

# **National Mutual Royal Savings Bank Limited (Merger) Bill**

**No.**

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# LEGISLATIVE COUNCIL

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Read 1° 6 October 1987

*(Brought in by the Honourable J. H. Kennan)*

## A BILL

to provide for the transfer of the banking business conducted by National Mutual Royal Savings Bank Limited to National Mutual Royal Savings Bank (N.S.W) Limited and for other purposes.

### **National Mutual Royal Savings Bank Limited (Merger) Act 1987**

#### **Preamble.**

The National Mutual Royal Savings Bank Ltd is a company deemed to be incorporated under the *Companies (Victoria) Code* under the *National Mutual Permanent Building Society Act 1985*;

- 5 The National Mutual Royal Savings Bank (N.S.W) Ltd was registered as a company incorporated under the *Companies (NSW) Code* on 28 February 1987;

Both companies are wholly owned subsidiaries of the National Mutual Royal Bank Ltd;

- 10 It is expedient in the interests of banking efficiency that the banking business conducted by the National Mutual Royal Savings Bank Ltd should be transferred to the National Mutual Royal Savings Bank (N.S.W) Ltd;

The Parliament of Victoria therefore enacts as follows:

#### **15 Purpose of Act.**

1. The purpose of this Act is to enable the proposed merger of the National Mutual Royal Savings Bank Ltd and the National Mutual Royal Savings Bank (N.S.W) Ltd to be effected.

**Commencement.**

2. This Act comes into operation on a day to be proclaimed.

**Definitions.**

3. In this Act—

- “**Appointed day**” means the day on which this Act comes into operation. 5
- “**Commission**” means the National Companies and Securities Commission.
- “**Continuing bank**” means the National Mutual Royal Savings Bank (N.S.W) Limited. 10
- “**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 thereof were lodged, filed or registered under any act or law and includes any judgment, order or process of a court. 15
- “**Legal proceedings**” includes an arbitration.
- “**Liabilities**” means all liabilities, duties and obligations, whether actual, contingent or prospective.
- “**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 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. 20  
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- “**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 the foregoing whether upon demand or otherwise. 30
- “**Transferred employee**” means an employee of the Victorian bank who becomes an employee of the continuing bank under this Act. 35
- “**Undertaking**” in relation to the Victorian bank means—
- (a) all property of the Victorian bank wherever located; and
- (b) all rights and liabilities of the Victorian bank wherever located. 40
- “**Victorian bank**” means the National Mutual Royal Savings Bank Limited.

**Crown to be bound.**

4. This Act binds the Crown.

**Vesting of undertaking of the Victorian bank.**

5. (1) On the appointed day—

- 5 (a) the undertaking of the Victorian bank is vested in the continuing bank; and
- (b) the continuing bank is the successor in law of the Victorian bank; and
- 10 (c) the Victorian bank is dissolved and ceases to be deemed to be incorporated under the *Companies (Victoria) Code* and must surrender its certificate of incorporation to the Commissioner for Corporate Affairs who must remove its name from the register of companies.

(2) On and after the appointed day—

- 15 (a) a reference to the Victorian bank in any instrument made, passed or executed before that day is to be read and construed as a reference to the continuing bank; and
- 20 (b) a reference to the holder for the time being of a particular office within the Victorian bank in any instrument made, passed or executed before that day is to be read and construed as a reference to a person holding an office of the same name within the continuing bank or, if there is no person holding an office of that name, to a person for the time being holding office as managing director of the continuing bank or any other officer of the continuing bank as is designated from time to time by a managing director of the continuing bank or by any other officer acting under delegation.

30 (3) On and after the appointed day any place of business of the Victorian bank wherever located is to be taken to be a place of business of the continuing bank.

35 (4) Without prejudice to the generality of this section and notwithstanding anything to the contrary in any other Act or law if the Victorian bank is immediately before the appointed day the registered proprietor of an interest in any land under a mortgage registered under the *Transfer of Land Act 1958*, on and after the appointed day—

- (a) the continuing bank is to be taken to be the registered proprietor of that interest in land; and
- 40 (b) the continuing bank has the same rights and remedies in respect of the mortgage as the Victorian bank had.

**Transitional provisions.**

6. Without prejudice to any other provisions of this Act, the following have effect on and after the appointed day:

- (a) An instruction, order, direction, mandate or authority given to the Victorian bank and subsisting immediately before the appointed day is to be taken to have been given to the continuing bank; 5
- (b) An instrument given or addressed to the Victorian bank on or after the appointed day is to be taken to have been given or addressed to the continuing bank; 10
- (c) A security held by the Victorian bank as security for a debt or other liability to the Victorian bank incurred before the appointed day is 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, is available as security for the discharge of debts owed to or liabilities to the continuing bank which are incurred on or after the appointed day and in relation to a security the continuing bank is entitled to all the rights and priorities (however arising) and is subject to all liabilities to which the Victorian bank would have been entitled or subject if this Act had not been passed; 15
- (d) All the rights and liabilities of the Victorian bank as bailee of documents or chattels are transferred to and assumed by the continuing bank; 20
- (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 the Victorian bank or payable at a place of business of the Victorian bank has 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 the Victorian bank or was payable at the place of business of the continuing bank which the first mentioned place of business is by this Act taken to be; 25
- (f) The relationship between the Victorian bank and a customer or depositor becomes the same relationship between the continuing bank and the customer or depositor and the same rights and liabilities including rights of set-off exist between the continuing bank and the customer or depositor as existed immediately before the appointed day between the Victorian bank and the customer or depositor; 30
- (g) All instruments and contracts, agreements, conveyances, deeds, leases, licences, undertakings and notices (whether or not in writing) entered into by, made with, given to or by or addressed to the Victorian bank (whether alone or with 35

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any other person) before the appointed day and in effect immediately before the appointed day are to the extent that they were previously binding on and enforceable by, against or in favour of the Victorian bank, binding on and enforceable by, against or in favour of the continuing bank as fully and effectually in every respect as if, instead of the Victorian bank, 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 the Victorian bank abate or are otherwise prejudiced by reason of this Act;

(i) Nothing effected by this Act—

(i) is to be regarded as placing the Victorian bank or the continuing bank in breach of contract or confidence or as otherwise making either of them guilty of a civil wrong;

(ii) is to 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 any property or the disclosure of any information; or

(iii) releases any surety wholly or in part from all or any obligations; and

(j) Nothing done or suffered by the Victorian bank or the continuing bank under this Act (not being something effected by this Act)—

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

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

(iii) releases any surety wholly or in part from all or any obligations—

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

#### **Continuity of legal proceedings.**

7. (1) Legal proceedings to which the Victorian bank was a party immediately before the appointed day may be continued by or against the continuing bank.

(2) A judgment, order or award obtained by or against the Victorian bank in legal proceedings commenced before the appointed day may be enforced by or against the continuing bank.

**Evidence.**

8. (1) Documentary or other evidence which would have been admissible for or against the interests of the Victorian bank, if this Act had not been passed is admissible for or against the interests of the continuing bank. 5

(2) Notwithstanding the transfer of the undertaking of the Victorian bank to the continuing bank the provisions of Division 3A of Part III. of the *Evidence Act* 1958 continue to apply with respect to the books of account of the Victorian bank and to entries made in those books of account before the appointed day. 10

(3) In sub-section (2) “books of account” has the same meaning as in Division 3A of Part III. of the *Evidence Act* 1958.

**Employees.**

9. Notwithstanding any other provision of this Act—

- (a) on the appointed day each employee of the Victorian bank ceases to be an employee of the Victorian bank and becomes an employee of the continuing bank but for the purposes of every Act and other law, award, determination, contract and agreement relating to the employment of each employee the contract of employment is to be taken to be unbroken and the period of service with the Victorian bank is to be taken to have been a period of service with the continuing bank; and 15
- (b) the terms and conditions of the employment of each transferred employee with the continuing bank are— 20
- (i) on the appointed day (and thereafter until varied) to be identical with the terms and conditions of employment with the Victorian bank immediately before the appointed day and to be capable of variation in the same manner as they were immediately before that day; and 30
- (ii) subject to any Act or other law, award or determination relating to those terms and conditions, also 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 35
- (c) a transferred employee is not entitled to receive any payment or other benefit by reason only of that employee ceasing by virtue of this Act to be an employee of the Victorian bank; and 40
- (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 the Victorian bank; and

- 5 (e) a director, secretary, auditor or public officer (for the purposes of the *Income Tax Assessment Act 1936* of the Commonwealth) of the Victorian bank does not by virtue of this Act become a director, secretary, auditor or public officer (for the purposes of the *Income Tax Assessment Act 1936* of the Commonwealth) of the continuing bank.

**Company charges.**

- 10 10. Section 206 (1) of the *Companies (Victoria) Code* is to be taken to have been complied with in respect of all charges of which the continuing bank becomes the holder by virtue of this Act if there is lodged in the manner specified in paragraph (a) of that section a certificate signed by a Managing Director of the continuing bank or by an officer acting under delegation from him or her stating that by virtue of this Act the undertaking of the Victorian bank has become vested in
- 15 the continuing bank.

