

Westpac Banking Corporation (Transfer of Incorporation) Act 2000 No 71

[2000-71]



New South Wales

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Contents

Long title	4
Part 1 Preliminary	4
1 Name of Act	4
2 Commencement	4
3 Definitions	4
4 Notes	5
Part 2 Registration of Westpac as a public company	5
Division 1 Status and registration of Westpac	5
5 Westpac is deemed registration company	5
5A Order specifying registration date	6
Division 2 Transfer resolutions	7
6 What is a transfer resolution?	7
7 Irregularities concerning transfer resolutions	8
Division 3 General	8
8, 9 (Repealed)	8
10 Relationship of this Act with Corporations legislation of the Commonwealth	8
11 (Repealed)	10
Part 3 Miscellaneous	10

12 Repeal of Westpac legislation	10
13 Regulations.....	11
14 Savings, transitional and other provisions.....	11
Schedule 1 Savings, transitional and other provisions	11

Westpac Banking Corporation (Transfer of Incorporation) Act 2000 No 71



New South Wales

An Act to provide for Westpac Banking Corporation to be registered as a public company limited by shares under the *Corporations Act 2001* of the Commonwealth; to provide for the repeal of certain legislation applying specifically to the Westpac Banking Corporation; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Westpac Banking Corporation (Transfer of Incorporation) Act 2000*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Definitions

(1) In this Act:

ASIC means the Australian Securities and Investments Commission.

deed of settlement means the deed of settlement that is referred to in the preamble to the *Bank of New South Wales Act of 1850*, as subsequently amended from time to time.

registration date means the registration day specified by the Attorney General in an order made under section 5A.

transfer resolution means a transfer resolution referred to in section 6.

Westpac means the body politic and corporate constituted by the *Bank of New South Wales Act of 1850*, whose corporate name is Westpac Banking Corporation.

Note—

Section 4 of the *Bank of New South Wales (Change of Name) Act 1982* provided for the corporate name of the Bank of New South Wales constituted by the 1850 Act to be Westpac Banking Corporation.

Westpac company means Westpac after it is taken to be registered as a public company limited by shares under the *Corporations Act 2001* of the Commonwealth by operation of section 5H (4) of that Act.

Westpac shareholder means a shareholder within the meaning of the deed of settlement.

(2) Words and expressions used in this Act have the same meanings as in section 9 of the *Corporations Act 2001* of the Commonwealth, except in so far as they are defined differently in this Act or the context or subject-matter otherwise indicates or requires.

(3) (Repealed)

4 Notes

Notes included in this Act do not form part of this Act.

Part 2 Registration of Westpac as a public company

Division 1 Status and registration of Westpac

5 Westpac is deemed registration company

(1) Westpac is a deemed registration company for the purposes of section 5H of the *Corporations Act 2001* of the Commonwealth.

(2) For the purposes of that section:

(a) the day on which Westpac is to be taken to be registered as a company is the registration date specified by the Attorney General in an order made under section 5A, and

(b) the type of company that Westpac is to be registered as is a public company limited by shares, and

(c) the company's proposed name is "Westpac Banking Corporation".

Note—

Section 5H of the *Corporations Act 2001* of the Commonwealth provides that a body is taken to be registered under that Act as a company of a particular type under section 118 of that Act if a law of a State or Territory to which the Act applies:

(a) provides that the body is a deemed registration company for the purposes of the section, and

(b) specifies:

(i) the day on which the body is to be taken to be registered (the registration day) or the manner in which

that day is to be fixed, and

(ii) the type of company the body is to be registered as under the Act, and

(iii) the company's proposed name (unless the ACN is to be used in its name),

and if section 5H (2) and (3) (relating to the lodgement of certain notices and documents with ASIC) are satisfied.

5A Order specifying registration date

(1) The Attorney General may, by order published in the Gazette, specify a day on which Westpac is to be taken to be registered as a public company limited by shares for the purposes of section 5H of the *Corporations Act 2001* of the Commonwealth.

Editorial note—

Day specified: 23.8.2002. See Gazette No 133 of 23.8.2002, p 6420.

(2) The Attorney General may make an order under subsection (1) only if the Attorney General is satisfied that:

(a) a transfer resolution has been passed by the shareholders of Westpac in accordance with the provisions of this Act, and

(b) the period of at least 1 month has elapsed since the date on which the resolution was passed, and

(c) an order declaring the resolution to be invalid has not been made by the Supreme Court under section 7 (1), and

(d) Westpac has complied with section 5H (2) and (3) of the *Corporations Act 2001* of the Commonwealth within the prescribed period after the transfer resolution was passed.

(3) The Attorney General is to provide ASIC with a copy of an order made under this section as soon as practicable after it is issued to Westpac. However, a failure to provide such a copy does not affect the validity of the order.

(4) An order under this section cannot be challenged, reviewed or called into question in proceedings before any court or tribunal.

(5) An order under this section is conclusive evidence in any proceedings before a court or tribunal that all the requirements of this Act have been complied with concerning the registration of Westpac under the *Corporations Act 2001* of the Commonwealth as a public company limited by shares.

(6) Nothing in subsection (4) or (5) affects the operation of section 7 in relation to an application made to the Supreme Court under that section for an order declaring a transfer resolution to be invalid.

(7) Nothing in this section prevents a further proposal for a transfer resolution being put

to Westpac shareholders if:

- (a) a previously proposed transfer resolution was not passed or was declared to be invalid by order of the Supreme Court under section 7 (1), or
- (b) Westpac did not comply with section 5H (2) and (3) of the *Corporations Act 2001* of the Commonwealth within the prescribed period in relation to a previous transfer resolution.

(8) In this section:

prescribed period, in relation to a transfer resolution, means:

- (a) in relation to a resolution passed on or after the commencement of Schedule 4.73 to the *Corporations (Consequential Amendments) Act 2001*:
 - (i) except as provided by subparagraph (ii)—the period of 6 months (or such other period as may be prescribed by the regulations whether before or after the resolution is passed) after the date on which the resolution is passed, or
 - (ii) if an application for an order under section 7 (1) is duly made but is refused or withdrawn after the end of the period referred to in subparagraph (i)—the period of one month after the date on which the application is finally determined or withdrawn (as the case may be), or
- (b) in relation to a transfer resolution of the kind referred to in section 6 (2)—the period that was the prescribed period in relation to that resolution for the purposes of section 5 of this Act as in force immediately before its repeal by the *Corporations (Consequential Amendments) Act 2001* or such further period as may be prescribed by the regulations (whether before or after the expiry of the prescribed period).

Division 2 Transfer resolutions

6 What is a transfer resolution?

- (1) For the purposes of this Act, a **transfer resolution** is a special resolution (within the meaning of the deed of settlement) passed by Westpac shareholders that resolves that Westpac be registered as a public company limited by shares under the *Corporations Act 2001* of the Commonwealth.
- (2) Any special resolution (within the meaning of the deed of settlement) passed by Westpac shareholders that was a transfer resolution within the meaning of this section as in force immediately before the commencement of this subsection is taken to be a transfer resolution for the purposes of subsection (1).

Note—

Clause 117 (r) of the deed of settlement defines “special resolution” to be a resolution that has been passed by a

majority of not less than three-quarters of the votes of such of the shareholders of Westpac as are entitled so to vote in person, by proxy or by a representative at a general meeting of which not less than 21 days' notice specifying the intention to propose the resolution as a special resolution has been duly given.

7 Irregularities concerning transfer resolutions

- (1) A transfer resolution is not invalidated because of any procedural irregularity unless, on an application made under this section, the Supreme Court by order declares the resolution to be invalid (an **invalidity order**).
- (2) No fewer than 200 persons who were Westpac shareholders eligible to vote at the meeting at which the transfer resolution was passed may make an application to the Supreme Court in accordance with this section for an invalidity order.
- (3) Such an application can only be made to the Supreme Court within the period of one month after the date of the passing of the transfer resolution.
- (4) The Supreme Court must not make an invalidity order unless it is of the opinion:
 - (a) that the irregularity was not, or was not the result of, an accidental omission or non-receipt of a notice required under the deed of settlement, and
 - (b) that the irregularity has caused or may cause substantial injustice.
- (5) If the Supreme Court makes an invalidity order in relation to a transfer resolution, any order made by the Attorney General under section 5A in relation to that resolution is taken to have no effect for the purposes of this Act.
- (6) Rules of court (not inconsistent with this Act or the regulations) may be made under the [Supreme Court Act 1970](#) for the purposes of this section. This subsection does not limit the rule-making powers conferred by the [Supreme Court Act 1970](#).
- (7) In this section:
 - (a) a reference to a procedural irregularity includes a reference to:
 - (i) any defect, irregularity or deficiency of notice or time, and
 - (ii) any miscalculation of voting entitlements, and
 - (b) a reference to a transfer resolution includes a reference to a purported transfer resolution.

Division 3 General

8, 9 (Repealed)

10 Relationship of this Act with Corporations legislation of the Commonwealth

- (1) The regulations may declare a matter that is dealt with by this Act or the regulations

(or that is of a savings or transitional nature consequent on Westpac's registration as a public company limited by shares under the *Corporations Act 2001* of the Commonwealth) to be an excluded matter for the purposes of section 5F of that Act in relation to:

- (a) the whole of the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies, or
- (b) a specified provision of that legislation, or
- (c) that legislation other than a specified provision, or
- (d) that legislation otherwise than to a specified extent.

Note—

Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

(2) Without limiting subsection (1), that subsection extends to any of the following matters:

- (a) the use of the name Westpac Banking Corporation or the word "Limited" in Westpac company's name after the registration date,
- (b) the use of Westpac's ARBN after the registration date,
- (c) benefits given to a director of Westpac company in accordance with an agreement with the director on the terms referred to in Clause 56 (4B) of the deed of settlement,
- (d) any buy-back of shares of Westpac that has not been completed by the registration date.

(3) The regulations may declare a relevant provision of this Act to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth (either generally or specifically in relation to a provision of the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies).

Note—

Section 5G of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, then any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply in the State concerned to the extent necessary to avoid the inconsistency.

(4) In this section:

matter includes act, omission, body, person or thing.

relevant provision of this Act means a provision that is:

- (a) a post-commencement provision within the meaning of section 5G of the *Corporations Act 2001* of the Commonwealth, or
- (b) materially amended within the meaning of that section on or after the commencement of the *Corporations Act 2001* of the Commonwealth if the amendment is enacted on or after that commencement.

11 (Repealed)

Part 3 Miscellaneous

12 Repeal of Westpac legislation

On or after the registration date, the Governor may, by one or more proclamations, repeal any or all of the following Acts and regulations (or specified provisions of the Acts and regulations):

- (a) *Bank of New South Wales Act of 1850*,
- (b) *Bank of New South Wales Act of 1852*,
- (c) *Bank of New South Wales Act of 1854*,
- (d) *Bank of New South Wales Act of 1864*,
- (e) *Bank of New South Wales Act of 1870*,
- (f) *Bank of New South Wales Act of 1886*,
- (g) *Bank of New South Wales Act 1905*,
- (h) *Bank of New South Wales Act 1910*,
- (i) *Bank of New South Wales Act 1923*,
- (j) *Bank of New South Wales (Amendment) Act 1962*,
- (k) *Bank of New South Wales (Change of Name) Act 1982*,
- (l) *Westpac Banking Corporation Act 1995*,
- (m) any regulation made under an Act referred to in paragraphs (a)–(l).

Note—

Section 30 of the *Interpretation Act 1987* provides that the repeal of an Act or statutory rule does not, among other things, affect the previous operation of the Act or statutory rule or anything duly suffered, done or commenced under the Act or statutory rule or affect any right, privilege, obligation or liability acquired, accrued

or incurred under the Act or statutory rule.

Editorial note—

Date of repeal of the Acts and regulations referred to in paragraphs (a)–(m): 20.12.2002. See proclamation published in Gazette No 263 of 20.12.2002, p 10754.

13 Regulations

- (1) 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.
- (2) The *Subordinate Legislation Act 1989* does not apply to the regulations.

14 Savings, transitional and other provisions

Schedule 1 has effect.

Schedule 1 Savings, transitional and other provisions

(Section 14)

Part 1 General

1 Regulations

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

2-9 (Repealed)

10 Application of *Westpac Banking Corporation Act 1995* and *Westpac Banking*

Corporation Regulation 1996

The *Westpac Banking Corporation Act 1995* and *Westpac Banking Corporation Regulation 1996* are taken not to apply to Westpac company on and after the registration date.