

BANKING BILL

EXPLANATORY NOTE

THIS Bill consolidates and amends the Banking Act 1908.

The 1908 Act is itself a consolidation of a number of enactments relating to banking. A number of the matters originally dealt with in that Act are now dealt with in the Reserve Bank Act 1964, e.g. bank notes and bank returns, and the Act has also been amended in a number of respects. The purpose of the Bill is simply to consolidate the Act and, where appropriate, amend it having regard to the present day requirements of banking business.

Clause 1 relates to the Short Title.

Clause 2 relates to the definition of certain terms used in the Bill.

Clause 3 (which relates to the transfer of shares on which there is a liability) re-enacts section 6 of the existing Act without change in its effect. The main effect of the provision is to prevent the transfer of shares on which there is any liability without the written consent of the directors of the bank.

Clause 4 provides that a certificate may be given by a director, secretary, or authorised officer or attorney of a bank as prima facie evidence of title to shares in the bank. Under section 7 of the existing Act such a certificate may be given only by a director or attorney and is conclusive evidence of title.

Clause 5 relates to proof of entries made in the business records of a bank. The existing section 19 applies to the proof of entries in the "books" of a bank. "Business records", as defined in the Bill, includes books, documents, records, forms, cards, tape, disc, or electronic or storage media on which information is entered, recorded, or stored. The clause will thus apply to the proof of entries made in the records of a bank in accordance with modern methods.

Clause 6 (which relates to the compellability of a bank officer to produce business records in evidence in proceedings where the bank is not a party) re-enacts section 20 of the existing Act with minor amendments.

Clause 7 (which relates to inspection of the business records of a bank by the parties to litigation) re-enacts section 21 of the existing Act with minor amendments.

Clause 8 relates to the powers of the Controller and Auditor-General.

Clause 9 relates to the hours of opening of a bank.

Subclause (1), in general terms, provides that except on certain days when banks are authorised to close for business, the business premises of a bank shall be open for business from 10 a.m. until 3 p.m. from Monday to Friday.

Subclause (2) provides that nothing in *subclause (1)* shall prevent a bank from opening for business at any other time on which it may lawfully open its premises for business.

Subclause (3) provides that if the staff employed on any bank premises does not exceed 5, the premises may close for one hour each day between noon and 2 p.m.

Apart from *subclause (2)* (which has been inserted for clarification) the foregoing provisions re-enact section 9 (2) and (4) of the Statutes Amendment Act 1946.

Subclause (4) is new and provides that if a bank carries on business at any time other than during the period when it is required to be open:

- (a) Its business may be limited to such classes of business as the bank may determine;
- (b) If its business is limited, notice must be displayed as to the type of business being transacted;
- (c) Any transaction so made after 3 p.m. on any day may be recorded as having taken place on the next following business day on which the bank is open for business and is deemed to have taken place on that day.

Subclause (5) provides that the clause applies to the Reserve Bank and trading banks.

Clause 10 relates to bank holidays.

Subclause (1) provides that on the days specified in the First Schedule (which are the usual bank holidays) a bank shall not be open for business.

Subclauses (2) to (4) (when read together) provide that if any of those days is a Saturday or a Sunday (unless that is Anzac Day or Waitangi Day) the holiday shall be taken on the next business day unless that day is a bank holiday, in which case the business day following that day shall also be a holiday.

Clause 11 (which relates to special bank holidays) re-enacts section 24 of the existing Act with minor amendments.

Clause 12 relates to the destruction of documents and replaces section 26 of the existing Act. The main changes made are that cheques, drafts, bills of exchange, and promissory notes must be retained for a period of 7 years and may then be destroyed. They may, however, be retained during that period on microfilm subject to the overriding qualification that such documents may not be destroyed for at least 2 years. It is provided that a microfilm copy made pursuant to the clause shall be admissible in evidence as if it were the document of which it is a copy.

Clause 13 amends the Public Finance Act 1977 by the insertion of a new section 28A. The new section 28A (which is derived from section 22 of the Banking Act 1908) confers power on the Audit Office, for the purpose of performing its functions, to examine the account of any person in a bank. For

that purpose the Audit Office may require the account to be produced and information relating to it be supplied. It is also empowered to take copies of the account and related documents. It is provided that these powers may not be exercised unless the Controller and Auditor-General has certified that he has reason to believe that public money, or money belonging to a Government agency or local authority has been fraudulently or wrongfully paid into that account.

Clause 14 amends the enactments specified in the Second Schedule to the Bill.

Clause 15 repeals the enactments specified in the Third Schedule to the Bill.

Right Hon. Mr Muldoon

BANKING

ANALYSIS

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A BILL INTITULED

An Act to consolidate and amend the Banking Act 1908

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Banking Act 1982.

2. Interpretation—In this Act, unless the context otherwise requires,—

10 “Bank” means any person, partnership, corporation, or company carrying on in New Zealand the business of banking:

“Bank holiday” means a day on which by virtue of the provisions of section 10 of this Act, a bank may not

15 “Bank note” or “note” means any negotiable instrument used or circulated, or intended for use or circulation, as currency:

- “Business records” includes any books, documents, records, forms, cards, tape, disc, or electronic or storage media, on which any information relating to the business of the bank is entered, recorded, or stored: 5
- “Charter” of a bank means the enactment, deed of settlement, memorandum of association, or other instrument by or under which the bank is incorporated; and includes all amendments of such instrument, and also all articles of association, 10 bylaws, rules, and regulations providing for the administration of the bank:
- “Court” means the High Court or a District Court; and includes a Judge of the High Court or a District Court Judge: 15
- “Legal proceeding” means any civil or criminal proceeding or inquiry, and includes an arbitration:
- “Officer”, in relation to a bank or branch of a bank, includes—
- (a) The General Manager, manager, or any person 20 occupying the position of General Manager or manager by whatever name called; and
- (b) The accountant of the bank or branch of a bank:
- “Special bank holiday” or “part holiday” means a day 25 or any portion of a day (as the case may be) appointed pursuant to section 11 of this Act as a special bank holiday or part holiday.
- Cf. 1908, No. 11. s. 2

3. Transfer of bank shares—(1) Notwithstanding any- 30 thing in the charter of any bank, no transfer of shares of any bank on which there is any liability shall be complete or shall operate to vest those shares in any person, or to relieve the transferor from liability in respect thereof, until such transfer is approved of in writing by the directors of the bank. 35

(2) Subsection (1) of this section shall be sufficient authority to the directors to refuse their approval to any transfer of shares on which there is any liability, without assigning any reason therefor.

(3) If the branch register upon which any such transfer is to 40 be recorded is kept in any country other than the country in which the head office of the bank is situated, the directors of the bank may, if they think fit, delegate to a duly appointed attorney or attorneys, with power to act jointly or severally,

the duty of approving or disapproving in writing such transfer and of registering the same upon such branch register, and the approval of such transfer by such attorney or attorneys shall take the place of the approval by the directors of the
5 bank required by this or any other Act, and shall be as valid to complete any transfer of shares and to relieve the transferor from liability as if such transfer had been approved by the directors themselves.

(4) Where any bank has before the coming into operation
10 of this Act delegated to any attorney or attorneys the duty of approving or disapproving any such transfer and of registering the same upon any branch register, and such transfer has been approved by such attorney or attorneys and registered upon such branch register, such approval shall be
15 as valid and effectual to complete such transfer and relieve the transferor from liability as if such transfer had been approved by the directors themselves before being registered.

Cf. 1908, No. 11, s. 6

4. Certificate as to shareholder—Subject to any other
20 enactment or rule of law, a certificate given by one or more of the directors of a bank, or the secretary or a duly authorised officer of a bank, or the attorney or attorneys of the bank, specifying any shares held by any person, shall be prima facie evidence of the title of such person to the shares therein
25 specified.

Cf. 1908, No. 11, s. 7

5. Proof of entries in business records of banks—

(1) Notwithstanding anything in any enactment or rule of
30 law, but subject to the provisions of this section, a copy of any entry in the business records of a bank shall in all legal proceedings be received as prima facie evidence of such entry, and of the matters, transactions, and accounts therein recorded.

(2) Such copy shall not be received in evidence under this
35 Act unless it is first proved—

(a) That the business record was at the time of the making
of the entry one of the ordinary business records of
the bank, and that the entry was made in the usual
and ordinary course of business, and that the
40 business record is in the custody or control of the
bank; and

(b) That the copy has been compared with the original
entry and is correct.

(3) Notwithstanding anything in any enactment or rule of law, but subject to the provisions of subsection (4) of this section, a document certified by an officer of the bank to be a record of an entry in the business records of a bank and which is produced in the usual and ordinary course of producing such records by a device by means of which information is entered, recorded, or stored, shall, in all legal proceedings be received as prima facie evidence of such entry, and of the matters, transactions, and accounts therein recorded. 5

(4) A document certified in accordance with subsection (3) of this section shall not be received in evidence under that section unless it is first proved that the business record was at the time of making of the entry one of the ordinary business records of the bank, and that the entry was made in the usual and ordinary course of business, and that the business record is in the custody or control of the bank or available to the bank. 10 15

Cf. 1908, No. 11, s. 19 (1), (2)

6. Officer not compellable to produce business records—An officer of a bank shall not, in any legal proceedings to which the bank is not a party, be compellable either to produce any business record of the bank the contents of which can be proved pursuant to section 5 of this Act, or to appear as a witness to prove the matters, transactions, and accounts therein recorded, unless by order of a Court made for special cause. 20 25

Cf. 1908, No. 11, s. 20

7. Court may order inspection—(1) On the application of any party to a legal proceeding a Court may, on summons, order that such party be at liberty to inspect and take copies of any entries in the business records of a bank for any of the purposes of such proceeding. 30

(2) An order under this section shall be served on the bank not less than 3 clear days before the same is to be obeyed, unless the Court directs otherwise. 35

(3) Sunday, and any bank holiday, special bank holiday, or part holiday shall be excluded from the computation of time under this section.

(4) The costs of any application to a Court under or for the purposes of this section, and the costs of anything done or to be done under an order of a Court made under or for the purposes of this section, shall be in the discretion of the Court. 40

(5) Where any such costs have been occasioned by any default or delay on the part of the bank, the Court may order that the same or any part thereof be paid to any party by the bank.

5 (6) Any such order against a bank may be enforced as if the bank were a party to the proceeding.

Cf. 1908, No. 11, s. 21

8. Saving of power of Auditor-General to inspect private accounts—Nothing in this Act shall limit or affect
10 the powers of the Controller and Auditor-General under any other Act.

Cf. 1908, No. 11, s. 22

9. Banking hours—(1) Except on bank holidays, or on special bank holidays or part holidays, and except as
15 provided in this section, the business premises of every bank, other than an agency or receiving agency, shall be open for business from 10 o'clock in the morning to 3 o'clock in the afternoon on every day of the week other than Saturday and Sunday.

20 (2) Nothing in subsection (1) of this section shall prevent the business premises of a bank from being open at any other time that such premises may lawfully be open.

(3) Where the number of the staff employed on any bank premises does not exceed 5, the premises may be closed for
25 one hour on each day, between noon and 2 o'clock in the afternoon.

(4) Where the business of banking is carried on at the premises of any bank at any time other than a time during which the banking premises of the bank are required to be
30 open for business pursuant to subsection (1) of this section,—

(a) The business of the bank may be limited to the conduct of such classes of business as the bank may from time to time determine:

35 (b) If the business of the bank is so limited the bank shall display adequate notice of the classes of business for which the bank is open:

(c) Any transaction made after 3 o'clock in the afternoon may be recorded in the business records of the bank as having taken place on the date of the next
40 following day on which the bank is open for business and, if so recorded, shall be deemed to have taken place on that day.

(5) For the purposes of this section “bank” means the Reserve Bank and every trading bank named in the First Schedule to the Reserve Bank Act 1964.

10. Bank holidays—(1) Subject to subsection (2) of this section, a bank shall not open for business on any of the several days mentioned in the First Schedule to this Act. 5

(2) Where any of the days mentioned in the First Schedule to this Act falls on either a Saturday or a Sunday, the next following business day shall be a day on which the bank shall not open for business. 10

(3) Where such next following business day is one of the days mentioned in the First Schedule to this Act, the business day next following that day shall also be a day on which the bank shall not be open for business.

(4) Nothing in subsection (2) of this section shall apply with respect to Anzac Day or Waitangi Day, as the case may be, when Anzac Day or Waitangi Day falls on a Saturday or a Sunday. 15

Cf. 1908, No. 11, s. 23; 1935, No. 23, s. 3

11. Special bank holidays—With the previous consent in writing of the Minister of Finance, but not otherwise, the Managing Director, General Manager, or other chief officer in New Zealand for the time being of any bank may, by writing under his hand, appoint any day or portion of a day as a special bank holiday or part holiday at the bank under his direction or control, and such holiday or part holiday may be observed at any specified place or places in which the bank carries on business within New Zealand, subject to the provisions following, that is to say: 20 25

(a) It shall not be lawful at any time to appoint more than 2 consecutive business days as holidays, or more than 3 consecutive days as part holidays: 30

(b) Any day or portion of a day so appointed shall be notified by public advertisement, purporting to be by proper authority, not less than 2 times within the 7 days immediately preceding such day, in some newspaper circulating in the district in which the holiday or part holiday is to be observed: 35

(c) A copy of such notice shall be displayed in a front window or on or near the main entrance door of the building in which the bank carries on its business, at the place or places where the holiday or part holiday is to be observed, for at least 3 days before such day: 40

- 5 (d) The production of a newspaper containing any such advertisement shall be prima facie proof that the holiday or part holiday was duly appointed to be observed at the place or places specified in that advertisement:
- (e) Such day shall be a special bank holiday or part holiday only at the particular bank or banks specified in the notice hereby required:
- 10 (f) Bills of exchange or promissory notes due on a part holiday shall be payable on that day within the business hours during which the bank is open.
- Cf. 1908, No. 11, s. 24 (a)-(e), (g)

12. Destruction of documents—(1) Subject to this section, all cheques and bank drafts in the possession of the bank on which they are drawn, and all bills of exchange or promissory notes in the possession of a bank and made payable at that bank shall be retained by such bank for a period of 7 years from the date thereof in the case of documents payable on demand, or from the due date thereof in the case of other documents, and may thereafter be destroyed.

25 (2) It shall be sufficient compliance with subsection (1) of this section if a microfilm copy of the document has been made by the bank and is retained by the bank for the same period as that document is required to be retained pursuant to subsection (1) of this section.

(3) Notwithstanding subsections (1) or (2) of this section, no document shall be destroyed under the authority of this section—

- 30 (a) At any time within 2 years after the date thereof in the case of documents payable on demand, or after the due date thereof in the case of other documents:
- (b) At any time after a demand for the delivery of such document has been made to the bank by the person entitled thereto.
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(4) Notwithstanding any enactment or rule of law, a microfilm copy of a document made pursuant to this section shall be admissible in evidence in any legal proceedings to the same extent as the document of which it is a copy would have
40 been admissible.

(5) This section shall apply to cheques, drafts, bills, and promissory notes received by a bank either before or after the coming into operation of this Act.

Cf. 1908, No. 11, s. 26

13. Amendment to Public Finance Act 1977—The Public Finance Act 1977 is hereby amended by inserting, after section 28, the following section: 5

“**28A. Power to inspect bank accounts**—(1) For the purpose of fulfilling any function or duty lawfully conferred or imposed on it, the Audit Office may examine or audit the account of any person in any bank and for that purpose may: 10

“(a) Require any officer of the bank to produce such account and supply any information relating thereto in the possession of the bank or under its control: 15

“(b) Take copies of such account and any documents relating thereto in the possession of the bank or under its control.

“(2) The powers conferred on the Audit Office by subsection (1) of this section shall not be exercised by the Audit Office in relation to the account of any person in any bank unless the Controller and Auditor-General certifies in writing to that bank that he has reason to believe, and does believe, that public money, or money belonging to a Government agency of which the Audit Office is auditor, or a local authority, has been fraudulently or wrongfully paid into that account. 25

“(3) For the purpose of this section ‘bank’ means a bank within the meaning of the Banking Act 1982.”

14. Consequential amendments—The enactments listed 30 in the Second Schedule to this Act are hereby consequentially amended.

15. Repeals—The enactments listed in the Third Schedule to this Act are hereby repealed.

SCHEDULES

FIRST SCHEDULE

Section 10 (1), (2)

BANK HOLIDAYS

Anniversary Day in the locality where the bank or branch is situated	Anzac Day
New Year's Day	Christmas Day
Good Friday	Boxing Day
Easter Monday	The Sovereign's Birthday
	Labour Day
	Waitangi Day

SECOND SCHEDULE

Section 14

ENACTMENTS CONSEQUENTIALLY AMENDED

Enactment	Amendment
1873, No. 1—The National Bank of New Zealand (Limited) Act 1873	By omitting from the Title the words "and issue notes".
1948, No. 62—The Trustee Savings Banks Act 1948. (Reprinted 1973, Vol. 2, p. 1663.)	By repealing section 38A (1), and substituting the following subsection: “(1) The provisions of <u>sections 5 to 8</u> of the Banking Act 1982 shall apply with respect to trustee savings banks.”
1959, No. 30—The Post Office Act 1959. (Reprinted 1970, Vol. 3, p. 2155.)	By repealing section 118A (1), and substituting the following subsection: “(1) The provisions of <u>sections 5 to 8</u> of the Banking Act 1982 shall apply with respect to the Post Office Savings Bank.”
1964, No. 9—The Private Savings Banks Act 1964	By repealing section 24 (3), and substituting the following subsection: “(3) The provisions of <u>sections 5 to 8</u> of the Banking Act 1982 shall apply to private savings banks.”

SECOND SCHEDULE—*continued*

Enactment	Amendment
1964, No. 134—The Reserve Bank of New Zealand Act 1964. (Reprinted 1974, Vol. 3, p. 2439.)	By repealing section 47, and substituting the following section: “47. Application of Banking Act to Reserve Bank —(1) Sections 5 to 12 of the Banking Act 1982 shall apply with respect to the Reserve Bank. “(2) Except as provided in subsection (1) of this section, the provisions of the Banking Act 1982 shall not apply with respect to the Reserve Bank.”

Section 15

THIRD SCHEDULE

ENACTMENTS REPEALED

- 1908, No. 11—The Banking Act 1908. (R.S. Vol. 1, p. 268.)
- 1935, No. 23—The Banking Amendment Act 1935. (R.S. Vol. 1, p. 277.)
- 1946, No. 40—The Statutes Amendment Act 1946: Sections 7 to 10. (R.S. Vol. 1, p. 279.)
- 1953, No. 115—The Finance Act (No. 2) 1953: Sections 22 and 23. (R.S. Vol. 1, p. 281.)
- 1964, No. 134—The Reserve Bank of New Zealand Act 1964: So much of the Fourth Schedule as relates to the Banking Act 1908 and the Banking Amendment Act 1935. (Reprinted 1974, Vol. 3, p. 2439.)
- 1976, No. 33—The Waitangi Day Act 1976: Section 7 (5), (6).