



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 72 of 1982

An Act to provide for the transfer in South Australia to Bank of New South Wales of the undertaking of The Commercial Bank of Australia Limited and for the transfer in South Australia to Bank of New South Wales Savings Bank Limited of the undertaking of The Commercial Savings Bank of Australia Limited, and for other purposes.

[Assented to 19 August 1982]

WHEREAS 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 in pursuance of action under Part VIB of the Companies Act, 1961 (as amended) of the State of Victoria:

AND WHEREAS The Commercial Savings Bank of Australia Limited is a wholly-owned subsidiary of The Commercial Bank of Australia Limited and Bank of New South Wales Savings Bank Limited is a wholly-owned subsidiary of Bank of New South Wales:

AND WHEREAS it is expedient in the interest of banking efficiency that the banking business conducted by The Commercial Bank of Australia Limited should be transferred to Bank of New South Wales and the banking business conducted by The Commercial Savings Bank of Australia Limited should be transferred to Bank of New South Wales Savings Bank Limited:

AND WHEREAS it is expedient that the transfers be effected by Act of Parliament:

BE IT THEREFORE ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as "The Commercial Bank of Australia Limited Short title. (Merger) Act, 1982".

2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

Interpretation.

3. In this Act, unless the contrary intention appears—

“the appointed day” means the day on which this Act comes into operation:

“CBA” means The Commercial Bank of Australia Limited:

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

“the continuing bank” means the body incorporated by the Bank of New South Wales Act of 1850 of New South Wales:

“the continuing savings bank” means the corporation incorporated in New South Wales under the name “Bank of New South Wales Savings Bank Limited”:

“corporation” includes any body corporate or unincorporate:

“excluded assets” means—

(a) documents required by law to be kept by CBA or CBA Savings Bank;

(b) prescribed securities held, immediately before the appointed day, by or on behalf of CBA or CBA Savings Bank otherwise than by way of security;

(c) land held, immediately before the appointed day, by or on behalf of CBA or CBA Savings Bank otherwise than by way of security;

(d) property held, immediately before the appointed day, by CBA upon trust pursuant to subsection 11 of section 180X of the Companies Act, 1961, of Victoria;

and

(e) property held, immediately before the appointed day, by CBA for the trustees of the CBA Staff Superannuation Fund, the CBA Female Staff Superannuation Fund and the CBA Wages Staff Superannuation Fund:

“instrument” means an instrument (other than this Act) that creates, evidences, modifies or extinguishes rights or liabilities or would do so if it, or a copy of it, were lodged, filed or registered under any Act or law and includes any judgment, order or process of a court:

“land” includes any estate or interest in land, or any interest in respect of land:

“legal proceedings” includes an arbitration:

“liabilities” means all liabilities, duties and obligations, whether actual, contingent or prospective:

“prescribed securities” means securities within the meaning of the *Securities Industry (South Australia) Code*:

“property” means property of every kind whether real or personal, corporeal or incorporeal and without limiting the generality of the foregoing includes choses in action, goodwill, 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 or charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, indemnity, lien, pledge or other security for the payment of money or for the discharge of any other liability and includes an agreement or undertaking to give or execute any of those documents whether upon demand or otherwise:

“subsidiary” has the same meaning as in the *Companies (South Australia) Code*:

“transferred employee” means an employee of CBA who becomes an employee of the continuing bank in pursuance of this Act:

“undertaking” in relation to CBA and CBA Savings Bank means—

(a) all property of the relevant bank (apart from excluded assets);

and

(b) all rights and liabilities of the relevant bank (apart from rights and liabilities relating to excluded assets).

4. Nothing in this Act applies to or in respect of—

(a) any property, rights and liabilities arising from, accruing under, created or evidenced by or the subject of any of the instruments described in the schedule;

or

(b) any of those instruments.

Savings relating to certain property, etc.

5. This Act binds the Crown.

Crown to be bound.

6. (1) On the appointed day—

(a) the undertaking of CBA is vested in the continuing bank;

and

(b) the undertaking of CBA Savings Bank is vested in the continuing savings bank.

Vesting of undertakings of CBA and CBA Savings Bank.

(2) On and after the appointed day—

(a) a reference to CBA in an instrument made, passed or executed before that day shall (except to the extent that the instrument relates to an excluded asset and unless the context otherwise requires) be read and construed as a reference to the continuing bank;

(b) a reference to CBA Savings Bank in an instrument made, passed or executed before that day shall (except to the extent that the instrument relates to an excluded asset and unless the context otherwise requires) be read and construed as a reference to the continuing savings bank;

and

(c) a reference 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 in any instrument made or executed before that day shall be read and construed as a reference to the person for the time being holding office as Chief General Manager of the continuing bank or such other officer of the continuing bank or the continuing savings bank as is designated from time to time by the Chief General Manager of the continuing bank or by any other officer acting under delegation from him.

(3) On and after the appointed day—

(a) any place of business of CBA wherever located shall be deemed to be a place of business of the continuing bank;

and

(b) any place of business of CBA Savings Bank wherever located shall be deemed to be a place of business of the continuing savings bank.

(4) The Registrar-General shall, upon the application of the continuing bank or the continuing savings bank, register the applicant as the proprietor of land in the State (being land under the provisions of the Real Property Act, 1886-1982) that has vested in the applicant in pursuance of this section.

(5) An instrument relating to land (being land under the provisions of the Real Property Act, 1886-1982) that has vested in the continuing bank or the continuing savings bank in pursuance of this section shall, if the instrument is executed by the continuing bank or the continuing savings bank and is otherwise in registrable form, be registered by the Registrar-General notwithstanding that the relevant bank has not been registered as the proprietor of the land in pursuance of subsection (4).

(6) 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 immediately before the appointed day remains a liability to CBA Savings Bank on or after that day,

CBA or CBA Savings Bank, as the case may be, shall 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.

Transitional
provision—CBA.

7. Without prejudice to the generality of other provisions of this Act the following provisions shall have effect on and after the appointed day—

(a) an instruction, order, direction, mandate or authority given to CBA and subsisting immediately before the appointed day (not being one relating to an excluded asset) shall be deemed to have been given to the continuing bank;

(b) an instrument given or addressed to CBA on or after the appointed day (not being an instrument relating to an excluded asset)

shall be deemed to have been given or addressed to the continuing bank;

- (c) 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 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 subject if this Act had not been passed;
- (d) all the rights and liabilities of CBA as bailee of documents or chattels shall be transferred to and assumed by the continuing bank;
- (e) 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 endorsed by CBA or payable at a place of business of CBA shall have the same effect on and after the appointed day as if it had been drawn on or given to or accepted or endorsed by the continuing bank instead of CBA or was payable, where, at the time of payment, the continuing bank is conducting business at the place at which it was originally payable, at that place or, where the continuing bank is not then conducting business at that place, at the place of business of the continuing bank nearest to that place;
- (f) 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 the customer or depositor as existed immediately before the appointed day between CBA and the customer or depositor;
- (g) all contracts, agreements, conveyances, deeds, leases, licences, instruments and undertakings (whether or not in writing) entered into by, made with, given to or by or addressed to CBA (whether alone or with any other person) before the appointed day and in effect 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 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;
- (h) no legal proceedings commenced before the appointed day by, against or in favour of CBA shall abate or be otherwise prejudiced by reason of this Act;
- (i) nothing effected by this Act—

- (i) shall be regarded as placing CBA or the continuing bank in breach of contract or confidence or as otherwise making either of them guilty of a civil wrong;
- (ii) shall be regarded as placing either of them in breach of any Act or other law or contractual provision prohibiting, restricting or regulating the assignment or transfer of property or the disclosure of information;
- or
- (iii) shall release any surety wholly or in part from all or any of his obligations;
- and
- (j) nothing done or suffered by CBA or the continuing bank pursuant to this Act—
 - (i) shall be regarded as a breach of contract or confidence or otherwise as a civil wrong;
 - (ii) shall be regarded as a breach of any Act or other law or contractual provision prohibiting, restricting or regulating the assignment or transfer of property or the disclosure of information;
 - (iii) shall release any surety wholly or in part from all or any of his obligations,

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

Transitional
provision—CBA
Savings Bank.

8. Without prejudice to the generality of other provisions of this Act the following provisions shall have effect on and after the appointed day—

- (a) an instruction, order, direction, mandate or authority given to CBA Savings Bank and subsisting immediately before the appointed day (not being one relating to an excluded asset) shall be deemed to have been given to the continuing savings bank;
- (b) an instrument given or addressed to CBA Savings Bank on or after the appointed day (not being an instrument relating to an excluded asset) shall be deemed to have been given or addressed to the continuing savings bank;
- (c) a security held by CBA Savings Bank as security for a debt or other liability to CBA Savings Bank incurred before the appointed day shall be available to the continuing savings 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 continuing savings bank incurred on or after the appointed day; and in relation to a security the continuing savings bank shall be entitled to all the rights and priorities (howsoever arising) and shall be subject to all liabilities to which CBA Savings Bank would have been entitled or subject if this Act had not been passed;
- (d) all the rights and liabilities of CBA Savings Bank as bailee of documents or chattels shall be transferred to and assumed by the continuing savings bank;
- (e) 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 endorsed by CBA Savings Bank or payable at a place of business of CBA Savings Bank shall have the same effect on and after the appointed day as if it had been drawn on or given to or accepted or endorsed by the continuing savings bank instead of CBA Savings Bank or was payable, where, at the time of payment, the continuing savings bank is conducting business at the place at which it was originally payable, at that place or, where, the continuing savings bank is not then conducting business at that place, at the place of business of the continuing savings bank nearest to that place;

- (f) the relationship between CBA Savings Bank and a customer or depositor shall become the same relationship between the continuing savings bank and that customer or depositor and the same rights and liabilities (including rights of set off) shall exist between the continuing savings bank and the customer or depositor as existed immediately before the appointed day between CBA Savings Bank and the customer or depositor;
- (g) all contracts, agreements, conveyances, deeds, leases, licences, instruments and undertakings (whether or not in writing) entered into by, made with, given to or by or addressed to CBA Savings Bank (whether alone or with any other person) before the appointed day and in effect 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, be binding on and enforceable by, against or in favour of the continuing savings bank as fully and effectually in every respect as if, instead of CBA Savings Bank, the continuing savings 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;
- (h) no legal proceedings commenced before the appointed day by, against or in favour of CBA Savings Bank shall abate or be otherwise prejudiced by reason of this Act;
- (i) nothing effected by this Act—
- (i) shall be regarded as placing CBA Savings Bank or the continuing savings bank in breach of contract or confidence or as otherwise making either of them guilty of a civil wrong;
 - (ii) shall be regarded as placing either of them in breach of any Act or other law or contractual provision prohibiting, restricting or regulating the assignment or transfer of property or the disclosure of information;
- or
- (iii) shall release any surety wholly or in part from all or any of his obligations;
- and
- (j) nothing done or suffered by CBA Savings Bank or the continuing savings bank pursuant to this Act—
- (i) shall be regarded as a breach of contract or confidence or otherwise as a civil wrong;

(ii) shall be regarded as a breach of any Act or other law or contractual provision prohibiting, restricting or regulating the assignment or transfer of property or the disclosure of information;

(iii) shall release any surety wholly or in part from all or any of his obligations,

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

Assignment and
subletting of
lease.

9. (1) Where, under the provisions of a lease, licence or other contract or agreement CBA or CBA Savings Bank has rights in respect of the occupation or use of land, being an excluded asset, those rights may, notwithstanding that there has been no assignment, transfer, underletting or other disposition by CBA or CBA Savings Bank, be exercised by the continuing bank or the continuing savings bank, as the case may be.

(2) For the purposes of a lease, licence or other contract or agreement relating to the occupation or use of land, CBA or CBA Savings Bank does not part with possession of land by permitting the continuing bank or the continuing savings bank, as the case may be, to exercise rights under subsection (1) in respect of the land.

Continuity of
legal proceedings.

10. (1) Legal proceedings to which CBA or CBA Savings Bank was a party immediately before the appointed day may be continued (in the case of CBA) by or against the continuing bank and (in the case of CBA Savings Bank) by or against the continuing savings bank.

(2) A judgment, order or award obtained by or against CBA or CBA Savings Bank in legal proceedings commenced before the appointed day may be enforced (in the case of CBA) by or against the continuing bank and (in the case of CBA Savings Bank) by or against the continuing savings bank.

Evidence.

11. (1) Documentary or other evidence which would have been admissible for or against the interests of CBA or CBA Savings Bank before the appointed day shall, after that day, be admissible for or against the interests of the continuing bank or the continuing savings bank, as the case may be.

(2) Notwithstanding the transfer of the undertakings of CBA and CBA Savings Bank to the continuing bank and the continuing savings bank, the provisions of Part V of the Evidence Act, 1929-1982, shall continue to apply with respect to the banking records of CBA and CBA Savings Bank and to entries made in those banking records before the appointed day.

(3) In subsection (2) "banking records" has the same meaning as in Part V of the Evidence Act, 1929-1982.

Officers and
employees.

12. Notwithstanding any other provision of this Act—

(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 law, award, determination, contract and agreement relating to the employment of each employee his contract of employment shall be deemed to be unbroken and the period of his service with CBA shall be deemed to have been a period of service with the continuing bank;

(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 as they were immediately before that day;

and

(ii) subject to any 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;

(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;

(d) nothing in this Act other than paragraph (c) of this section affects rights or liabilities under any provident, benefit, superannuation or retirement fund or scheme relating to employees of CBA;

and

(e) a director, secretary or auditor of CBA or CBA Savings Bank does not by virtue of this Act become a director, secretary or auditor of the continuing bank or the continuing savings bank.

13. (1) The continuing bank may at any time within three months after the appointed day by instrument executed under its seal declare that a corporation that is a subsidiary of the continuing bank and is named in the instrument as new trustee of trusts that are specified in the instrument is appointed in the place of another corporation that was, immediately before that day, a subsidiary of CBA and that is named in the instrument as the retiring trustee of those trusts.

Appointment of
new trustee.

(2) Upon the instrument being so executed and notice of it being published in the *Gazette*—

(a) the corporation named in the instrument as the retiring trustee shall be wholly discharged from the trusts that are specified in the instrument;

(b) the new trustee shall be trustee of those trusts in the place of the retiring trustee and shall have the same powers, authorities and discretions in relation to each trust as the retiring trustee had immediately before being discharged;

and

(c) all property subject to the trusts and vested in the retiring trustee shall, subject to subsection (5), be vested in the 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 Act or law.

(4) Subject to subsection (5) but notwithstanding anything to the contrary in any other Act or law, an instrument relating to land (being land under

the provisions of the Real Property Act, 1886-1982) that has vested in a corporation in pursuance of this section shall, if the instrument is executed by the continuing bank or the continuing savings bank and is otherwise in registrable form, be registered by the Registrar-General notwithstanding that the relevant bank has not been registered as a proprietor of the land.

(5) An estate or interest referred to in subsection (4) shall not vest until a copy of the instrument referred to in subsection (1) has been lodged with the Registrar-General, who is hereby authorized and required to make all necessary entries in the register-book.

(6) In this section "trustee" has the same meaning as in the Trustee Act, 1936-1982, but extends to a nominee, a custodian trustee and a person charged with the management or administration of property.

Transfer of
certain shares;
etc.

14. (1) Where prescribed securities are by virtue of this Act vested in the continuing bank, the continuing savings bank or a subsidiary of the continuing bank, a certificate signed by the Chief General Manager of the continuing bank or by an officer acting under delegation from him stating that the prescribed securities have so vested shall, notwithstanding any other Act or law or the provisions of any instrument, be deemed to be a sufficient duly stamped instrument of transfer of those prescribed securities.

(2) Subsection (1) applies only to and in respect of prescribed securities—

(a) that, when vested in the continuing bank or the continuing savings bank, will be held by way of security;

or

(b) that are vested in a subsidiary of the continuing bank by the operation of section 13.

Company charges.

15. If the provisions of subsection (1) of section 206 of the *Companies Act* 1981 of the Commonwealth apply as laws of South Australia on the appointed day, those provisions shall be deemed to have been complied with in respect of all charges of which the continuing bank or the continuing savings bank becomes the holder by virtue of this Act if there is lodged in the manner specified in paragraph (a) of that subsection a certificate signed by the Chief General Manager of the continuing bank or by an officer acting under delegation from him stating that by virtue of this Act the undertaking of CBA has become vested in the continuing bank and the undertaking of CBA Savings Bank has become vested in the continuing savings bank.

Protection of
persons in respect
of dealings with
excluded assets.

16. (1) No person dealing—

(a) with the continuing bank or CBA (in any capacity whatsoever);

or

(b) with the continuing savings bank or CBA Savings Bank (in any capacity whatsoever),

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, shall, in respect of any dealing or transaction entered into or purporting to be entered into by the continuing bank, the continuing savings bank, CBA or CBA Savings Bank be concerned to see or enquire into whether any property the subject of the dealing or transaction (whether or not that property is 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.

(2) If any dealing or transaction is entered into by the continuing bank or the continuing savings bank 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, 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, as the case may be, under this Act.

(3) If any dealing or transaction is entered into by CBA or CBA Savings Bank with any person, in relation to or in connection with any property which has vested in the continuing bank or the continuing savings bank, as the case may be, under 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, as the case may be, has full power and authority to enter into that dealing or transaction as if the property were an excluded asset.

(4) Nothing in this section affects the liability of the continuing bank, the continuing savings bank, CBA or CBA Savings Bank to any other of them in respect of anything done, or purporting to have been done, by the continuing bank, the continuing savings bank, CBA or CBA Savings Bank, as the case may be, in relation to or in connection with an excluded asset or any other property.

17. Notwithstanding anything to the contrary in any other Act or law, no duty of any kind is chargeable or payable on any instrument, certificate or document or in respect of any act or transaction executed, done, suffered or entered into for the purpose of this Act or of any corresponding law of the Commonwealth or of another State or Territory. Duties.

THE SCHEDULE

Deed dated 27th June, 1978, made between the continuing bank of the one part and CBA of the other part entitled "Equity Participants' Deed"

Agreement dated 27th June, 1978, made between the continuing bank and CBA of the one part and Chase-N.B.A. Group Limited of the other part entitled "Management Agreement"

Agreement dated 27th June, 1978, made between Qantas Airways Limited of the one part and the continuing bank and CBA of the other part entitled "Equipment Purchase Agreement"

Deed of Assignment dated 27th June, 1978, between Qantas Airways Limited of the one part and the continuing bank and CBA of the other part

Agreement dated 27th June, 1978, made between the continuing bank and CBA of the first part, Government Insurance Office of New South Wales of the second part and Qantas Airways Limited of the third part entitled "Loan Agreement"

Deed of Lease dated 27th June, 1978, made between the continuing bank and CBA of the one part and Qantas Airways Limited of the other part

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor