

Version  
as at 28 October 2021



## Westpac New Zealand Act 2006

Private Act      2006 No 3  
Date of assent    13 September 2006  
Commencement    see section 2

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#### Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

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## Preamble

- (1) Westpac Banking Corporation is incorporated in New South Wales, Australia under the Corporations Act 2001 of the Commonwealth of Australia, is registered in New Zealand as an overseas company under the Companies Act 1993, and is a registered bank under the Reserve Bank of New Zealand Act 1989:
- (2) Westpac Banking Corporation carries on a banking business in Australia, New Zealand, and other Pacific countries:
- (3) Since July 2003, the policy of the Reserve Bank of New Zealand has been that systemically important banks should be incorporated in New Zealand. Accordingly, Westpac Banking Corporation has established Westpac New Zealand to assume and carry on Westpac Banking Corporation's New Zealand retail banking business:
- (4) Legislation is the only means by which Westpac Banking Corporation's New Zealand retail banking business can be vested in Westpac New Zealand efficiently and economically. Legislation is also the only means by which appropriate amendments to existing legislation can be effected:
- (5) The objects of this Act cannot be attained other than by legislation.

## 1 Title

This Act is the Westpac New Zealand Act 2006.

## 2 Commencement

- (1) This Act comes into force on the day after the date on which it receives the Royal assent, except for sections 23 and 24.
- (2) Sections 23 and 24 come into force on the appointed day.

Section 2(1): sections 23 and 34 brought into force, on 31 October 2006, pursuant to clause 2 of the Westpac New Zealand Proposal Approval Order 2006 (SR 2006/306).

## Part 1 Preliminary provisions

### 3 Purposes

The purposes of this Act are to provide for—

- (a) the vesting of certain assets and liabilities of Westpac Banking Corporation, being principally assets and liabilities of Westpac Banking Corporation's New Zealand retail banking business, in Westpac New Zealand, a company incorporated in New Zealand, in order to comply with the local incorporation policy of the Reserve Bank of New Zealand; and
- (b) the efficient conduct of Westpac New Zealand's business.

### 4 Interpretation

- (1) In this Act, unless the context otherwise requires,—

**appointed day** means the day on which the proposal approved in accordance with section 6(1) takes effect

**assets** means property of any kind, whether tangible or intangible, real or personal, corporeal or incorporeal, and whether or not subject to rights, and includes—

- (a) estates or interests in any land, including rights of occupation of land or buildings:
- (b) buildings, vehicles, plant, equipment, machinery, fixtures and fittings, and rights in them:
- (c) choses in action and money:
- (d) rights of any kind, and applications, objections, submissions, and appeals in respect of those rights:
- (e) intellectual property and applications pending for intellectual property:
- (f) goodwill, and any business undertaking

**contract** includes any agreement, arrangement, conveyance, deed, lease, licence, and security interest

**describe**, in relation to an asset or liability, includes—

- (a) describing either individually or as a group or class; and

- (b) identifying a document in which the asset or liability is described either individually or as a group or class

**designated assets and liabilities** means each asset and liability of Westpac Banking Corporation that is to vest in Westpac New Zealand; and **designated asset** and **designated liability** have corresponding meanings

**document** means a document in any form; and includes—

- (a) any writing on any material; and
- (b) information recorded or stored by means of a tape recorder, computer, or other device; and material subsequently derived from information so recorded or stored; and
- (c) a book, graph, or drawing; and
- (d) a photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced

**Inland Revenue Acts** has the meaning given to it by section YA 1 of the Income Tax Act 2007

**instrument** includes—

- (a) an enactment (other than this Act and the Westpac Banking Corporation Act 1982) or equivalent instrument of a country other than New Zealand; and
- (b) an instrument of any form or kind that creates, evidences, modifies, or extinguishes rights, interests, or liabilities, or would do so if it, or a copy of it, were lodged, filed, or registered under any enactment; and
- (c) a judgment, order, or process of a court or tribunal; and
- (d) an undertaking, communication, notice, instruction, order, direction, mandate, authority, negotiable instrument, order for payment of money, register, and record

**intellectual property** means all patents, designs, copyright, know-how, trade secrets, trade marks, service marks, and other intellectual or industrial property rights of any kind, whether enforceable by Act or rule of law, and any rights in relation to them

**liabilities** means liabilities, debts, charges, duties, and obligations of every description (whether present or future, actual or contingent, and whether payable or to be observed or performed in New Zealand or elsewhere)

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the Reserve Bank of New Zealand Act 1989

**rights** includes all rights, powers, privileges, interests, leases, licences, approvals, consents, designations, permissions, dispensations, authorisations, bene-

fits, defences, immunities, claims, and equities of any kind, 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

**security interest** means a security interest (including a security interest as defined in the Personal Property Securities Act 1999), mortgage, submortgage, charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, an indemnity, a defeasance, hypothecation, lien, pledge, or other security for the payment of money or for the discharge of any other obligation or liability; and in any case whether upon demand or otherwise, whether present or future, and whether actual or contingent; and includes any contract or undertaking to give or execute, whether upon demand or otherwise, any of them

**transferring employee** means an individual whose contract of employment, to the extent that it provides for the employer's rights and obligations, is to vest in Westpac New Zealand under the proposal approved in accordance with section 6(1)

**vest** means vest by operation of this Act

**Westpac Banking Corporation** means Westpac Banking Corporation (ABN 33 007 457 141) incorporated in New South Wales, Australia under the Corporations Act 2001 of the Commonwealth of Australia

**Westpac Banking Corporation's New Zealand retail banking business** means the consumer banking, business banking, and related corporate support operations carried out by the New Zealand branch of Westpac Banking Corporation immediately before the appointed day

**Westpac New Zealand** means the company, incorporated in New Zealand under the Companies Act 1993, having registration number 1763882, and having the name Westpac New Zealand Limited at the date on which this Act comes into force.

- (2) A reference in this Act to any asset, contract, document, instrument, intellectual property, liability, right, or security interest includes an asset, contract, document, instrument, intellectual property, liability, right, or security interest which was made in, arose in, is located in, or is governed by the law of, a country other than New Zealand.

Section 4(1) **Inland Revenue Acts**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

## 5 Act to bind the Crown

This Act binds the Crown.

## Part 2

### Vesting of designated assets and liabilities in Westpac New Zealand

#### 6 Governor-General may approve proposal to vest designated assets and liabilities

- (1) The Governor-General may, by Order in Council made on the advice of the Minister that is given in accordance with a recommendation of the Reserve Bank of New Zealand, approve a proposal.
- (2) The proposal must—
  - (a) specify the appointed day; and
  - (b) describe the designated assets and liabilities; and
  - (c) state either—
    - (i) the consideration payable by Westpac New Zealand for the vesting of the designated assets and liabilities, either individually or as a group or class; or
    - (ii) the method by which the consideration is to be calculated; and
  - (d) state the name of the recipient of the consideration; and
  - (e) be signed by or on behalf of Westpac Banking Corporation and Westpac New Zealand.
- (3) The proposal may also state 1 or more of the following:
  - (a) the time at which the designated assets and liabilities, or certain designated assets and liabilities, vest (in which case, references to the appointed day in this Act are references to that time in relation to those designated assets and liabilities); and
  - (b) any assets or liabilities specifically excluded from being designated assets and liabilities; and
  - (c) terms or conditions that relate to the vesting of the designated assets and liabilities.
- (4) The proposal may describe any or all of the designated assets and liabilities by referring to information in 1 or more ledgers or registers maintained by Westpac Banking Corporation immediately before the appointed day.
- (5) A designated asset or designated liability may consist of part only of an asset or liability.
- (6) An Order in Council under subsection (1) must identify the proposal and may, but need not, incorporate it in the order.
- (7) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 6(7): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

**7 Governor-General may approve amendment to proposal to vest designated assets and liabilities**

- (1) The Governor-General may, by Order in Council made on the advice of the Minister that is given in accordance with a recommendation of the Reserve Bank of New Zealand, approve a written agreement that has been made between Westpac Banking Corporation and Westpac New Zealand to amend the proposal approved in accordance with section 6(1).
- (2) The Governor-General may approve a written agreement under subsection (1) on, before, or after the appointed day.
- (3) An amendment to the proposal that forms part of an agreement that has been approved by Order in Council in accordance with subsection (1) has effect as if it had been included in the proposal at the time the proposal was approved in accordance with section 6(1).
- (4) Westpac Banking Corporation and Westpac New Zealand may only make an agreement to amend the proposal if the amendment is, in their opinion,—
  - (a) desirable to correct an error in, or clarify, the proposal; or
  - (b) of a minor or technical nature only; or
  - (c) necessary to avoid costs or losses being incurred by Westpac Banking Corporation, Westpac New Zealand, or any other person as a result of the proposal.
- (5) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 7(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

## **8 Vesting of designated assets and liabilities**

- (1) The proposal approved in accordance with section 6(1) takes effect on and from the appointed day, except to the extent that the proposal provides otherwise.
- (2) The designated assets and liabilities described in the proposal vest in Westpac New Zealand on the appointed day in accordance with and subject to any terms and conditions in the proposal.
- (3) Westpac New Zealand is the universal successor to the designated assets and liabilities, and all assets and liabilities of Westpac Banking Corporation which have become those of Westpac New Zealand under this Act cease to be assets and liabilities of Westpac Banking Corporation on and from the appointed day.
- (4) If a designated asset or designated liability is part only of an asset or liability,—
  - (a) the remainder of the asset or liability continues to be an asset or liability of Westpac Banking Corporation as if this Act had not been enacted; and
  - (b) Westpac New Zealand and Westpac Banking Corporation must each use their best endeavours to co-operate in exercising their rights, and performing their obligations, in respect of that asset or liability.

## **9 Relationship with customers and customers' rights**

- (1) The relationship between Westpac Banking Corporation and a customer in relation to the designated assets and liabilities immediately before the appointed day becomes the same relationship between Westpac New Zealand and that customer on and from the appointed day, and the same rights and liabilities exist between Westpac New Zealand and that customer in relation to the designated assets and liabilities as existed immediately before the appointed day between Westpac Banking Corporation and that customer.
- (2) Subsection (1) applies except to the extent otherwise agreed between a customer, Westpac Banking Corporation, and Westpac New Zealand.
- (3) At any time before the 15th anniversary of the appointed day, a person who was a customer of Westpac Banking Corporation immediately before the appointed day may ask Westpac New Zealand whether any of that person's accounts vested in Westpac New Zealand.
- (4) Westpac New Zealand must, as soon as practicable, advise a person who makes an enquiry under subsection (3) whether any of that person's accounts vested in Westpac New Zealand.

## **10 Effect of vesting on security interests**

- (1) A security interest held by Westpac Banking Corporation immediately before the appointed day is, on and from the appointed day, to be held on trust by Westpac Banking Corporation or, if vested in Westpac New Zealand, by Westpac New Zealand,—



- (a) for the benefit of both Westpac Banking Corporation and Westpac New Zealand; and
  - (b) as continuing security for the discharge of any liability that it secured before the appointed day.
- (2) If the security interest extends to future or prospective liabilities, it is also security for the discharge of any liabilities to each of Westpac Banking Corporation and Westpac New Zealand incurred on or after the appointed day that it would have been security for if—
- (a) this Act had not been enacted; and
  - (b) Westpac Banking Corporation and Westpac New Zealand were a single legal entity.
- (3) Any rights or priorities relating to the security interest continue on and from the appointed day for the benefit of Westpac Banking Corporation and Westpac New Zealand in relation to all liabilities secured by that security interest, whether or not the liability was incurred or agreed to before, on, or after the appointed day.
- (4) Westpac Banking Corporation and Westpac New Zealand may determine how those rights and priorities are exercised as between Westpac Banking Corporation and Westpac New Zealand.

## **11 Effects of vesting on contracts, instruments, and documents**

- (1) This section applies to a contract, instrument, or document entered into by, made with, given to or by, addressed to or by, or referring to Westpac Banking Corporation (whether or not in writing and whether alone or with any other person) that exists immediately before the appointed day.
- (2) A contract, instrument, or document that is included (in whole or in part) in the designated assets and liabilities is binding on and enforceable by, against, or in favour of Westpac New Zealand as fully and effectually as if, instead of Westpac Banking Corporation, Westpac New Zealand had been the person by whom it was entered into, with whom it was made, to or by whom it was given or addressed, or to whom it referred.
- (3) Subsection (2) has effect—
- (a) on and from the appointed day; and
  - (b) to the extent that the contract, instrument, or document relates to the designated assets and liabilities, or any other existing or future assets or liabilities, or operations of Westpac New Zealand.
- (4) A reference (express or implied) to Westpac Banking Corporation, the holder of a particular office within Westpac Banking Corporation, or the place of business of Westpac Banking Corporation in a contract, instrument, or document that relates to the designated assets and liabilities, or any other existing or

future assets, liabilities, or operations of Westpac New Zealand, is to be read as a reference to, as the case may be,—

- (a) Westpac New Zealand; or
  - (b) the person for the time being holding a corresponding or equivalent office in Westpac New Zealand; or
  - (c) the place of business of Westpac New Zealand.
- (5) Subsection (4) applies—
- (a) unless the context of the reference requires otherwise; and
  - (b) on and from the appointed day; and
  - (c) to the extent that the contract, instrument, or document relates to the designated assets and liabilities, or any other existing or future assets or liabilities, or operations of Westpac New Zealand.
- (6) A contract that immediately before the appointed day provided for the supply of goods or services to Westpac Banking Corporation (whether or not that contract is vested in Westpac New Zealand) is to be regarded as permitting the on-supply of those goods and services between Westpac Banking Corporation and Westpac New Zealand to the same extent that that on-supply would have been permitted if Westpac Banking Corporation and Westpac New Zealand were a single legal entity.

## **12 Transfer of employees**

- (1) A transferring employee ceases to be an employee of Westpac Banking Corporation and becomes an employee of Westpac New Zealand on the appointed day.
- (2) For the purposes of every enactment, law, determination, and contract relating to the employment of a transferring employee,—
  - (a) his or her employment contract is to be regarded as not having been broken by any provision of this Act; and
  - (b) the period of his or her service with Westpac Banking Corporation is to be regarded as having been a period of service with Westpac New Zealand.
- (3) A transferring employee's terms and conditions of employment with Westpac New Zealand on and from the appointed day are identical to the terms and conditions of his or her employment with Westpac Banking Corporation immediately before the appointed day, and are capable of variation in the same manner.
- (4) A transferring employee is not entitled to receive any payment or other benefit by reason only of ceasing, by operation of this Act, to be an employee of Westpac Banking Corporation.

## **13 Legal proceedings not affected by vesting**

- (1) This section applies to any claim, action, arbitration, or proceeding that either—

- (a) immediately before the appointed day, is pending or existing by, against, or in favour of Westpac Banking Corporation or is one to which Westpac Banking Corporation is or could be a party and that is included (in whole or in part) in the designated assets and liabilities; or
  - (b) arises on or after the appointed day in respect of the designated assets and liabilities and that would, but for this Act, have been available to, against, or in favour of Westpac Banking Corporation or is one to which Westpac Banking Corporation could have been a party.
- (2) A claim, action, arbitration, or proceeding—
- (a) does not abate, and is not discontinued or prejudicially affected, by this Act; and
  - (b) may be prosecuted and, without amendment of any writ, pleading, or other document, continued and enforced by, against, or in favour of Westpac New Zealand in its own name to the same extent that it might have been prosecuted, continued, and enforced by, against, or in favour of Westpac Banking Corporation if this Act had not been enacted and Westpac Banking Corporation and Westpac New Zealand were a single legal entity.

#### **14 Documents, matters, and things to remain evidence**

- (1) Any document, matter, or thing which, if this Act had not been enacted and Westpac Banking Corporation and Westpac New Zealand were a single legal entity, would have been admissible in evidence in respect of any matter for or against that entity is, on and after the appointed day, admissible in evidence in respect of the same matter for or against Westpac Banking Corporation or Westpac New Zealand.
- (2) In this section, **document** has the same meaning as in section 2(1) of the Evidence Amendment Act (No 2) 1980.

#### **15 Storage of information concerning designated assets and liabilities included in proposal**

- (1) If the proposal approved in accordance with section 6(1) describes designated assets and liabilities by referring to information in a ledger or in a register, as permitted by section 6(4), all information contained in that ledger or register must be stored by Westpac New Zealand.
- (2) The information may be stored in electronic form.
- (3) Westpac New Zealand must ensure that the information—
  - (a) is kept in New Zealand in good condition for at least 15 years from the appointed day; and
  - (b) is readily available throughout that period.

**16 Registers and evidence of vesting**

- (1) No Registrar-General of Land, Registrar of Personal Property Securities, or any other person charged with the keeping of any books or registers is obliged solely by reason of this Act to change the name of Westpac Banking Corporation to that of Westpac New Zealand in those books or registers or in any other document.
- (2) The presentation to any court, tribunal, arbitral tribunal, registrar, or other person of an instrument is, in the absence of evidence to the contrary, sufficient evidence that the assets or liabilities to which the instrument relates are vested in Westpac New Zealand.
- (3) Subsection (4) applies—
  - (a) to any security issued by, and any rights or interests in assets of, any person (a **relevant person**) that are held by Westpac Banking Corporation immediately before the appointed day; and
  - (b) despite any other enactment or rule of law or the provisions of any instrument.
- (4) If Westpac New Zealand or Westpac Banking Corporation presents a relevant person with a certificate signed by or on behalf of Westpac New Zealand stating that a security or a right or interest to which this subsection applies has vested in Westpac New Zealand, that person must register Westpac New Zealand as the holder of that security or as the person entitled to that right or interest.
- (5) Neither Westpac Banking Corporation nor Westpac New Zealand is required to give a copy of a verification statement in respect of a financing change statement to any debtor, as required by section 148 of the Personal Property Securities Act 1999, if—
  - (a) Westpac Banking Corporation or Westpac New Zealand registers that financing change statement under that Act in respect of a security interest held by Westpac Banking Corporation immediately before the appointed day; and
  - (b) the only change recorded in the financing change statement is the change of secured party.
- (6) In subsection (2), **instrument** means an instrument, whether or not comprising an instrument of transfer,—
  - (a) executed or purporting to be executed by or on behalf of Westpac New Zealand; and
  - (b) relating to any assets or liabilities held by Westpac Banking Corporation immediately before the appointed day; and
  - (c) containing a recital that those assets or liabilities have vested in Westpac New Zealand.

- (7) In subsections (3) and (4), **security** has the same meaning as in section 2D of the Securities Act 1978.
- (8) Unless the context requires otherwise, terms used in subsection (5) and defined in the Personal Property Securities Act 1999 have the same meanings as in that Act.

#### 17 Purpose of sections 18 and 19

The purpose of sections 18 and 19 is to ensure that the vesting of the designated assets and liabilities in Westpac New Zealand under this Act does not give rise to tax consequences under the Inland Revenue Acts for Westpac Banking Corporation or Westpac New Zealand that would not have arisen if they were the same person.

#### 18 Financial arrangements

- (1) For the purposes of the financial arrangements rules in the Income Tax Act 2007, for each financial arrangement to which Westpac Banking Corporation is a party immediately before the appointed day and which vests in Westpac New Zealand,—
  - (a) if the financial arrangement is an asset of Westpac Banking Corporation, Westpac New Zealand is to be treated as having paid to Westpac Banking Corporation, as consideration for the financial arrangement, an amount equal to the tax book value of the financial arrangement on the appointed day; and
  - (b) if the financial arrangement is a liability of Westpac Banking Corporation, Westpac Banking Corporation is to be treated as having paid to Westpac New Zealand, as consideration for the financial arrangement, an amount equal to the tax book value of the financial arrangement on the appointed day; and
  - (c) Westpac Banking Corporation must, on the appointed day, calculate a base price adjustment under section EW 31 of the Income Tax Act 2007; and
  - (d) when Westpac New Zealand is required to calculate a base price adjustment under section EW 31 of the Income Tax Act 2007, that base price adjustment must be calculated as if Westpac Banking Corporation and Westpac New Zealand were the same person; and
  - (e) sections EW 38, EW 42, and GB 21 of the Income Tax Act 2007 do not apply.
- (2) In subsection (1),—

**financial arrangements rules** has the same meaning as in section EW 1(2) of the Income Tax Act 2007

**tax book value** means, in respect of the appointed day and a financial arrangement, the value for tax purposes of that financial arrangement on the appointed

day determined consistently with the method used in subpart EW of the Income Tax Act 2007 to calculate and allocate income and expenditure under that financial arrangement as if the day immediately preceding the appointed day were the last day of an income year.

- (3) For the avoidance of doubt, **tax book value** in subsection (2) includes any interest accrued immediately before the appointed day but, other than where an amount has been written off in accordance with section DB 31 of the Income Tax Act 2007, does not include any adjustment for—
- (a) a decline in the other party's creditworthiness between the date on which the financial arrangement was entered into and the appointed day; or
  - (b) an increase in the possibility that the other party will not meet an obligation under the financial arrangement between the date on which the financial arrangement was entered into and the appointed day.

Section 18(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 18(1)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 18(1)(d): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 18(1)(e): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 18(2) **financial arrangements rules**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 18(2) **tax book value**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 18(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

## 19 Application of provisions relating to taxes and duties

- (1) For the purposes of the Income Tax Act 2007,—
- (a) the amount of any expenditure in connection with any designated assets and liabilities for which Westpac Banking Corporation has been allowed a deduction and that is unexpired immediately before the appointed day (that amount to be calculated by applying section EA 3(4) to (7) of that Act as if the day immediately before the appointed day (the **preceding day**) were the last day of an income year) is—
    - (i) income of Westpac Banking Corporation under section CH 2 of that Act in the income year in which the preceding day falls; and
    - (ii) an amount for which Westpac New Zealand is allowed a deduction under section DB 50 of that Act in the income year which includes the appointed day; and

- (b) for any income year the last day of which is the preceding day, section EA 3(3) of that Act does not apply to an amount of expenditure to which paragraph (a) applies; and
  - (c) for any income year the last day of which falls on or after the appointed day, section EA 3 of that Act applies—
    - (i) to Westpac New Zealand as if Westpac New Zealand had been allowed a deduction under that Act for the amount of expenditure to which paragraph (a) applies; and
    - (ii) to Westpac Banking Corporation as if Westpac Banking Corporation had not been allowed a deduction for that amount.
- (2) For the purposes of the Income Tax Act 2007, if Westpac New Zealand incurs an amount of expenditure or loss on or after the appointed day in respect of a designated asset or designated liability, Westpac New Zealand is entitled to a deduction for the amount of that expenditure or loss if Westpac Banking Corporation would have been allowed a deduction for that amount if the designated asset or designated liability had not vested in Westpac New Zealand and Westpac Banking Corporation had incurred the expenditure or loss.
- (3) For the purposes of the Income Tax Act 2007, if Westpac New Zealand derives an amount on or after the appointed day in respect of a designated asset or designated liability, that amount is income of Westpac New Zealand if it would have been income of Westpac Banking Corporation if the designated asset or designated liability had not vested in Westpac New Zealand and Westpac Banking Corporation had derived the amount.
- (4) For the purposes of sections CG 3 and DB 31 of the Income Tax Act 2007, on and from the appointed day Westpac Banking Corporation and Westpac New Zealand must be treated as the same person in respect of any obligation that is owed to Westpac Banking Corporation immediately before the appointed day and that vests in Westpac New Zealand.
- (5) The amount of tax payable by Westpac New Zealand under the Goods and Services Tax Act 1985 in respect of, or in relation to, any of the designated assets and liabilities must be determined as if Westpac New Zealand and Westpac Banking Corporation were the same person.
- (6) The vesting of the designated assets and liabilities in Westpac New Zealand—
  - (a) is to be treated as not being a supply for the purposes of the Goods and Services Tax Act 1985; and
  - (b) does not give rise to a dutiable gift for the purposes of the Estate and Gift Duties Act 1968; and
  - (c) does not give rise to a dividend for the purposes of the Income Tax Act 2007.
- (7) For the purposes of subpart EE of the Income Tax Act 2007, for any designated asset which is depreciable property,—

- (a) Westpac Banking Corporation is entitled to a deduction for an amount of depreciation loss for the period beginning on the first day of the income year in which the appointed day occurs and ending on the day before the appointed day; and
  - (b) Westpac Banking Corporation does not derive any income or have any deductions under sections EE 44 to EE 49, and EE 51 and EE 52 as a result of the vesting of the designated assets and liabilities in Westpac New Zealand; and
  - (c) on and from the appointed day, Westpac New Zealand must calculate its amount of depreciation loss and depreciation recovery income (if any) for the designated asset as if Westpac New Zealand and Westpac Banking Corporation were the same person.
- (8) For the purposes of the continuity provisions and of any other provision of the Income Tax Act 2007, the application of which depends on the extent of any person's shareholding or other ownership interest in any company, the question of whether any change in shareholding or ownership has occurred is to be determined as if the proposal approved in accordance with section 6(1) had not been approved and as if the vesting of the designated assets and liabilities had not occurred.
- (9) For the purposes of the Income Tax Act 2007, whether or not any designated asset or designated liability is revenue account property of Westpac New Zealand is to be determined as if Westpac Banking Corporation and Westpac New Zealand were the same person.
- (10) For the purposes of the Income Tax Act 2007 and the Stamp and Cheque Duties Act 1971, any transaction that has been registered as a registered security by Westpac Banking Corporation, and any class of transactions that has been registered as registered securities by Westpac Banking Corporation, is to be treated as having also been registered as a registered security or registered securities by Westpac New Zealand; and Westpac New Zealand is deemed to be an approved issuer in respect of those registered securities.
- (11) Westpac Banking Corporation and Westpac New Zealand are deemed to be the same person for the purposes of the making, giving, or receiving of any elections, notices, certificates, and filings required or provided for under the Inland Revenue Acts, except any returns that are required to be filed after the appointed day by either Westpac Banking Corporation or Westpac New Zealand with the Commissioner of Inland Revenue under the Tax Administration Act 1994 or the Goods and Services Tax Act 1985.
- (12) In this section, the terms **company**, **continuity provisions**, **depreciable property**, **depreciation loss**, **depreciation recovery income**, **registered security**, and **revenue account property** have the same meanings as in section YA 1 of the Income Tax Act 2007.



Section 19(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 19(1)(a)(ii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 19(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 19(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 19(4): amended (applying with effect from 31 March 2008), on 18 June 2011, by section 27(2) of the Westpac New Zealand Act 2011 (2011 No 1 (P)).

Section 19(6)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 19(7): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 19(7)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 19(8): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 19(9): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 19(10): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 19(12): amended (applying with effect from 13 September 2006), on 18 June 2011, by section 27(3) of the Westpac New Zealand Act 2011 (2011 No 1 (P)).

Section 19(12): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

## **20 Use of information and intellectual property**

- (1) Westpac Banking Corporation and Westpac New Zealand may each collect, use, disclose, or send any information if that collection, use, disclosure, or sending would be permitted if Westpac Banking Corporation and Westpac New Zealand were a single legal entity.
- (2) Westpac Banking Corporation and Westpac New Zealand may each use or modify any intellectual property if that use or modification would be permitted if Westpac Banking Corporation and Westpac New Zealand were a single legal entity.
- (3) Subsection (1) does not apply if the collection, use, disclosure, or sending of the information is only permitted by reason of a consent given after the appointed day.
- (4) Subsections (1) and (2) apply despite—
  - (a) the Privacy Act 2020:
  - (b) any other enactment or rule of law:
  - (c) the provisions of any contract.

Section 20(4)(a): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

**21 Effect of this Act**

Nothing effected or authorised by this Act—

- (a) places Westpac Banking Corporation, Westpac New Zealand, or any other person—
  - (i) in breach of, or default under, any contract, or in breach of trust, or in breach of confidence, or in the position of having committed a civil wrong; or
  - (ii) in breach of an enactment, rule of law, or contractual provision prohibiting, restricting, or regulating the assignment or transfer of an asset or liability; or
  - (iii) in breach of the Privacy Act 2020 or any other enactment, rule of law, or contractual provision relating to the collection, use, disclosure, or sending of any information; or
- (b) releases any surety or other person (other than Westpac Banking Corporation) wholly or in part from all or any of the surety's or other person's obligations; or
- (c) gives rise to a right for any person to—
  - (i) terminate, cancel, or modify a contract; or
  - (ii) enforce or accelerate the performance of an obligation; or
  - (iii) require the performance of an obligation not otherwise arising for performance; or
- (d) invalidates or discharges any contract.

Section 21(a)(iii): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

### **Part 3 Miscellaneous**

**22 Banking legislation continues to apply**

Nothing in this Act exempts Westpac Banking Corporation or Westpac New Zealand from the provisions of any enactment relating to banks or banking.

**23 Consequential amendments to regulations**

- (1) Regulation 3(a) of the Residential Tenancies (Fees) Regulations 1998 is amended by omitting “the Westpac Banking Corporation” and substituting “Westpac New Zealand Limited”.
- (2) Schedule 1 of the Crown Minerals (Minerals and Coal) Regulations 1999 is amended by—

- (a) omitting “WestpacTrust Banking Corporation” in each place where it appears and substituting in each case “Westpac New Zealand Limited”;  
and
  - (b) omitting “WestpacTrust Bank” in each place where it appears and substituting in each case “Westpac New Zealand Limited”.
- (3) Schedule 2 of the Fisheries (Infringement Offences) Regulations 2001 is amended by omitting “WestpacTrust Bank” in each place where it appears and substituting in each case “Westpac New Zealand Limited”.
- (4) Schedule 3 of the Fisheries (Infringement Offences) Regulations 2001 is amended by omitting “Westpac Bank” and substituting “Westpac New Zealand Limited”.

#### **24 Repeal**

Section 23 of the Westpac Banking Corporation Act 1982 is repealed.

## Notes

### **1** *General*

This is a consolidation of the Westpac New Zealand Act 2006 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

### **2** *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

### **3** *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

### **4** *Amendments incorporated in this consolidation*

Secondary Legislation Act 2021 (2021 No 7): section 3

Privacy Act 2020 (2020 No 31): section 217

Westpac New Zealand Act 2011 (2011 No 1 (P)): section 27(2), (3)

Income Tax Act 2007 (2007 No 97): section ZA 2(1)

Westpac New Zealand Proposal Approval Order 2006 (SR 2006/306): clause 2