

South Australia



**WESTPAC/CHALLENGE ACT 1996**

**No. 62 of 1996**

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No. 62 of 1996

**An Act to provide for the transfer to Westpac Banking Corporation of certain assets and liabilities of Challenge Bank Limited and for related purposes.**

*[Assented to 8 August 1996]*

The Parliament of South Australia enacts as follows:

## PART 1 PRELIMINARY

### Short title

1. This Act may be cited as the *Westpac/Challenge Act 1996*.

### Commencement

2. This Act will come into operation as soon as all provisions (except section 12) of the Western Australian Act are in operation.

### Interpretation

3. In this Act—

"**Challenge**" means Challenge Bank Limited (ACN: 009 230 433);

"**Chief Executive Officer**" in relation to a bank, means the officer in charge of the day to day management of the affairs of that bank or a person appointed by that officer in writing;

"**commencement time**" means the time this Act comes into operation;

"**excluded assets**" means—

- (a) any document required to be kept by Challenge under the Corporations Law or any other law;
- (b) shares held by Challenge in—
  - (i) CBL Financial Services Ltd (ACN: 009 340 390);

- (ii) CBL Securities Ltd (ACN: 009 124 341);
  - (iii) Challase Pty Ltd (ACN: 059 339 641);
  - (iv) Challenge Finance Limited (ACN: 000 032 735);
  - (v) Challenge Funds Management Ltd (ACN: 009 065 990);
  - (vi) Challenge Information Technology Pty Ltd (ACN: 007 258 488);
  - (vii) Challenge Insurance Services (Agency) Pty Ltd (ACN: 009 086 444);
  - (viii) Cold Storage Construction Pty Ltd (ACN: 001 122 005);
  - (ix) Herston Pty Ltd (ACN: 009 041 650);
  - (x) National Permanent Management Services Pty Ltd (ACN: 009 076 653);
  - (xi) Olsona Ltd (ACN: 003 409 756);
  - (xii) Westman Enterprises Pty Ltd  
(ACN: 008 915 099);
- (c) units held by Challenge in National Permanent Property Trust, a trust created by a deed dated 21 August 1982 between Herston Pty Ltd and National Permanent Funds Management Pty Ltd;
- (d) the Challenge logo registered under the *Trade Marks Act 1995* of the Commonwealth as a trade mark in classes 16, 36 and 39 under numbers A486912, A486911 and A486910 respectively;
- (e) the trade mark "Challenge" registered under the *Trade Marks Act 1995* of the Commonwealth as a trademark in class 36 under number A533638; and
- (f) such other assets as are listed in a certificate signed by the Chief Executive Officer of Westpac and received by the Treasurer before the commencement time;

"land" includes any legal or equitable estate, interest or right in or in respect of land;

"liabilities" includes duties, obligations and incidents of every description, whether actual, contingent or prospective, but does not include any duty, obligation or incident relating to an excluded asset;

"property" means property and assets of every description, and includes securities, rights and powers of every description;

"register" includes a book of registry and an index relating to registration;

"security" includes a mortgage (whether legal or equitable), charge, debenture, bill of exchange, promissory note, guarantee, lien, pledge or other means of securing the payment of a debt, whether present or future, or the discharge of an obligation or liability, whether actual or contingent;

"**transition period**" means the period beginning at the commencement time and ending four months later or at a later time fixed by the Treasurer by notice in the *Gazette* after consultation with the Chief Executive Officer of Westpac;

"**Treasurer**" means the Treasurer of the State;

"**undertaking of Challenge**" means the business and all of the property of Challenge (except any excluded assets and any right or power of Challenge relating to any excluded assets) vested in or belonging to or held by that bank immediately before the commencement time and all of the liabilities to which that bank is subject immediately before the commencement time;

"**Victorian Act**" means the *Westpac and Bank of Melbourne (Challenge Bank) Act 1996* (Vic);

"**Western Australian Act**" means the *Westpac Banking Corporation (Challenge Bank) Act 1996* (WA);

"**Westpac**" means Westpac Banking Corporation (ARBN: 007 457 141).

#### **Act binds the Crown**

4. This Act binds the Crown in right of the State and, so far as the legislative power of the State permits, in all its other capacities.

#### **Territorial application of Act**

5. (1) This Act applies both within and outside the State.

(2) This Act applies outside the State to the full extent of the extra-territorial legislative power of the State.

#### **Application of Act in relation to banking business transferred under the Victorian Act**

6. This Act does not apply to, or in relation to, the banking business of Challenge transferred to Westpac under the Victorian Act.

**PART 2**  
**VESTING OF CHALLENGE'S UNDERTAKING IN WESTPAC**

**Vesting of undertaking**

7. At the commencement time, the undertaking of Challenge is by virtue of this Act divested from Challenge and vested in Westpac.

**Effect on contracts and instruments**

8. (1) All contracts, agreements, conveyances, deeds, leases, licences and other instruments or undertakings entered into by or made with, or addressed to, Challenge (whether alone or with any other person) in force immediately before the commencement time are on and after that time to the extent that they were immediately before that time binding upon and enforceable by, or against, Challenge, binding and of full force and effect in every respect in favour of, or against, Westpac, as fully and effectually as if, instead of Challenge, Westpac had been a party to them or bound by them or entitled to the whole or any portion of the benefit of them.

(2) Subsection (1) does not apply to any contract, agreement, conveyance, deed, lease, licence, instrument or undertaking relating to—

- (a) an excluded asset;
- (b) the employment of a Challenge employee; or
- (c) a provident, benefit, superannuation or retirement fund relating to Challenge employees.

(3) A director, secretary or auditor of Challenge is not by reason only of this Act a director, secretary or auditor (as the case may be) of Westpac.

**Transitional provisions**

9. (1) Without limiting sections 7 and 8, the following provisions have effect in relation to the banking business of Challenge—

- (a) the relationship between Challenge and a customer or depositor of that bank is, on and after the commencement time, between Westpac and that customer or depositor, and gives rise to the same rights and the same duties (including rights of set-off) as would have existed before that time if that relationship had been between Westpac and the customer or depositor, and so that any instruction, order, direction, mandate or authority given by that customer or depositor to Challenge and subsisting on or given after the commencement time is, unless and until revoked or cancelled, deemed to have been given to Westpac;
- (b) any security held by Challenge as security for the payment of the debts or liabilities (whether present or future, certain or contingent) of any person is by virtue of this Act transferred to Westpac at the commencement time, and is to be held by and be available to Westpac as security for the payment of those debts and liabilities to Westpac (but not, by reason only of this Act, as security for any debt or liability of that person to Westpac existing immediately before that time) and, where the security extends to future advances to, or to future liabilities of, that person, the security shall, after that time, subject to any agreement between Westpac and that person, be held by and be available to Westpac as security for future advances to that person by, and future liabilities of that person to, Westpac, to the same extent to which future advances by, or liabilities to, Challenge were secured immediately before that time;

- (c) Westpac is, in relation to any security transferred under this Act and the money secured by the security, entitled to the same rights and priorities and subject to the same liabilities as Challenge would have been entitled and subject to, if the security had continued to be held by Challenge;
- (d) the custody of any document, goods or thing held by Challenge as bailee for any other person at any office or branch or agency of Challenge is by virtue of this Act transferred to Westpac at the commencement time, and the rights, duties and liabilities of Challenge under any contract of bailment relating to the document, goods or thing are transferred at that time to Westpac;
- (e) any negotiable instrument or order for the payment of money, whether drawn, given, accepted or endorsed before, on or after the commencement time, which is expressed to be drawn by, drawn on, or given to, or accepted or endorsed by Challenge, or payable at any place of business of Challenge, has the same effect after the commencement time as if it had been drawn by, drawn on, or given to, or accepted or endorsed by, Westpac, or payable at the same place of business of Westpac;
- (f) any information held immediately before the commencement time by Challenge relating to a customer or depositor of that bank is available to and may be used by Westpac on and after the commencement time.

(2) Despite subsection (1) and sections 7 and 8—

- (a) Westpac is, in relation to any security held by it over any money on deposit with Challenge immediately before the commencement time, entitled to the same rights and priorities and subject to the same liabilities as it would have been had the money on deposit continued to be held by Challenge; and
- (b) Westpac is, in relation to any security held by Challenge immediately before the commencement time over money on deposit with Westpac, entitled to the same rights and priorities and subject to the same liabilities as Challenge would have been had the security continued to be held by Challenge.

**Business name**

10. During the transition period Westpac may carry on business in the State under the business name *Challenge Bank Limited*.

**Legal proceedings**

11. (1) This section applies to—

- (a) any action, arbitration or proceeding or cause of action, arbitration or proceeding which is at the commencement time pending or existing by, against, or in favour of, Challenge; and
- (b) any cause of action, arbitration or proceeding by, against, or in favour of, Challenge, which arises after the commencement time in respect of a contract made by Challenge before the commencement time or which arises in respect of anything done or omitted to be done by Challenge before the commencement time,

but does not apply to any action, arbitration or proceeding or to any cause of action relating to —

- (c) an excluded asset;

- (d) the employment of a Challenge employee; or
- (e) a provident, benefit, superannuation or retirement fund relating to Challenge employees.

(2) Any action, arbitration or proceeding and any cause of action, arbitration or proceeding to which this section applies, is not abated or discontinued or in any way prejudicially affected by reason of this Act, and may, without any further act, deed or instrument other than any appropriate amendment of the records of the relevant court or tribunal, be prosecuted and continued and enforced by or against Westpac, in its own name as and when it might have been prosecuted, continued and enforced by or against Challenge if this Act had not been enacted.

(3) Despite subsection (2), the court, tribunal 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 Westpac in any legal or arbitral proceeding to which this section applies may, at the request of any party in whose favour the judgment, order or award is being made or entered, make or enter the judgment, order or award against both Challenge and Westpac, and the judgement, order or award may, when so made or entered, be enforced against both Challenge and Westpac.

#### **Amendment of Court documents where Westpac erroneously made a party**

12. (1) Any party to any action, arbitration or proceeding relating to an excluded asset or a Challenge or Westpac employee is entitled at any stage to seek leave to amend any writ, pleading or other document filed by the party in the action, arbitration or proceeding by substituting for the name of Westpac the name of Challenge as party.

(2) No order is to be made against any party so amending to pay to Westpac or to Challenge any costs occasioned by that amendment.

(3) The action, arbitration or proceeding is to be continued as if Challenge had originally been made a party to it.

#### **Evidence**

13. (1) Any book or document which if this Act had not been enacted would have been evidence in respect of any matter for or against Challenge is, subject to this Act, on and after the commencement time, to be admissible in evidence in respect of the same matter for or against Westpac.

(2) Without limiting subsection (1), the banking records of Challenge are for the purposes of sections 46 to 52 of the *Evidence Act 1929* deemed to be, and to have been, banking records used in the ordinary business of Westpac.

(3) For the purposes of this section, **banking records** has the same meaning as in section 46 of the *Evidence Act 1929*.

#### **Construction of references**

14. Subject to this Act, if any written law (other than this Act) or any document, whenever made or executed or any register established or kept under any Act contains any reference express or implied to Challenge, the reference is, on and after the commencement time to be read and construed as a reference to Westpac, unless the context otherwise requires.

**PART 3  
GENERAL**

**Payment in lieu of State taxes and charges**

15. Westpac must pay to the Treasurer of the State of South Australia, in lieu of the taxes and charges that would have been payable under the law of South Australia if assets and liabilities had been transferred without the assistance of this Act, an amount agreed between Westpac and the Treasurer.

**Effect of things done under this Act**

16. (1) Nothing effected by this Act or done or suffered by Challenge or Westpac under this Act or done to give effect to this Act—

- (a) is to be regarded as placing either of them in breach of contract or confidence or as otherwise making either of them guilty of a civil wrong;
- (b) is to be regarded as placing either of them in breach of or as constituting a default under any written law or other law or any provision in any agreement, arrangement or understanding including, without limiting the generality of the foregoing, any provision prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information;
- (c) is to be regarded as fulfilling any condition which allows a person to terminate any agreement or liability; or
- (d) releases any surety or other obligee wholly or in part from any liability.

(2) Without limiting subsection (1) where, but for this subsection, the advice or consent of any person would be necessary to carry out any action authorised by this Act, that advice or consent is taken to have been given.

**Service of documents**

17. (1) Service of a document on and after the commencement time—

- (a) on Westpac is deemed to be service on Challenge in addition to service on Westpac; and
- (b) on Challenge is deemed to be service on Westpac in addition to service on Challenge.

(2) Subsection (1) ceases to apply upon Challenge ceasing to be a related body corporate of Westpac within the meaning of section 9 of the Corporations Law.

**Excluded assets**

18. (1) No person dealing with Westpac or Challenge (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, in respect of any dealing or transaction entered into or purporting to be entered into by Westpac or Challenge, is to 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 an excluded asset, nor is such person to be affected by any notice, express, implied or constructive, that any such property is an excluded asset.



(2) If any dealing or transaction is entered into by Westpac with any person, in relation to or in connection with an excluded asset, it is to be deemed in favour of that person that Westpac has full power and authority to enter into that dealing or transaction as if the excluded asset had vested in Westpac under this Act.

(3) Nothing in this section affects the liability of Westpac to Challenge in respect of anything done, or purporting to be done, by Westpac in relation to or in connection with an excluded asset.

#### **Certificates may be issued**

19. The Chief Executive Officer of Westpac may, by signed certificate, certify any matter in relation to the operation of this Act.

#### **Certificates in relation to charges**

20. Section 268(1) of the *Corporations Law* is to be taken to have been complied with in respect of all charges of which Westpac becomes the holder by virtue of this Act if there is lodged with the Australian Securities Commission a certificate signed by the Chief Executive Officer of Westpac stating that by virtue of this Act the undertaking of Challenge has become vested in Westpac.

#### **Other property**

##### **21. Where—**

- (a) any property becomes, under this Act, the property of Westpac; and
- (b) any person or authority has, under any written law, responsibility for keeping a register in respect of property of that kind,

then—

- (c) any requirement of that written law relating to the transfer of such property from one person to another is to be taken to have been complied with if there is lodged with that person or authority a certificate signed by the Chief Executive Officer of Westpac stating that by virtue of this Act the undertaking of Challenge has become vested in Westpac; and
- (d) that person or authority, on being requested to do so and on delivery of any relevant instrument, is to make any amendments to that register which are necessary to make it accurately reflect the effect of this Act.

#### **Certificates conclusive**

22. (1) For all purposes and in all courts, tribunals and proceedings, a certificate under this Act is conclusive evidence of the matters certified, except so far as the contrary is established.

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

#### **Application of banking laws**

23. Except to the extent that an exemption is directly contemplated by, or is a necessary consequence of, this Act, nothing in this Act exempts Westpac from the provisions of any written law relating to companies carrying on the business of banking.

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

E. J. NEAL Governor