



New South Wales

Bank Mergers (Bank of Melbourne) Regulation 1998

under the
Bank Mergers Act 1996

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Bank Mergers Act 1996*.

MICHAEL EGAN, M.L.C.,
Treasurer

Explanatory note

The object of this Regulation is to provide for the merger of the Bank of Melbourne Limited (*Bank of Melbourne*) with Westpac Banking Corporation (*Westpac*).

The Regulation is made pursuant to the powers contained in sections 4-6 of the *Bank Mergers Act 1996*.

Part 1 Preliminary

Clause 1 specifies the name of the Regulation.

Clause 2 provides for the commencement of the Regulation.

Clause 3 defines certain words and expressions used in the Regulation.

Clause 4 provides that this explanatory note and the table of contents do not form part of the Regulation.

Part 2 Bank reorganisation

Clause 5 provides that Westpac will become the successor in law of the Bank of Melbourne on the succession day and liquidates and dissolves the Bank of Melbourne on that day. The provision makes it clear that Westpac is the universal successor of the Bank of Melbourne for all purposes, including private international law.

Clause 6 confirms that the assets and liabilities of the Bank of Melbourne vest in Westpac on the succession day.

Clause 7 continues the effect of instruments to which the Bank of Melbourne was a party, as if Westpac were referred to in the instruments.

Clause 8 provides that places of business of the Bank of Melbourne will be taken to be places of business of Westpac.

Clause 9 substitutes Westpac as a party in existing legal proceedings instead of the Bank of Melbourne and provides for evidence in proceedings to be admissible for or against Westpac in the same way it was admissible for or against the Bank of Melbourne before the succession day.

Clause 10 confirms that the staff of the Bank of Melbourne will become the staff of Westpac without affecting their continuity or conditions of service or any rights to leave or that are related to superannuation or retirement benefits.

Clause 11 provides that directors and the secretary of the Bank of Melbourne cease to hold office on and from the succession day and are not by virtue only of the proposed Regulation directors or the secretary of Westpac.

Clause 12 makes it clear that customers and depositors of the Bank of Melbourne are to have the same relationship with Westpac.

Clause 13 requires Westpac to do whatever is necessary to ensure that proposed Part 2 (which provides for Westpac to be the successor of the Bank of Melbourne) is effective, particularly in relation to its business outside New South Wales.

Clause 14 requires Westpac, within three months after the succession day, to request that the Bank of Melbourne's authority to carry on banking business in Australia be revoked.

Clause 15 enables Westpac to use the business name and other names of the Bank of Melbourne.

Part 3 Miscellaneous

Clause 16 prevents proposed Part 2 from operating unless the amount (if any) determined by the Treasurer for taxes, charges, rates, duties or other imposts in relation to the merger of the banks is paid. The Treasurer must give a certificate to the bank concerned when satisfied that the required amount has been paid or that no requirement is to be made.

Clause 17 empowers an authorised person to certify certain matters for the purposes of the proposed Act, including matters relating to assets or acts done for such purposes.

Clause 18 deems Westpac to be the registered proprietor of any interest in land held by the Bank of Melbourne immediately before the succession day and prevents the Registrar-General and other persons from enquiring into whether Westpac has become the owner.

Clause 19 enables Westpac to comply with the requirements of the *Corporations Law* for notice of change of ownership of charges to be given in respect of all charges of the Bank of Melbourne by lodging a certificate signed by an authorised person.

Clause 20 requires a person or authority who has, under New South Wales law, responsibility for keeping a register of assets to register Westpac as the owner of any assets of which Westpac has become the owner by virtue of the proposed Act, if a certificate by an authorised person is given to that effect.

Clause 21 provides that a document purporting to be a certificate under the proposed Part is taken to be such a certificate and to have been properly given, unless the contrary is established.

Clause 22 makes the public documents of the Bank of Melbourne public documents of Westpac for the purposes of sections 156 to 158 of the *Evidence Act 1995*.

Clause 23 construes references in Acts and other documents to the Bank of Melbourne and other previous bodies as references to Westpac.

Clause 24 makes it clear that the Regulation has effect despite anything in any contract, deed, undertaking, agreement or other instrument and prevents Westpac, the Bank of Melbourne or any other person from being in breach of a law of New South Wales, a contractual provision or other condition because of the operation of the Regulation. The provision also makes it clear that the Regulation does not exempt Westpac from having to comply with any Act relating to companies carrying on the business of banking.

Schedule 1 lists previous bodies for the purposes of proposed clause 23.

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Clause 1 Bank Mergers (Bank of Melbourne) Regulation 1998

Part 1 Preliminary

**Bank Mergers (Bank of Melbourne) Regulation
1998**

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Bank Mergers (Bank of Melbourne) Regulation 1998*.

2 Commencement

This Regulation commences on 3 May 1998.

3 Definitions

(1) In this Regulation:

asset means property, or a right, of any kind, and includes:

- (a) any legal or equitable estate or interest (whether present or future, vested or contingent or tangible or intangible) in real or personal property of any kind, and
- (b) any chose in action, and
- (c) any right, interest or claim of any kind, including rights, interests or claims in or in relation to property (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing), and
- (d) any asset within the meaning of Part IIIA of the *Income Tax Assessment Act 1936* of the Commonwealth.

authorised person, for the purposes of a provision of this Regulation, means:

- (a) the Treasurer, or
- (b) the chief executive officer of Westpac, or
- (c) the secretary of Westpac, or

- (d) any of the following persons, if the Treasurer designates in writing that person as an authorised person for the purposes of the provision:
- (i) a senior executive of Westpac,
 - (ii) a member of the Chief Executive Service or the Senior Executive Service of the Public Service.

Bank of Melbourne means the Bank of Melbourne Limited (ACN 007 270 448).

chief executive officer of Westpac means the officer having the day to day management of the affairs of Westpac and includes an officer acting from time to time in that capacity.

eligible negotiable instrument has the same meaning as it has in the *Corporations Law*

instrument includes a document and an oral agreement.

interest, in relation to land, includes:

- (a) a legal or equitable estate or interest in the land, or
- (b) a right, power or privilege over, or in relation to, the land.

liability includes a duty or obligation of any kind (whether arising under an instrument or otherwise, and whether actual, contingent or prospective).

public document has the same meaning as it has in the *Corporations Law*.

secretary of Westpac means the person holding that office or a person acting from time to time in that office.

succession day means the day on which this Regulation commences.

the Act means the *Bank Mergers Act 1996*

translated asset means an asset referred to in clause 6.

translated instrument, in relation to the Bank of Melbourne, means an instrument (including a legislative instrument other than this Regulation) subsisting immediately before the succession day:

- (a) to which the Bank of Melbourne is a party, or

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Clause 3 Bank Mergers (Bank of Melbourne) Regulation 1998

Part 1 Preliminary

- (b) that was given to, by or in favour of, the Bank of Melbourne, or
- (c) that refers to the Bank of Melbourne, or
- (d) under which money is, or may become, payable or other property is, or may become, liable to be transferred, to or by the Bank of Melbourne.

translated liability means a liability referred to in clause 6.

Westpac means Westpac Banking Corporation (ARBN 007457 141).

- (2) Where reference is made in this Regulation to anything done for a purpose connected with, or arising out of, the operation or effect of this Regulation. that reference is taken to include any transaction entered into, or any instrument or document made, executed, lodged or given, for that purpose.

4 Notes

The explanatory note and table of contents do not form part of this Regulation.

Part 2 Bank reorganisation

5 Consequence of succession

- (1) On the succession day, in accordance with the principle of succession in law:
 - (a) Westpac becomes the successor in law of the Bank of Melbourne and is for all purposes a continuation of and the same legal entity as the Bank of Melbourne, and
 - (b) the Bank of Melbourne is liquidated and dissolved.
- (2) Nothing in any other provision of this Part limits the operation of this clause.

6 Assets and liabilities

- (1) On the succession day, in accordance with the principle of succession in law:
 - (a) all assets of the Bank of Melbourne, wherever located, vest in, or are otherwise available for the use of, Westpac without the need for any conveyance, transfer, assignment or assurance and without the need for any prior notice or further act, and
 - (b) all liabilities of the Bank of Melbourne, wherever located, become liabilities of Westpac without the need for any prior notice or further act.
- (2) On and from the succession day Westpac may execute an instrument discharging, surrendering, transferring or otherwise dealing with a transferred asset or liability in its own name, in the name of the Bank of Melbourne or the name of any predecessor in title to the Bank of Melbourne.

7 Translated instruments

- (1) Each translated instrument in respect of the Bank of Melbourne continues to have effect, according to its tenor, on and after the succession day, as if a reference in the instrument to the Bank of Melbourne were a reference to Westpac.

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Part 2 Bank reorganisation

- (2) Without limiting subclause (1), an instrument securing the payment of moneys owing to the Bank of Melbourne is taken to secure moneys owing to Westpac for the purposes of determining liability for stamp duty in respect of that instrument or any collateral instrument.

8 Places of business

On and after the succession day, a place that, immediately before that day, was a place of business of the Bank of Melbourne is taken to be a place of business for Westpac.

9 Legal proceedings and evidence

- (1) Where, immediately before the succession day, proceedings (including arbitration proceedings) to which the Bank of Melbourne was a party were pending or existing in any court or tribunal, Westpac is, on that day, substituted for the Bank of Melbourne as a party to the proceedings and has the same rights in the proceedings as the Bank of Melbourne had.
- (2) Where, before the succession day, documentary or other evidence would have been admissible for or against the interests of the Bank of Melbourne, that evidence is admissible, on or at any time after that day, for or against the interests of Westpac.

10 Employees

On the succession day each employee of the Bank of Melbourne ceases to be employed by the Bank of Melbourne and becomes an employee of Westpac on the same terms and conditions as those that applied immediately before the succession day and this section does not:

- (a) affect his or her contract of employment, or
- (b) interrupt his or her continuity of service, or
- (c) prejudice his or her existing or accruing rights to recreation leave, sick leave, superannuation or long service leave or any other employee entitlement existing immediately before the succession day, or

- (d) affect rights or liabilities under any provident, benefit, superannuation or retirement fund or scheme relating to employees of the Bank of Melbourne, or
- (e) constitute a retrenchment or redundancy or give rise to any right of the employee to receive any payment or other benefit.

11 Directors

A person holding office as a director or secretary of the Bank of Melbourne immediately before the succession day ceases to hold office on and from the succession day and is not by virtue only of this Regulation a director or secretary of Westpac.

12 Relationships with customers and depositors

- (1) The relationship between the Bank of Melbourne and a customer or depositor at an office or branch or agency of the Bank of Melbourne is, on and after the succession day, between Westpac and that customer or depositor, and gives rise to the same rights and duties (including rights of set-off) as would have existed before that day if that relationship had always been between Westpac and the customer or depositor.
- (2) Any instruction, order, direction, mandate or authority given by that customer or depositor to the Bank of Melbourne and subsisting on or given after the succession day is, unless and until revoked or cancelled, taken to have been given to Westpac.
- (3) Any information held immediately before the succession day by the Bank of Melbourne relating to a customer or depositor of the Bank of Melbourne at that time is available to and may be used by Westpac on and after the succession day.

13 Westpac to do what is necessary to carry out reorganisation

Westpac must do whatever is necessary to ensure that this Part is fully effective, particularly in relation to its business outside New South Wales, whether within or outside Australia.

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Clause 14 Bank Mergers (Bank of Melbourne) Regulation 1998

Part 2 Bank reorganisation

14 Revocation of banking authority

Within three months following the succession day, Westpac must by notice in writing to the Treasurer in accordance with section 9 of the *Banking Act 1959* of the Commonwealth request that the authority to carry on banking business in Australia granted to the Bank of Melbourne be revoked.

15 Business names and other names

- (1) Westpac may, in addition to any other name it is entitled to use, operate in this State under the name “Bank of Melbourne” or “Bank of Melbourne Limited (ACN 007270448)” (the *permitted business names*).
- (2) This clause does not prevent Westpac from registering any of the permitted business names, or any other name, under the *Business Names Act 1962*.
- (3) In this clause, a reference to operating under a name includes a reference to engaging in any conduct in respect of which, for the purpose of the *Business Names Act 1962*, that name would (but for subclause (1)) have been required to be registered.
- (4) An officer or employee of Westpac may, on behalf of Westpac, sign, issue or publish, or authorise the signing, issuing or publication, of a public document or eligible negotiable instrument of Westpac in the name of “Bank of Melbourne Limited (ACN 007270448)” or “Bank of Melbourne Ltd (ACN 007 270 448)”.

Part 3 Miscellaneous

16 Payment of an amount instead of State duties or other imports

- (1) Despite any other provision of this Regulation, Part 2 does not have effect unless any requirement made under this clause has been complied with or the Treasurer determines that no requirement is to be made. The Treasurer may issue a certificate to that effect under subclause (4) or (5).
- (2) The Treasurer may require Westpac to pay to the Treasurer instead of all duties, taxes, charges, rates or other imposts for which Westpac or the Bank of Melbourne would be liable under the law of this State as a result of, or in connection with, the merger of the Bank of Melbourne with Westpac an amount that is, in the opinion of the Treasurer, proper in the circumstances.
- (3) The amount payable to the Treasurer is to be determined by the Treasurer in accordance with such principles as the Treasurer thinks appropriate.
- (4) The Treasurer must, when satisfied that a requirement under this clause has been complied with, give Westpac a certificate stating that the requirement has been complied with.
- (5) If the Treasurer determines that no requirement will be made under this clause, the Treasurer must give Westpac a certificate stating that no requirement is to be made.
- (6) If a certificate is given under subclause (4) or (5), Westpac is not liable for any duties, taxes, charges, rates or other imposts of a kind referred to in subclause (2), despite the provisions of any Act relating to the payment of duties, taxes, charges, rates or other imposts.
- (7) A copy of a certificate under this clause, certified as such by the chief executive officer of Westpac, or a person authorised to do so by the chief executive officer, is for all purposes and in all courts, tribunals and proceedings, conclusive evidence of the matters certified.
- (8) This clause does not apply to any duties, taxes, charges, rates or other imposts:

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Part 3 Miscellaneous

- (a) payable to the Australian Securities Commission under the *Corporations Law, Corporations Regulations, ASC Law or ASC Regulations*, or
- (b) payable to the Registrar-General in respect of any act, dealing or other transaction relating to land.

17 Certificates evidencing operation of Regulation

- (1) An authorised person may, by certificate signed by that person, certify any matter in relation to the operation or effect of this Regulation and, in particular, may certify that:
 - (a) a specified matter or thing relevant to Westpac is an aspect of the operation or effect of this Regulation, or
 - (b) a specified thing was done for a purpose connected with, or arising out of, the operation or effect of this Regulation in relation to Westpac, or
 - (c) a specified asset of the Bank of Melbourne has become a translated asset of Westpac, or
 - (d) a specified liability of the Bank of Melbourne has become a translated liability of Westpac.
- (2) For all purposes and in all courts, tribunals and proceedings, a certificate under subclause (1) is conclusive evidence of the matters certified, except to the extent that the contrary is proved.

18 Interests in land

- (1) Without prejudice to the generality of this Regulation and despite anything to the contrary in any other Act or law, if, immediately before the succession day, the Bank of Melbourne is, or is to be taken to be, the registered proprietor of an interest in land under the *Real Property Act 1900*, on and after the succession day:
 - (a) Westpac is to be taken to be the registered proprietor of that interest in land or the caveator of the registrable interest, as the case may be, and
 - (b) Westpac has the same rights and remedies in respect of that interest as the Bank of Melbourne had.

- (2) No person dealing with Westpac (in any capacity at all), nor the Registrar-General, nor any other person registering or certifying title to land or having the power or duty to examine or receive evidence as to title to land, is, in respect of any dealing or transaction in relation to land entered into or purporting to be entered into by Westpac, where the registered proprietor of that land is the Bank of Melbourne, to be concerned to see, or enquire into, whether the land has vested in Westpac.

19 Company charges

- (1) Section 268 (1) of the *Corporations Law* is taken to have been complied with in respect of all charges of which Westpac becomes the holder by virtue of this Regulation if there is lodged with the Australian Securities Commission a certificate signed by an authorised person stating that by virtue of this Regulation the assets and liabilities of the Bank of Melbourne have become vested in Westpac and if Westpac pays the fee referred to in subclause (2).
- (2) The fee payable in relation to the lodgment of the certificate under subclause (1) is to be an amount agreed on between Westpac and the Australian Securities Commission, or the total amount payable for lodgment of the transfer of the charges detailed in the certificate as prescribed by the regulations made under the *Corporations Law*, whichever is the lesser.

20 Other assets

- (1) If:
- (a) an asset (other than an interest in land referred to in clause 18 or a company charge referred to in clause 19) becomes under this Regulation an asset of Westpac, and
 - (b) any person or authority has, under a law of this State, responsibility for keeping a register in respect of assets of that kind,
- then:
- (c) any requirement of that law relating to the transfer of the property from one person to another is taken to have been complied with if there is lodged with that person or authority a certificate signed by an authorised person

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Clause 20 Bank Mergers (Bank of Melbourne) Regulation 1998

Part 3 Miscellaneous

stating that by virtue of this Regulation the assets and liabilities of the Bank of Melbourne have vested in Westpac, and

- (d) that person or authority, on being requested to do so, must make any amendments to that register which are necessary to make it accurately reflect the effect of this Regulation.
- (2) This clause does not affect the operation of the *Corporations Law*.

21 Documents purporting to be certificates

A document purporting to be a certificate given under this Part is, unless the contrary is established, taken to be such a certificate and to have been properly given.

22 Evidence

- (1) The public documents of the Bank of Melbourne are for the purposes of sections 156 to 158 of the *Evidence Act 1995* taken to be, and to have been, public documents used in the ordinary business of Westpac.
- (2) For the purposes of this clause, *public document* has the same meaning as in the *Evidence Act 1995*.

23 Construction of references

If any Act or regulation (other than the Act or this Regulation) or any instrument whenever made or executed (other than an instrument constituting or relating to a provident, benefit, superannuation or retirement fund) or any register established or kept under any Act contains any reference express or implied to the Bank of Melbourne or a body referred to in Schedule 1, the reference is, on and after the appointed day, to be read as a reference to Westpac. unless the context otherwise requires.

24 Regulation to have effect despite other instruments

- (1) This Regulation has effect despite anything in any contract, deed, undertaking, agreement or other instrument (whether made before or after the commencement of this Regulation).

- (2) Nothing done by or under this Regulation:
- (a) places Westpac, the Bank of Melbourne or another person in breach of contract or confidence or otherwise makes any of them guilty of a civil wrong, or
 - (b) places Westpac, the Bank of Melbourne or another person in breach of:
 - (i) any law of New South Wales, or
 - (ii) any contractual provision prohibiting, restricting or regulating the assignment or transfer of any asset or liability or the disclosure of any information, or
 - (c) constitutes an event or fulfils any condition which allows a person to terminate or otherwise exercise a right or power under any agreement or liability, or
 - (d) releases any surety or other obligor, wholly or partly, from any liability, whether actual, contingent or prospective.
- (3) Without limiting subclause (1), where, apart from this clause, the advice or consent of a person would be necessary in any particular respect in order to give effect to this Regulation, the advice is taken to have been obtained or the consent is taken to have been given, as the case requires.
- (4) Nothing in this Regulation exempts Westpac from the provisions of any Act or statutory instrument relating to companies carrying on the business of banking.

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Schedule 1 Previous bodies

Schedule 1 Previous bodies

(Clause 23)

A.F.T. Keystone Permanent Building Society
Central Permanent Building Society
Dandenong-Westernport Permanent Building Society
Eastern Suburbs Permanent Building Society
Greater Ballarat Permanent Building Society
Keystone Ringwood Permanent Building Society
Knox Premier Building Society
Mutual Permanent Building Society
Peninsula Permanent Building Society
Permanent Building Society of Victoria
Port Phillip Permanent Building Society
Provident Building Society
R.E.A.A. Permanent Building Society
RESI Building Society
RESI-Statewide Building Society
Ringwood Permanent Building Society
Statewide Building Society
The RESI Permanent Building Society
United Permanent Building Society