

Hon. Mr Templeton

WESTPAC BANKING CORPORATION

[PRIVATE]

ANALYSIS

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A BILL INTITULED

An Act to provide—

- 5 (a) **For the transfer to Bank of New South Wales of the undertaking in New Zealand of The Commercial Bank of Australia Limited; and**
- (b) **For the transfer to Bank of New South Wales Savings Bank (N.Z.) Limited of the undertaking of The Commercial Bank Savings Bank (N.Z.) Limited; and**

No. 35—1

Price \$1.05

- (c) For recognition of a change in the name of Bank of New South Wales to Westpac Banking Corporation; and
- (d) For the Westpac Banking Corporation to hold at all times in New Zealand assets (other than goodwill) of not less than the value of the total of that Corporation's deposit liabilities in New Zealand; and
- (e) For other purposes incidental thereto and consequent thereon

WHEREAS Bank of New South Wales is a body politic and corporate incorporated under the Bank of New South Wales Act of 1850 of the State of New South Wales of the Commonwealth of Australia: And whereas The Commercial Bank of Australia Limited is a corporation incorporated under the Companies Act 1890 of the State of Victoria of the Commonwealth of Australia: And whereas both Bank of New South Wales and The Commercial Bank of Australia Limited are trading banks named in the First Schedule to the Reserve Bank of New Zealand Act 1964 and carry on the business of banking in New Zealand and elsewhere: And whereas Bank of New South Wales Savings Bank (N.Z.) Limited, a company duly incorporated under the Companies Act 1955, is a wholly owned subsidiary of Bank of New South Wales Savings Bank Limited (which is incorporated under the Companies Acts of the State of New South Wales of the Commonwealth of Australia and which is a wholly owned subsidiary of Bank of New South Wales): And whereas The Commercial Bank Savings Bank (N.Z.) Limited, a company duly incorporated under the Companies Act 1955, is a wholly owned subsidiary of The Commercial Bank of Australia Limited: And whereas both Bank of New South Wales Savings Bank (N.Z.) Limited and The Commercial Bank Savings Bank (N.Z.) Limited are savings bank companies under the Private Savings Banks Act 1964: And whereas, by the acquisition by Bank of New South Wales of all the stock units in The Commercial Bank of Australia Limited in pursuance of action under Part VIB of the Companies Act 1961 of the State of Victoria of the Commonwealth of Australia, The Commercial Bank of Australia Limited became, on or about the 12th day of February 1982, a wholly owned subsidiary of Bank of New South Wales: And whereas, by the Bank of New South Wales (Change of Name) Act 1982 of the State of New South Wales

of the Commonwealth of Australia, provision is made for the name of Bank of New South Wales to be changed to Westpac Banking Corporation, such change to take effect on a date appointed and notified pursuant to section 2 (2) of that Act:

5 And whereas it is expedient in the interests of banking efficiency that the banking business conducted by The Commercial Bank of Australia Limited should be vested in Bank of New South Wales in order that the banking businesses of the two banks may be amalgamated and that
10 the banking business conducted by The Commercial Bank Savings Bank (N.Z.) Limited should be vested in Bank of New South Wales Savings Bank (N.Z.) Limited in order that the banking businesses of the two savings banks may be amalgamated: And whereas legislation is the only means by
15 which—

- (a) A transfer to Bank of New South Wales of such part of the undertaking of The Commercial Bank of Australia Limited as relates to its New Zealand business; and
- 20 (b) A transfer to Bank of New South Wales Savings Bank (N.Z.) Limited of the undertaking of The Commercial Bank Savings Bank (N.Z.) Limited; and
- (c) The amalgamation of the banking businesses of the said
25 banks; and
- (d) The changes consequent on the change in the name of Bank of New South Wales to Westpac Banking Corporation—

30 can be effected efficiently and economically and without interference with the conduct and continuity of the business of banking in the interests of the said banks, their customers, and other persons having business with them: And whereas the objects of this Act cannot be attained without the authority of Parliament:

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

1. Short Title and commencement—(1) This Act may be cited as the Westpac Banking Corporation Act 1982.

40 (2) This section and sections 2 and 3 of this Act shall come into force on the date on which this Act receives the Governor-General's assent.

(3) Except as provided in subsection (2) of this section, the provisions of this Act shall come into force on a date to be appointed for the commencement thereof by the Governor-General by Order in Council. For the purposes of this subsection, one or more Orders in Council may be made bringing different provisions of this Act into force on different dates. 5

(4) The Governor-General shall not appoint a date under subsection (3) of this section for the purposes of bringing sections 4 to 19 of this Act and the Schedule to this Act into force unless the Minister of Justice has advised him that the Commissioner of Inland Revenue has confirmed that the Continuing Bank has paid, or has given an undertaking (in terms acceptable to the Commissioner) to pay, to the Commissioner such sum of money as the Commissioner considers is the amount of stamp duties that would have been payable to the Crown in respect of all assets vested by virtue of this Act if those assets had been vested other than by virtue of this Act. 10 15

2. Interpretation—In this Act, unless the context otherwise requires,— 20

“Appointed day” means the date appointed for the commencement of sections 4 to 19 of this Act and the Schedule to this Act:

“CBA” means The Commercial Bank of Australia Limited: 25

“CBA Savings Bank New Zealand” means The Commercial Bank Savings Bank (N.Z.) Limited:

“Continuing Bank” means the body politic and corporate which is incorporated by the Bank of New South Wales Act of 1850 of the State of New South Wales of the Commonwealth of Australia and which is to be named “Westpac Banking Corporation” on and from the day appointed and notified pursuant to section 2 (2) of the Bank of New South Wales (Change of Name) Act, 1982 of the State of New South Wales of the Commonwealth of Australia: 30 35

“Continuing Savings Bank New Zealand” means the body corporate which is incorporated in New Zealand under the Companies Act 1955 and which is named, at the passing of this Act, “Bank of New South Wales Savings Bank (N.Z.) Limited”: 40

“Excluded assets” means—

(a) Documents required by law to be kept by CBA or CBA Savings Bank New Zealand:

5 (b) Shares in corporations held, immediately before the appointed day, by or on behalf of CBA or CBA Savings Bank New Zealand otherwise than by way of security:

10 (c) Land held, immediately before the appointed day, by or on behalf of CBA or CBA Savings Bank New Zealand otherwise than by way of security:

(d) Property held, immediately before the appointed day, by CBA for the trustees of the C.B.A. New Zealand Staff Superannuation Fund:

“Instrument” includes—

15 (a) Any instrument (other than this Act) of any form or kind that creates, evidences, modifies, or extinguishes rights, interests, or liabilities or would do so if it or a copy thereof were lodged, filed, or registered under any enactment; and

20 (b) Any judgment, order, or process of a Court:

“Instrument by way of security” has the meaning assigned to it in section 2 of the Chattels Transfer Act 1924:

25 “Land” has the meaning assigned to it in section 2 of the Land Transfer Act 1952:

30 “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):

“Property” means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal and, without limiting the generality of the foregoing, includes—

35 (a) Choses in action:

(b) Goodwill:

40 (c) Rights, interests and claims of every kind in or to property, whether arising from, accruing under, created or evidenced by, or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent, or prospective:

“Rights” means all rights, powers, privileges, and immunities, whether actual, contingent, or prospective:

“Security” means a mortgage, submortgage or charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, indemnity, defeasance, hypothecation, instrument by way of security, 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 an agreement or undertaking to give or execute whether upon demand or otherwise any of the foregoing: 5

“Subsidiary” has the same meaning as in the Companies Act 1955: 10

“Transferred employee” means an employee of CBA who becomes an employee of the Continuing Bank in pursuance of this Act: 15

“Undertaking” means—

(a) In relation to CBA,—

(i) All property of CBA (apart from excluded assets) relating to its New Zealand business; and 20

(ii) All rights and liabilities of CBA (apart from rights and liabilities relating to excluded assets) relating to its New Zealand business: 25

(b) In relation to CBA Savings Bank New Zealand,—

(i) All property of CBA Savings Bank New Zealand (apart from excluded assets); and 30

(ii) All rights and liabilities of CBA Savings Bank New Zealand (apart from rights and liabilities relating to excluded assets).

3. Act to bind the Crown and other persons—This Act shall bind the Crown and every person (including any body politic or corporate) whose rights are affected by any provision of this Act. 35

4. Vesting of undertakings of CBA and CBA Savings Bank New Zealand—(1) On the appointed day—

(a) The undertaking of CBA shall, by virtue of this Act, vest in the Continuing Bank; and 40

- (b) The undertaking of CBA Savings Bank New Zealand shall, by virtue of this Act, vest in the Continuing Savings Bank New Zealand.
- (2) On and after the appointed day—
- 5 (a) A reference (express or implied) to CBA in any instrument made, given, passed, or executed before that day shall (except to the extent that the instrument relates to an excluded asset or unless the context otherwise requires) be read and construed as a reference to the Continuing Bank; and
- 10 (b) A reference (express or implied) to CBA Savings Bank New Zealand in any instrument made, given, passed, or executed before that day shall (except to the extent that the instrument relates to an excluded asset or unless the context otherwise requires) be read and construed as a reference to the Continuing Savings Bank New Zealand; and
- 15 (c) A reference (express or implied) to the holder for the time being of a particular office (other than the office of a director, secretary, or auditor) within CBA or CBA Savings Bank New Zealand in any instrument made, given, passed, or executed before that day shall be read and construed as a reference to the person for the time being holding office as
- 20 General Manager for New Zealand or Acting General Manager for New Zealand or such other officer of the Continuing Bank or the Continuing Savings Bank New Zealand as is designated from time to time by the General Manager for New Zealand or Acting General Manager for New Zealand of the Continuing Bank or by any other officer acting under delegation from him.
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- 30
- (3) On and after the appointed day—
- 35 (a) Any place of business that, immediately before the appointed day, was a place of business of CBA shall, wherever located, become a place of business for the time being of the Continuing Bank; and
- (b) Any place of business that, immediately before the appointed day, was a place of business of CBA Savings Bank New Zealand shall, wherever located, become a place of business for the time being of the
- 40 Continuing Savings Bank New Zealand.

(4) Where for any reason—

(a) A liability to CBA immediately before the appointed day remains a liability to CBA on or after that day; or

(b) A liability to CBA Savings Bank New Zealand immediately before the appointed day remains a liability to CBA Savings Bank New Zealand on or after that day—

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

(5) Nothing in subsection (3) of this section requires the Continuing Bank or the Continuing Savings Bank New Zealand to continue as a place of business of the Continuing Bank or the Continuing Savings Bank New Zealand any place of business to which that subsection applies.

5. CBA Savings Bank New Zealand ceasing business—

(1) On and after the appointed day CBA Savings Bank New Zealand shall cease to carry on business as a private savings bank.

(2) The provisions of section 12 of the Private Savings Banks Act 1964 shall not apply to the cessation of business by CBA Savings Bank New Zealand as a private savings bank pursuant to subsection (1) of this section.

6. Further consequential provisions in respect of CBA—Without prejudice to the generality of other provisions of this Act, the following provisions shall have effect on and after the appointed day—

(a) The relationship between CBA and a customer or depositor shall become the same relationship between the Continuing Bank and that customer or depositor and the same rights and liabilities, including rights of set-off, shall exist between the Continuing Bank and a customer or depositor as existed immediately before the appointed day between CBA and that customer or depositor:

(b) All contracts, agreements, conveyances, deeds, leases, licences, and other instruments, undertakings, and notices, (whether or not in writing), entered into by,

- 5 made with, given to or by, or addressed to CBA
(whether alone or with any other person) before the
appointed day and subsisting immediately before
the appointed day shall (except to the extent that
they relate to an excluded asset), to the extent that
they were previously binding on and enforceable by,
against, or in favour of CBA, be binding on and
enforceable by, against, or in favour of the
Continuing Bank as fully and effectually in every
10 respect as if, instead of CBA, the Continuing Bank
had been the person by whom they were entered
into, with whom they were made, or to or by whom
they were given or addressed, as the case may be:
- 15 (c) An instruction, order, direction, mandate, or authority
given to CBA and subsisting immediately before the
appointed day shall be deemed to have been given
to the Continuing Bank:
- 20 (d) A security held by CBA as security for a debt or other
liability to CBA incurred before the appointed day
shall be available to the Continuing Bank as
security for the discharge of that debt or liability
and, where the security extends to future or
prospective debts or liabilities, shall be available as
security for the discharge of debts or liabilities to the
25 Continuing Bank incurred on or after the appointed
day; and, in relation to a security, the Continuing
Bank shall be entitled to all the rights and priorities
(howsoever arising) and shall be subject to all
liabilities to which CBA would have been entitled or
30 subject if this Act had not been passed:
- (e) All the rights and liabilities of CBA as bailor or bailee of
documents or chattels shall be vested in and
assumed by the Continuing Bank:
- 35 (f) A negotiable instrument or order for payment of money
which before, on, or after the appointed day, is
drawn on or given to or accepted or indorsed by
CBA or payable at a place of business of CBA shall
(except to the extent that any such negotiable
instrument or order for payment of money relates to
40 an excluded asset or unless the context otherwise
requires) have the same effect on and after the
appointed day as if it had been drawn on or given to
or accepted or indorsed by the Continuing Bank
instead of CBA or was payable at the place of

business of the Continuing Bank which the said place of business of CBA is by this Act deemed to be:

- (g) A reference (express or implied) to CBA in any notice or other communication served, given, or sent on or after the appointed day in relation to any instrument or other document whatever subsisting immediately before the appointed day shall, unless the notice or other communication relates to an excluded asset or unless the context otherwise requires, be read as a reference to the Continuing Bank:
- (h) Nothing effected by this Act—
- (i) Shall be regarded as placing CBA or the Continuing Bank or any other person in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong; or
 - (ii) Shall be regarded as placing CBA or the Continuing Bank or any other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of any property or the disclosure of any information; or
 - (iii) Shall release any surety wholly or in part from all or any of his obligations; or
 - (iv) Shall invalidate or discharge any contract or security:
- (i) Nothing done or suffered by CBA or the Continuing Bank or any other person pursuant to this Act (not being something effected by this Act)—
- (i) Shall be regarded as a breach of contract or confidence or otherwise as a civil wrong; or
 - (ii) Shall be regarded as a breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of any property or the disclosure of any information; or
 - (iii) Shall release any surety wholly or in part from all or any of his obligations; or
 - (iv) Shall invalidate or discharge any contract or security,—
- if it would not have had that effect had it been done or suffered by CBA in the absence of this Act.

7. Further consequential provisions in respect of CBA Savings Bank New Zealand—Without prejudice to the generality of other provisions of this Act, the following provisions shall have effect on and after the appointed day—

- 5 (a) The relationship between CBA Savings Bank New Zealand and a customer or depositor shall become the same relationship between the Continuing Savings Bank New Zealand and that customer or depositor and the same rights and liabilities, including rights of set-off, shall exist between the
10 Continuing Savings Bank New Zealand and a customer or depositor as existed immediately before the appointed day between CBA Savings Bank New Zealand and that customer or depositor:
- 15 (b) All contracts, agreements, conveyances, deeds, leases, licences, and other instruments, undertakings, and notices, (whether or not in writing), entered into by, made with, given to or by, or addressed to CBA Savings Bank New Zealand (whether alone or with
20 any other person) before the appointed day and subsisting immediately before the appointed day shall (except to the extent that they relate to an excluded asset), to the extent that they were previously binding on and enforceable by, against, or in favour of CBA Savings Bank New Zealand, be
25 binding on and enforceable by, against, or in favour of the Continuing Savings Bank New Zealand as fully and effectually in every respect as if, instead of CBA Savings Bank New Zealand, the Continuing Savings Bank New Zealand had been the person by
30 whom they were entered into, with whom they were made, or to or by whom they were given or addressed, as the case may be:
- 35 (c) An instruction, order, direction, mandate, or authority given to CBA Savings Bank New Zealand and subsisting immediately before the appointed day shall be deemed to have been given to the Continuing Savings Bank New Zealand:
- 40 (d) A security held by CBA Savings Bank New Zealand as security for a debt or other liability to CBA Savings Bank New Zealand incurred before the appointed day shall be available to the Continuing Savings Bank New Zealand as security for the discharge of that debt or liability and, where the security extends

- to future or prospective debts or liabilities, shall be available as security for the discharge of debts or liabilities to the Continuing Savings Bank New Zealand incurred on or after the appointed day; and, in relation to a security, the Continuing Savings Bank New Zealand shall be entitled to all the rights and priorities (howsoever arising) and shall be subject to all liabilities to which CBA Savings Bank New Zealand would have been entitled or subject if this Act had not been passed:
- (e) All the rights and liabilities of CBA Savings Bank New Zealand as bailor or bailee of documents or chattels shall be vested in and assumed by the Continuing Savings Bank New Zealand:
- (f) A negotiable instrument or order for payment of money which before, on, or after the appointed day, is drawn on or given to or accepted or indorsed by CBA Savings Bank New Zealand or payable at a place of business of CBA Savings Bank New Zealand shall (except to the extent that any such negotiable instrument or order for payment of money relates to an excluded asset or unless the context otherwise requires) have the same effect on and after the appointed day as if it had been drawn on or given to or accepted or indorsed by the Continuing Savings Bank New Zealand instead of CBA Savings Bank New Zealand or was payable at the place of business of the Continuing Savings Bank New Zealand which the said place of business of CBA Savings Bank New Zealand is by this Act deemed to be:
- (g) A reference (express or implied) to CBA Savings Bank New Zealand in any notice or other communication served, given, or sent on or after the appointed day in relation to any instrument or other document whatever subsisting immediately before the appointed day shall, unless the notice or other communication relates to an excluded asset or unless the context otherwise requires, be read as a reference to the Continuing Savings Bank New Zealand:
- (h) Nothing effected by this Act—
- (i) Shall be regarded as placing CBA Savings Bank New Zealand or the Continuing Savings Bank

New Zealand or any other person in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong; or

5 (ii) Shall be regarded as placing CBA Savings Bank or the Continuing Savings Bank New Zealand or any other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of any property, or the disclosure of any
10 information; or

(iii) Shall release any surety wholly or in part from all or any of his obligations; or

(iv) Shall invalidate or discharge any contract or security:

15 (i) Nothing done or suffered by CBA Savings Bank New Zealand or the Continuing Savings Bank New Zealand or any other person pursuant to this Act (not being something effected by this Act)—

20 (i) Shall be regarded as a breach of contract or confidence or otherwise as a civil wrong; or

(ii) Shall be regarded as a breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of any property or the disclosure of
25 any information; or

(iii) Shall release any surety wholly or in part from all or any of his obligations; or

(iv) Shall invalidate or discharge any contract or security,—

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

8. Assignment and subletting of leases of land—

35 (1) Where, under the provisions of any enactment, lease, licence, contract, or agreement (whether or not in writing), CBA or CBA Savings Bank New Zealand has rights in respect of the use, enjoyment, or occupation of any land, being an excluded asset, those rights may, notwithstanding that there has been no assignment, transfer, subletting, devolution,
40 parting with possession, or other disposition of that land by CBA or CBA Savings Bank New Zealand, be exercised by the Continuing Bank or the Continuing Savings Bank New Zealand.

(2) For the avoidance of doubt it is hereby declared that the exercise by the Continuing Bank or the Continuing Savings Bank New Zealand of any of the rights referred to in subsection (1) of this section shall not constitute an assignment, transfer, subletting, devolution, parting with possession, or other disposition of such land for the purpose of any provision relating to assignment, transfer, subletting, devolution, parting with possession, or other disposition contained in any enactment, lease, licence, contract, or agreement (whether or not in writing) in existence on the appointed day and relating to that land.

9. Continuity of legal proceedings—(1) This section shall apply to—

(a) Any action, arbitration, or proceeding or cause of action, arbitration, or proceeding which immediately before the appointed day is pending or existing by, against, or in favour of CBA or CBA Savings Bank New Zealand or to which CBA or CBA Savings Bank New Zealand is a party:

(b) Any cause of action, arbitration, or proceeding, by, against, or in favour of CBA or CBA Savings Bank New Zealand or to which CBA or CBA Savings Bank New Zealand is a party arising on or after the appointed day but arising in respect of a contract made by CBA or CBA Savings Bank New Zealand before the appointed day or arising in respect of anything done or omitted to be done by CBA or CBA Savings Bank New Zealand before the appointed day,—

but shall not apply to any action, arbitration, or proceeding, or to any cause of action, arbitration, or proceeding, relating to an excluded asset.

(2) Any action, arbitration, or proceeding and any cause of action, arbitration, or proceeding to which this section applies shall not abate or be discontinued or be in any way prejudicially affected by reason of the provisions of this Act, but the same may be prosecuted and, without amendment of any writ, pleading, or other document, continued and enforced by, against, or in favour of—

(a) The Continuing Bank in its own name as and when it might have been prosecuted, continued, and enforced by, against, or in favour of CBA if this Act had not been passed; or

(b) The Continuing Savings Bank New Zealand in its own name as and when it may have been prosecuted, continued, and enforced by, against, or in favour of CBA Savings Bank New Zealand if this Act had not

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been passed,—

as the case may be.

(3) The Court 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 the

10 Continuing Bank or the Continuing Savings Bank New Zealand in any action, arbitration, or proceeding to which this section applies shall, at the request of any party in whose favour such judgment, order, or award is being made or entered, make or enter the same against both CBA and the

15 Continuing Bank or CBA Savings Bank New Zealand and the Continuing Savings Bank New Zealand, as the case may be, and the same may, when so made or entered, be enforced against both CBA and the Continuing Bank, or CBA Savings Bank New Zealand and the Continuing Savings Bank New

20 Zealand, as the case may be.

10. Actions, etc., relating to excluded assets of CBA and CBA Savings Bank New Zealand—

Any party to any action, arbitration, or proceeding relating to an excluded asset shall be entitled at any stage thereof to amend any writ,

25 pleading, or other document filed by him in such action, arbitration, or proceeding by substituting therein for the name of the Continuing Bank the name of CBA as party, or for the name of the Continuing Savings Bank New Zealand the name of CBA Savings Bank New Zealand as party, and

30 no order shall be made against any party so amending to pay to the Continuing Bank or the Continuing Savings Bank New Zealand or to CBA or CBA Savings Bank New Zealand any costs occasioned by such amendment, and the action, arbitration, or proceeding shall be continued as if CBA or

35 CBA Savings Bank New Zealand, as the case may be, had originally been made a party thereto.

11. Officers and employees—Notwithstanding any other provision of this Act—

40 (a) On the appointed day each employee of CBA shall cease to be an employee of CBA and shall become an employee of the Continuing Bank but, for the purposes of every enactment, law, award, determination, contract, and agreement relating to the

- employment of each such employee, his contract of employment shall be deemed to have been unbroken and the period of his service with CBA shall be deemed to have been a period of service with the Continuing Bank; and 5
- (b) The terms and conditions of the employment of each transferred employee with the Continuing Bank shall—
- (i) On the appointed day (and thereafter until varied) be identical with the terms and conditions of his employment with CBA immediately before the appointed day and be capable of variation in the same manner; and 10
- (ii) Subject to any enactment, law, award, or determination relating to those terms and conditions, also be capable of variation in the same manner as the general terms and conditions of employment of other persons employed by the Continuing Bank are capable of variation; and 15
- (c) A transferred employee shall not be entitled to receive any payment or other benefit by reason only of his ceasing by virtue of this Act to be an employee of CBA; and 20
- (d) Nothing in this Act, other than paragraph (c) of this section, shall affect any rights or liabilities under any provident, benefit, superannuation, or retirement fund or scheme relating to employees of CBA; and 25
- (e) A director, secretary, or auditor of CBA or CBA Savings Bank New Zealand shall not by virtue of this Act become a director, secretary, or auditor of the Continuing Bank or the Continuing Savings Bank New Zealand. 30

12. Appointment of new trustees—(1) The Continuing Bank may at any time after the appointed day by deed declare that a corporation which is a subsidiary of the Continuing Bank and which is named in the said deed as new trustee of such trusts as are specified in the said deed shall be appointed in the place of another corporation which is a subsidiary of the Continuing Bank and is named in the said deed as the retiring trustee of those trusts. 35 40

(2) Upon any such deed being so executed and notice thereof being published in the *New Zealand Gazette*—

- 5 (a) The corporation named therein as the retiring trustee shall be wholly discharged from the trusts therein specified; and
- 10 (b) The corporation named therein as new trustee shall be trustee of those trusts in the place of the corporation named therein as retiring trustee and shall have the same powers, authorities, and discretions in relation to each such trust as the retiring trustee had immediately before being discharged; and
- 15 (c) All property subject to the said trusts and vested in the retiring trustee shall be vested in the corporation named therein as new trustee.

(3) Any discharge or appointment of a trustee and any vesting of property by virtue of this section shall have effect notwithstanding anything to the contrary in any instrument or in any other enactment or rule of law.

20 (4) In this section “trustee” has the same meaning as in the Trustee Act 1956, and includes a nominee, a custodian trustee, and a person charged with the management or administration of property.

13. Power of a company to register holder of shares, etc.—Where any shares in, debentures of, or interests in or
25 made available by, any corporation are by virtue of this Act vested in the Continuing Bank, the Continuing Savings Bank New Zealand, or a subsidiary of the Continuing Bank, a certificate signed by the General Manager for New Zealand or Acting General Manager for New Zealand of the
30 Continuing Bank or by an officer acting under delegation from him certifying as to such vesting shall, notwithstanding any other enactment or rule of law or the provisions of any instrument, be registered by that corporation in the same manner in all respects as if it were a proper instrument of
35 transfer duly stamped of those shares, debentures, or interests.

14. Protection of persons in respect of dealings with excluded assets—(1) No person dealing—

- 40 (a) With the Continuing Bank or CBA in any capacity whatsoever; or
- (b) With the Continuing Savings Bank New Zealand or CBA Savings Bank New Zealand in any capacity whatsoever,—

shall, in respect of any dealing or transaction entered into or purporting to be entered into by the Continuing Bank, the Continuing Savings Bank New Zealand, CBA, or CBA Savings Bank New Zealand, be concerned to see or inquire into whether any property the subject of the dealing or transaction (whether or not that property is or includes any estate in land) is or is not an excluded asset, or be affected by any notice, express, implied or constructive, that any such property is or is not an excluded asset. 5

(2) If any dealing or transaction is entered into by the Continuing Bank or the Continuing Savings Bank New Zealand with any person, in relation to or in connection with an excluded asset, it shall be deemed in favour of that person and any person claiming through or under him that the Continuing Bank or the Continuing Savings Bank New Zealand, as the case may be, has full power and authority to enter into that dealing or transaction as if the excluded asset had vested in the Continuing Bank or the Continuing Savings Bank New Zealand, as the case may be, under this Act. 10 15

(3) If any dealing or transaction is entered into by CBA or CBA Savings Bank New Zealand, with any person, in relation to or in connection with an asset which has vested in the Continuing Bank or the Continuing Savings Bank New Zealand by virtue of this Act, it shall be deemed in favour of that person and any person claiming through or under him that CBA or CBA Savings Bank New Zealand, as the case may be, has full power and authority to enter into that dealing or transaction as if the asset were an excluded asset. 20 25

15. Books and documents to remain evidence—(1) Any document, matter, or thing, which if this Act had not been passed would have been evidence in respect of any matter for or against CBA or CBA Savings Bank New Zealand shall, on and after the appointed day, be admitted in evidence in respect of the same matter for or against the Continuing Bank or the Continuing Savings Bank New Zealand respectively. 30 35

(2) In this section, “document” has the same meaning as in section 2 (1) of the Evidence Amendment Act (No. 2) 1980.

16. Service of documents—Service of a document (as defined in section 2 (1) of the Companies Act 1955)— 40

(a) On the Continuing Bank shall be deemed to be service on CBA; or

- (b) On the Continuing Savings Bank New Zealand shall be deemed to be service on CBA Savings Bank New Zealand; or
- (c) On CBA shall be deemed to be service on the Continuing Bank; or
- (d) On CBA Savings Bank New Zealand shall be deemed to be service on the Continuing Savings Bank New Zealand.

10 **17. Application of Banking Act 1908 to bank books—**
Notwithstanding the vesting of the undertaking of CBA in the Continuing Bank and of the undertaking of CBA Savings Bank New Zealand in the Continuing Savings Bank New Zealand respectively by this Act, the provisions of the
15 Banking Act 1908 shall continue to apply with respect both to the books of CBA and the books of CBA Savings Bank New Zealand respectively and to entries made in such books before the appointed day.

20 **18. Repeals—**The enactments specified in the Schedule to this Act are hereby repealed.

19. Consequential amendments in respect of vesting of undertaking of CBA and CBA Savings Bank New Zealand—The First Schedule to the Reserve Bank of New
25 Zealand Act 1964 and the First Schedule to the Private Savings Banks Act 1964 are hereby amended by omitting the words “The Commercial Bank of Australia Limited”.

20. Consequential amendments in respect of change of name of Continuing Bank—(1) The First Schedule to the
30 Reserve Bank of New Zealand Act 1964 and the First Schedule to the Private Savings Bank Act 1964 are hereby amended—

- (a) By omitting the words “Bank of New South Wales”; and
- 35 (b) By inserting in each case, in their appropriate alphabetical order, the words “Westpac Banking Corporation”.

(2) Subject to subsection (4) of this section, a reference (express or implied) to “Bank of New South Wales” or “The
40 Bank of New South Wales” in any instrument or other document whatever, or in any entry or record made on any register in relation to any instrument or other document whatever, shall, unless the context otherwise requires, be read as a reference to “Westpac Banking Corporation”.

(3) Where the name of the Continuing Savings Bank New Zealand is changed after the passing of this Act from “Bank of New South Wales Savings Bank (N.Z.) Limited”, any reference (express or implied) to “Bank of New South Wales Savings Bank (N.Z.) Limited” in any instrument or other document whatever shall, unless the context otherwise requires, be read, after the commencement of this subsection, as a reference to the name of the Continuing Savings Bank New Zealand as so changed. 5

(4) Nothing in subsection (2) of this section affects the name of the Continuing Savings Bank New Zealand or any reference (express or implied) to that Bank. 10

21. Status of Continuing Bank—(1) For the avoidance of doubt it is hereby declared that the body politic and corporate referred to as “The Bank of New South Wales” in the Bank of New South Wales Act 1861 is the body politic and corporate incorporated by the Bank of New South Wales Act of 1850 of the State of New South Wales of the Commonwealth of Australia and referred to in this Act as the “Continuing Bank”. 15 20

(2) Except as provided in section 5 of this Act, nothing in this Act exempts the Continuing Bank or the Continuing Savings Bank New Zealand from the provisions of any enactment relating to banks or banking. 20

22. Deposit liabilities—(1) Except as otherwise authorised by the Reserve Bank of New Zealand, the Continuing Bank shall at all times hold in New Zealand assets (other than goodwill) of not less than the value of the total of the Continuing Bank’s deposit liabilities in New Zealand. 25

(2) In the event of the Continuing Bank becoming unable to meet its obligations or suspending payment, the assets of the Continuing Bank in New Zealand shall be available to meet the Continuing Bank’s deposit liabilities in New Zealand in priority to all other liabilities of the Continuing Bank. 30 35

(3) Every person who acts in contravention of or fails to comply with subsection (1) of this section commits an offence and is liable on conviction on indictment to a fine not exceeding \$25,000 and, if the offence is a continuing one, to a further fine not exceeding \$2,000 for every day on which the offence has continued. 40

(4) Nothing in this section limits the provisions of the Reserve Bank of New Zealand Act 1964.

23. Authorisation of names—The Continuing Bank, the Continuing Savings Bank New Zealand, and CBA are hereby authorised—

- 5 (a) To publicly use in connection with their respective businesses the words “Bank”, “Bankers”, or “Banking”, or any of those words as part of another word; and
- 10 (b) To carry on their respective activities under a name, title, style, or designation that includes the words, “Bank”, “Bankers”, or “Banking”, or any of these words as part of any other word.

24. Savings in relation to names of CBA and CBA Savings Bank New Zealand—No Registrar of Deeds or District Land Registrar or any other person charged with the
15 keeping of any books or registers shall be obliged solely by reason of the foregoing provisions of this Act to change the name of CBA to that of the Continuing Bank or the name of CBA Savings Bank New Zealand to that of the Continuing Savings Bank New Zealand in his books or registers or in any
20 document in his charge; but the presentation to any such Registrar or other person of any instrument—

- (a) Executed or purporting to be executed by the Continuing Bank or the Continuing Savings Bank New Zealand; and
- 25 (b) Relating to any property (other than an excluded asset) held immediately before the appointed day by CBA or, in the case of an instrument executed or purporting to be executed by the Continuing Savings Bank New Zealand, CBA Savings Bank
30 New Zealand; and
- (c) Containing a recital that that property has become vested in the Continuing Bank, or in the case of an instrument executed by the Continuing Savings Bank New Zealand, vested in the Continuing
35 Savings Bank New Zealand, by virtue of the provisions of this Act—

shall, in the absence of proof to the contrary, be sufficient evidence that the property is vested in the Continuing Bank or the Continuing Savings Bank New Zealand, as the case
40 may be.

25. Saving in relation to name of Continuing Bank—

No Registrar of Deeds or District Land Registrar or any other person charged with the keeping of any books or registers shall be obliged solely by reason of the provisions of section 20 of this Act or of the Bank of New South Wales (Change of Name) Act, 1982 of the State of New South Wales of the Commonwealth of Australia to change the name of the Continuing Bank from “Bank of New South Wales” or “The Bank of New South Wales” to “Westpac Banking Corporation” in his books or registers or in any document in his charge; but the presentation to any such Registrar or other person of any instrument—

- (a) Executed or purporting to be executed by the “Westpac Banking Corporation” (the Continuing Bank); and
 - (b) Relating to any property held in the name of “Bank of New South Wales” or “The Bank of New South Wales”; and
 - (c) Containing a recital that the name of the Continuing Bank has been changed from “Bank of New South Wales” to “Westpac Banking Corporation”—
- shall, in the absence of proof to the contrary, be sufficient evidence of the change of name.

26. Saving in relation to name of Continuing Savings Bank New Zealand—

No Registrar of Deeds or District Land Registrar or any other person charged with the keeping of any books or registers shall be obliged solely by reason of section 20 (3) of this Act to change the name of the Continuing Savings Bank New Zealand from “Bank of New South Wales Savings Bank (N.Z.) Limited” to its new name in his books or register or in any document in his charge; but the presentation to any such Registrar or other person of any instrument—

- (a) Executed or purporting to be executed by the Continuing Savings Bank New Zealand under its new name; and
- (b) Relating to any property held in the name of “Bank of New South Wales Savings Bank (N.Z.) Limited”; and
- (c) Containing a recital that the name of the Continuing Savings Bank New Zealand has been changed from “Bank of New South Wales Savings Bank (N.Z.) Limited” to its new name (which new name shall be stated in that recital)—

shall, in the absence of proof to the contrary, be sufficient evidence of the change of name.

27. Savings in respect of Land Transfer Act 1952—
Except as provided in sections 24 to 26 of this Act, nothing in this Act derogates from the provisions of the Land Transfer Act 1952.

5 **28. Private Act—**This Act is hereby declared to be a private Act.

SCHEDULE

Section 18

ENACTMENTS REPEALED

1861, No. 2 (Private)—The Bank of New South Wales Act 1861.

1951, No. 1 (Private)—The Bank of New South Wales Amendment Act 1951.

1962, No. 131—The Finance Act 1962: Section 11.