5 Appointed day

The Governor may, by proclamation, appoint a day for the purposes of this Act.

Editorial note—

Day appointed for the purposes of this Act, 1.6.1992. See Gazette No 91 of 24.7.1992, p 5181.

6 Act binds the Crown

This Act binds the Crown.

Part 2 Vesting of undertaking of CAB in ABA

Division 1 General

7 Vesting of undertaking

- (1) On the appointed day the undertaking of CAB is by virtue of this Act divested from CAB and vested in ABA.
- (2) If any portion of the undertaking of CAB cannot be vested in ABA by virtue of this Act because the vesting of that portion is governed otherwise than by the law of New South Wales, then CAB must as soon as is practicable after the appointed day take all necessary steps for the purpose of securing that the portion is effectively vested in ABA.
- (3) The production of an official copy of this Act is on and after the appointed day conclusive evidence in all courts and tribunals and proceedings of the vesting in ABA of the undertaking of CAB.

8 Effect of contracts and instruments

- (1) All contracts, agreements, conveyances, deeds, leases, licences and other instruments or undertakings entered into by or made with, or addressed to, CAB (whether alone or with any other person) in force immediately before the appointed day in respect of any part of the undertaking of CAB are on and after that day to the extent that they were immediately before that day binding on and enforceable by, or against, CAB, binding and of full force and effect in every respect in favour of, or against, ABA, as fully and effectually as if, instead of CAB, ABA had been a party to them or bound by them or entitled to the whole or any portion of the benefit of them.
- (2) Subsection (1) does not apply to a contract, agreement, conveyance, deed, lease, licence, instrument or undertaking relating to a provident, benefit, superannuation or retirement fund.
- (3) A director, secretary or auditor of CAB is not by virtue only of this Act a director, secretary or auditor (as the case may be) of ABA.

9 Consideration for vesting

Nothing in this Act prevents CAB and ABA from entering into an agreement (not inconsistent with this Act) in respect of the vesting of the undertaking of CAB in ABA which includes the payment of consideration by ABA to CAB for any part or all of the undertaking of CAB (including securities) vested in ABA by this Act.

Division 2 Transitional

10 Transitional provisions

This Division has effect in relation to the undertaking of CAB. Nothing in this Division limits the operation of sections 7 and 8.

11 Relationships with customers

The relationship between CAB and a customer or depositor at any office or branch or agency of CAB is, on and after the appointed day, between ABA and that customer or depositor, and gives rise to the same rights and the same duties (including rights of set-off) as would have existed before that day if that relationship had always been between ABA and the customer or depositor. Any instruction, order, direction, mandate or authority given by that customer or depositor to CAB and subsisting on or given after the appointed day is, unless and until revoked or cancelled, taken to have been given to ABA.

12 Securities

- (1) Any security that is part of the undertaking of CAB and is held by CAB as security for the payment of debts or the discharge of liabilities (whether present or future, certain or contingent) of any person is vested in or taken to be vested in ABA on the appointed day, and is to be held by and be available to ABA as security for the payment of those debts and the discharge of those liabilities to ABA.
- (2) If the security extends to future advances or other financial accommodation provided to, or to future liabilities of, that person, the security is, on and after that day, subject to any agreement between ABA and that person, to be held by and be available to ABA as security for future advances or other financial accommodation provided to that person by, and future liabilities of that person to, ABA, to the same extent to which future advances and financial accommodation provided by, or liabilities to, CAB were secured immediately before that day.

13 Transferred securities

ABA is, in relation to any security vested or taken to have been vested in it in accordance with, or by virtue of, this Act and the money and liabilities secured by it, entitled to the same rights and priorities and subject to the same obligations and incidents as CAB would have been entitled and subject to, if it had continued to be held by CAB.

14 Custody of documents etc

The custody of any document, goods or thing held by CAB as bailee for any other person at any office or branch or agency of CAB is vested in or taken to be vested in ABA on the appointed day, and the rights and obligations of CAB under any contract of bailment relating to the document, goods or thing are vested in or taken to be vested in ABA on that day.

15 Negotiable instruments etc

Any negotiable instrument or order for payment of money, whether drawn, given, accepted or endorsed before, on or after the appointed day, which is part of, or is related to, the undertaking of CAB and which is expressed to be drawn by, drawn on, or given to, or accepted or endorsed by CAB, or payable at any place of business of CAB, has the same effect on and after the appointed day as if it had been drawn by, drawn on, or given to, or accepted or endorsed by, ABA, or payable at the same place of business of ABA.

Division 3 Legal and evidentiary matters

16 Legal proceedings

- (1) This section applies to:
 - (a) any action, arbitration or proceeding or cause of action, arbitration or proceeding which is on the appointed day pending or existing by, against, or in favour of, CAB in respect of any part of the undertaking of CAB, and
 - (b) any cause of action, arbitration or proceeding by, against, or in favour of, CAB which arises after the appointed day in respect of an agreement, arrangement or understanding entered into by CAB before the appointed day, or which arises in respect of anything done or omitted to be done by CAB before the appointed day, in respect of any part of the undertaking of CAB.
- (2) Any action, arbitration or proceeding and any cause of action, arbitration or proceeding to which this section applies, is not abated or discontinued or in any way prejudicially affected because of this Act. It may, without any further act, deed or instrument other than any appropriate amendment of the records of the relevant court or tribunal, be prosecuted and continued and enforced by, against, or in favour of, ABA, in its own name as and when it might have been prosecuted, continued and enforced by, against, or in favour of, CAB if this Act had not been enacted.
- (3) Despite subsection (2), the court, tribunal or other person making or entering any judgment, order or award for the payment of any sum of money, whether ascertained or to be ascertained, against ABA in any action, arbitration or proceeding to which this section applies must, at the request of any party in whose favour the judgment, order or award is being made or entered, make or enter the judgment, order or award against both CAB and ABA, and the judgment, order or award may, when so made or entered, be enforced against both CAB and ABA.

17 Amendment of documents

- (1) Any party to any action, arbitration or proceeding relating to property of CAB not included in the undertaking of CAB is entitled at any stage of the action, arbitration or proceeding to amend any writ, pleading or other document filed by the party in the action, arbitration or proceeding by substituting for the name of ABA the name of CAB

as party.

- (2) No order is to be made against any party so amending to pay to ABA or to CAB any costs occasioned by that amendment.
- (3) The action, arbitration or proceeding is to be continued as if CAB had originally been made a party to it.

18 Evidence

- (1) Any book or document which if this Act had not been enacted would have been evidence in respect of any matter for or against CAB is, on and after the appointed day, to be admissible in evidence in respect of the same matter for or against ABA.
- (2), (3) (Repealed)

19 Construction of references

If any Act (other than this Act) or any document whenever made or executed (other than a document constituting or relating to a provident, benefit, superannuation or retirement fund) or any register established or kept under any Act contains any reference express or implied to CAB or any body referred to in Schedule 1, the reference is, on and after the appointed day, to be read as a reference to ABA, except to the extent that the reference is in relation to property that is not part of the undertaking of CAB or unless the context otherwise requires.

Part 3 General

20 Effect of things done under this Act

Nothing effected by this Act or done or suffered by CAB or ABA under this Act or in seeking the enactment of this Act:

- (a) is to be taken as:
 - placing either of them in breach of any agreement, arrangement or understanding, or
 - placing either of them in breach of trust, confidence or other equitable obligation, or
 - causing any anticipatory breach of any agreement, arrangement or understanding, or
 - otherwise making either of them commit a civil wrong, or
- (b) is to be taken as placing either of them in breach of or as constituting a default under any Act or other law or any provision in any agreement, arrangement or understanding including, without limiting the generality of the foregoing, any provision prohibiting, restricting or regulating the assignment or transfer of any property or the

disclosure of any information, or

- (c) is to be taken as fulfilling any condition which allows a person to terminate or otherwise exercise a right or power under or in connection with any agreement or liability, or
- (d) releases any surety or other obligor wholly or in part from any liability whether actual, contingent or prospective.

21 Service of documents

- (1) Service of a document:
 - (a) on ABA is taken to be service on CAB, and
 - (b) on CAB is taken to be service on ABA.
- (2) Subsection (1) (a) ceases to have any force and effect in relation to CAB on CAB ceasing to be a subsidiary of ABA within the meaning of section 9 of the [Corporations Law](#) of New South Wales.
- (3) Subsection (1) (b) ceases to have any force and effect on CAB ceasing to be a subsidiary of ABA within the meaning of section 9 of the [Corporations Law](#) of New South Wales.

22 Assets not part of undertaking

- (1) No person dealing with ABA or CAB (in any capacity at all) 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, is, in respect of any dealing or transaction entered into or purporting to be entered into by ABA or CAB, to be concerned to see, or inquire into, whether any property the subject of the dealing or transaction (whether or not that property is land) is or is not part of the undertaking of CAB, or be affected by any notice, express, implied or constructive, that any such property is or is not part of the undertaking of CAB.
- (2) If any dealing or transaction is entered into by ABA with any person, in relation to or in connection with property or any liability that is not part of, or any liability that is related to part of, the undertaking of CAB, it is to be taken in favour of that person that ABA has full power and authority to enter into that dealing or transaction as if the property or liability had vested in ABA under this Act.
- (3) Nothing in this section affects the liability of ABA to CAB, in respect of anything done, or purporting to be done, by ABA in relation to or in connection with property that was not part of the undertaking of CAB.

23 Identification of undertaking

The Chief Executive Officer of ABA may, by certificate signed by him or her, certify any matter in relation to the operation of this Act and, in particular, may certify whether specified property or liabilities formed or did not form on the appointed day part of the undertaking of CAB.

24 Interests in land

No person dealing with ABA (in any capacity at all), 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, is, in respect of any dealing or transaction in relation to land entered into or purporting to be entered into by ABA, where the registered proprietor of that land is CAB or any body referred to in Schedule 1, to be concerned to see, or enquire into, whether the land has vested in ABA.

25 Certificates in relation to charges

Section 268 (1) of the *Corporations Law* of New South Wales is to be taken to have been complied with in respect of all charges of which ABA becomes the holder by virtue of this Act if there is lodged with the Australian Securities and Investments Commission a certificate signed by the Chief Executive Officer of ABA stating that by virtue of this Act the undertaking of CAB has become vested in ABA.

26 Other property

Where:

- (a) any property (other than property to which section 24 or 25 applies) becomes, under this Act, the property of ABA, and
- (b) any person or authority has, under any law of this State, responsibility for keeping a register in respect of property of that kind,

then:

- (c) any requirement of that law relating to the transfer of the property from one person to another is taken to have been complied with if there is lodged with that person or authority a certificate signed by the Chief Executive Officer of ABA stating that by virtue of this Act the undertaking of CAB has become vested in ABA, and
- (d) that person or authority, on being requested to do so and on delivery of any relevant instrument, must make any amendments to that register which are necessary to make it accurately reflect the effect of this Act.

27 Certificates conclusive

- (1) For all purposes and in all courts, tribunals and proceedings, a certificate under this Act is conclusive evidence of the matters certified, except so far as the contrary is

established.

- (2) A document purporting to be a certificate under this Act is, unless the contrary is established, taken to be such a certificate and to have been properly given.

28 Application of other laws

Nothing in this Act exempts ABA from the provisions of any Act relating to companies carrying on the business of banking.

29 Exemption from duties and other charges

- (1) Despite anything to the contrary in any other Act or law, no tax (including tax imposed by the *Debits Tax Act 1990*), fee, duty, levy or charge of any kind is chargeable or payable on any instrument, certificate or document (including this Act) or in respect of any act or transaction executed, done, suffered or entered into (whether before, on or after the appointed day) for a purpose connected with, or arising out of, the operation or effect of this Act or of any corresponding law of another State or Territory.
- (2) This section does not apply to any fee or charge payable to the Registrar-General in respect of any act, dealing or other transaction relating to land.
- (3) Subsection (1) extends to an agreement referred to in section 9.

Schedule 1 Previous building societies and other bodies

(Sections 4, 19, 24)

Civic Co-operative Permanent Building Society Limited
Canberra Permanent Co-operative Building Society Limited
PA Credit Union Limited
Capital Permanent Co-operative Building Society Limited
Hibernian Co-operative Permanent Building and Investment Society (A.C.T.) Limited
Any other body corporate the undertaking of which has by operation of law been vested in any of the building societies and other bodies named in this Schedule