

# **Westpac New Zealand Bill**

Private Bill

## **Explanatory note**

### **General policy statement**

Westpac Banking Corporation is incorporated in New South Wales, Australia under the Corporations Act 2001 of the Commonwealth of Australia, is registered in New Zealand as an overseas company under the Companies Act 1993, and is a registered bank under the Reserve Bank of New Zealand Act 1989. Westpac Banking Corporation carries on a banking business in Australia, New Zealand, and certain other countries.

Since July 2003, the policy of the Reserve Bank of New Zealand has been that systemically important banks should be incorporated in New Zealand. Accordingly, Westpac Banking Corporation established Westpac New Zealand to assume and carry on Westpac Banking Corporation's New Zealand retail banking business. Westpac New Zealand is incorporated in New Zealand under the Companies Act 1993, and is a registered bank under the Reserve Bank of New Zealand Act 1989.

Under the Westpac New Zealand Act 2006 and the Westpac New Zealand Proposal Approval Order 2006, Westpac Banking Corporation's New Zealand retail banking business was vested in Westpac New Zealand.

Having regard to the Reserve Bank of New Zealand's local incorporation policy, certain additional assets and liabilities of Westpac Bank-

ing Corporation, being principally assets and liabilities of Westpac Banking Corporation's New Zealand institutional banking business, are now to be vested in Westpac New Zealand.

Legislation is the only means by which these assets and liabilities of Westpac Banking Corporation can be vested in Westpac New Zealand efficiently and economically. Legislation is also the only means by which amendments to the Westpac New Zealand Act 2006 can be effected.

The objects of the Bill cannot be attained other than by legislation.

### **Clause by clause analysis**

The *Preamble* describes the background to the Bill and sets out the objects of the Bill.

*Clause 1* sets out the Title.

*Clause 2* is the commencement clause. The Bill is to come into force on the day after it receives the Royal assent.

## **Part 1**

### **Preliminary provisions**

*Clause 3* states that the purposes of the Bill are to provide for—

- (a) the vesting of certain assets and liabilities of Westpac Banking Corporation, being principally assets and liabilities of Westpac Banking Corporation's New Zealand institutional banking business, in Westpac New Zealand, having regard to the Reserve Bank of New Zealand's local incorporation policy; and
- (b) the efficient conduct of Westpac New Zealand's business.

*Clause 4* defines terms used in the Bill. Some of the key terms are appointed day, designated assets and liabilities, and Westpac Banking Corporation's New Zealand institutional banking business. *Clause 4(2)* confirms that the Bill applies to assets and liabilities whether they are located in New Zealand or overseas.

*Clause 5* provides that the Bill binds the Crown.

## **Part 2**

### **Vesting of designated assets and liabilities in Westpac New Zealand**

*Clause 6* provides that the Governor-General may, by Order in Council, approve a proposal signed by Westpac Banking Corporation and Westpac New Zealand to vest certain assets and liabilities of Westpac Banking Corporation in Westpac New Zealand. The proposal must specify the day on which the vesting will occur, describe the assets and liabilities that will vest, and state the consideration payable. The proposal may also state the time at which the vesting occurs, exclude assets and liabilities from the vesting, and include terms and conditions that relate to the vesting. The proposal can describe the assets and liabilities by reference to ledgers or registers. The Order in Council must identify the proposal but does not need to incorporate it. The Order in Council can only be made on the advice of the Minister given in accordance with a recommendation of the Reserve Bank of New Zealand.

*Clause 7* provides that the Governor-General may, by Order in Council, approve an agreement to amend the proposal. That agreement has effect as if it had been included in the proposal and can only be made to correct an error, make a clarification, make a minor or technical modification, or avoid costs or losses being incurred. The Order in Council can only be made on the advice of the Minister given in accordance with a recommendation of the Reserve Bank of New Zealand.

*Clause 8* provides for the vesting to take effect on and from the day appointed for that purpose in the proposal, except to the extent that the proposal provides otherwise, and subject to any terms and conditions in the proposal. Westpac New Zealand is the universal successor of Westpac Banking Corporation in relation to the assets and liabilities that vest in Westpac New Zealand.

*Clause 9* provides that the relationship, rights, and liabilities between Westpac Banking Corporation and a customer in relation to the designated assets and liabilities immediately before the appointed day becomes the same relationship, rights, and liabilities between Westpac New Zealand and that customer on and from the appointed day, and deems any account comprised within the designated assets and liabilities to be a single continuing account. The vesting of rights and liabilities in Westpac New Zealand does not limit any right of set-off,

combination, appropriation, or counterclaim in relation to the designated assets and liabilities. Customers have a right for 7 years to inquire whether any of their accounts have vested in Westpac New Zealand, and Westpac New Zealand must answer that inquiry as soon as practicable.

*Clause 10* provides that security interests held by Westpac Banking Corporation, or rights of Westpac Banking Corporation in or to a security interest, at the time of vesting will be held on trust by Westpac Banking Corporation (or, if vested, by Westpac New Zealand) for the benefit of both. Rights and priorities relating to those security interests or rights in or to security interests are not affected by the vesting, and if those security interests extend to future liabilities, they will continue to do so after the vesting.

*Clause 11* sets out definitions of contract, document, and instrument for the purposes of *clauses 12 to 14*.

*Clause 12* deals with the effects of the vesting on contracts, documents, and instruments. This clause provides that any contract, document, or instrument entered into by, made with, given to or by, addressed to or by, or which refers to Westpac Banking Corporation is binding on, and enforceable by, against, or in favour of Westpac New Zealand to the extent it relates to the designated assets and liabilities, or any other existing or future assets, liabilities, or operations of Westpac New Zealand.

*Clause 13* deals specifically with references to Westpac Banking Corporation in contracts, documents, and instruments that relate to the designated assets and liabilities, or any other existing or future assets, liabilities, or operations of Westpac New Zealand. A reference to Westpac Banking Corporation, the holder of a particular office within Westpac Banking Corporation, the auditor or a representative of Westpac Banking Corporation, or the place of business of Westpac Banking Corporation in a contract, document, or instrument is to be read as a reference to Westpac New Zealand, the equivalent office, or the place of business of Westpac New Zealand.

*Clause 14* deals with contracts for the supply of goods and services to Westpac Banking Corporation (whether or not the contracts are vested in Westpac New Zealand). These contracts are to be regarded as permitting the on-supply of those goods and services between Westpac Banking Corporation and Westpac New Zealand to the same extent that that on-supply would have been permitted if Westpac

Banking Corporation and Westpac New Zealand were a single legal entity.

*Clause 15* provides for certain employees of Westpac Banking Corporation (as specified in the proposal) to become employees of Westpac New Zealand and for their employment to continue on the same terms.

*Clause 16* provides for continuity of legal proceedings affecting the assets and liabilities which vest in Westpac New Zealand.

*Clause 17* provides for all documents available as evidence for or against Westpac Banking Corporation to be available for or against Westpac New Zealand.

*Clause 18* provides that if the proposal refers to any ledger or register, all information contained in that ledger or register must be stored in good condition for 7 years from the vesting and must be readily available.

*Clause 19* provides that references in books and registers to Westpac Banking Corporation in relation to assets and liabilities that vest are not required to be changed to Westpac New Zealand. The presentation of an instrument prepared by Westpac New Zealand and stating that certain assets and liabilities have vested is, in the absence of evidence to the contrary, sufficient evidence of the vesting of those assets and liabilities.

*Clause 20* contains further provisions as to registers and evidence of vesting. Presentation of a certificate by Westpac Banking Corporation or Westpac New Zealand to a registrar stating that a security, right, or interest has vested in Westpac New Zealand entitles Westpac New Zealand to be registered as the holder of that security, right, or interest. Westpac Banking Corporation and Westpac New Zealand are not required by section 148 of the Personal Property Securities Act 1999 to give a copy of a verification statement in respect of a financing change statement to any debtor if the only change recorded in the financing change statement is to the name of the secured party.

*Clauses 21 to 23* provide for certain tax consequences of the vesting and in particular ensure that the vesting does not give rise to tax consequences for Westpac Banking Corporation or Westpac New Zealand that would not have arisen if the vesting did not occur, while recognising that Westpac Banking Corporation and Westpac New

Zealand are separate taxpayers and will continue to be so after the vesting.

*Clause 24* provides that Westpac Banking Corporation and Westpac New Zealand can each collect, use, disclose, or send information, or use or modify any intellectual property, as if they were a single legal entity. *Subclause (4)* provides that this clause applies despite any other enactment (including the Privacy Act 1993), equivalent of an enactment in a country other than New Zealand, rule of law, or the provision of any contract.

*Clause 25* provides that nothing effected or authorised by the Bill is to be regarded as placing Westpac Banking Corporation, Westpac New Zealand, or any other person in breach of any contract, trust, confidence, enactment, equivalent of an enactment in a country other than New Zealand, or rule of law. Nor is it to release any surety or other person (other than Westpac Banking Corporation) from all or any of that person's liabilities, or give rise to a right for any person to terminate or change the performance of any contract, or invalidate or discharge any contract or instrument.

### **Part 3**

#### **Inter-relationship with other Acts**

*Clause 26* provides that neither Westpac Banking Corporation nor Westpac New Zealand is exempt from the provisions of any enactment relating to banks or banking.

*Clause 27* makes 2 amendments to the Westpac New Zealand Act 2006 and states the dates from which those amendments have effect.

*Clause 27(6)* confirms that, except as provided in *clause 27*, nothing in the Bill affects the Westpac New Zealand Act 2006.

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*Craig Foss*

## **Westpac New Zealand Bill**

Private Bill

### **Contents**

		Page
	Preamble	2
1	Title	3
2	Commencement	3
<b>Part 1</b>		
<b>Preliminary provisions</b>		
3	Purposes	3
4	Interpretation	4
5	Act binds the Crown	6
<b>Part 2</b>		
<b>Vesting of designated assets and liabilities in Westpac New Zealand</b>		
6	Governor-General may approve proposal to vest designated assets and liabilities	6
7	Governor-General may approve amendment to proposal to vest designated assets and liabilities	7
8	Vesting of designated assets and liabilities	8
9	Relationship with customers and customers' rights and liabilities	9
10	Effect of vesting on security interests	10
11	Meaning of contract, document, and instrument in sections 12 to 14	10
12	Effect of vesting on contracts, documents, and instruments	11
13	References to Westpac Banking Corporation in contracts, documents, and instruments	11
14	Contracts for supply of goods or services	12

Preamble	<b>Westpac New Zealand Bill</b>	
<hr/>		
15	Transfer of employees	12
16	Legal proceedings not affected by vesting	13
17	Documents, matters, and things to remain evidence	13
18	Storage of information concerning designated assets and liabilities included in proposal	14
19	Registers and evidence of vesting	14
20	Further provisions as to registers and evidence of vesting	14
21	Purpose of sections 22 and 23	15
22	Financial arrangements	16
23	Application of provisions relating to taxes and duties	17
24	Use of information and intellectual property	20
25	Effect of this Act	21
 <b>Part 3</b> <b>Inter-relationship with other Acts</b>		
26	Banking legislation continues to apply	21
27	Amendments to Westpac New Zealand Act 2006	22

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### **Preamble**

- (1) Westpac Banking Corporation is incorporated in New South Wales, Australia under the Corporations Act 2001 of the Commonwealth of Australia, is registered in New Zealand as an overseas company under the Companies Act 1993, and is a registered bank under the Reserve Bank of New Zealand Act 1989. Westpac Banking Corporation carries on a banking business in Australia, New Zealand, and certain other countries: 5
- (2) Since July 2003, the policy of the Reserve Bank of New Zealand has been that systemically important banks should be incorporated in New Zealand. Accordingly, Westpac Banking Corporation established Westpac New Zealand to assume and carry on Westpac Banking Corporation's New Zealand retail banking business. Westpac New Zealand is incorporated in New Zealand under the Companies Act 1993 and is a registered bank under the Reserve Bank of New Zealand Act 1989: 10 15
- (3) Under the Westpac New Zealand Act 2006 and the Westpac New Zealand Proposal Approval Order 2006, Westpac Bank-

ing Corporation's New Zealand retail banking business was vested in Westpac New Zealand:

- (4) Having regard to the Reserve Bank of New Zealand's local incorporation policy, certain additional assets and liabilities of Westpac Banking Corporation, being principally assets and liabilities of Westpac Banking Corporation's New Zealand institutional banking business, are now to be vested in Westpac New Zealand: 5
- (5) Legislation is the only means by which these assets and liabilities of Westpac Banking Corporation can be vested in Westpac New Zealand efficiently and economically. Legislation is also the only means by which amendments to the Westpac New Zealand Act 2006 can be effected: 10
- (6) The objects of this Act cannot be attained other than by legislation: 15

**The Parliament of New Zealand therefore enacts as follows:**

**1 Title**

This Act is the Westpac New Zealand Act **2010**.

**2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent. 20

**Part 1  
Preliminary provisions**

**3 Purposes**

The purposes of this Act are to provide for— 25

(a) the vesting of certain assets and liabilities of Westpac Banking Corporation, being principally assets and liabilities of Westpac Banking Corporation's New Zealand institutional banking business, in Westpac New Zealand, having regard to the Reserve Bank of New Zealand's local incorporation policy; and 30

(b) the efficient conduct of Westpac New Zealand's business.

#### 4 Interpretation

- (1) In this Act, unless the context otherwise requires,—
- appointed day** means the day on which the proposal approved in accordance with **section 6(1)** takes effect
- assets** means property of any kind, whether tangible or intangible, real or personal, corporeal or incorporeal, and whether or not subject to rights, and includes—
- (a) estates or interests in any land, including rights of occupation of land or buildings:
  - (b) buildings, vehicles, plant, equipment, machinery, fixtures and fittings, and rights in them: 10
  - (c) choses in action and money:
  - (d) rights of any kind, and applications, objections, submissions, and appeals in respect of those rights:
  - (e) intellectual property and applications pending for intellectual property: 15
  - (f) goodwill and any business undertaking
- contract** includes any agreement, arrangement, conveyance, deed, lease, licence, and security interest
- describe**, in relation to an asset or liability, includes— 20
- (a) describing either individually or as a group or class; and
  - (b) identifying a document in which the asset or liability is described either individually or as a group or class
- designated assets and liabilities** means each asset and liability of Westpac Banking Corporation that is to vest in Westpac New Zealand; and **designated asset** and **designated liability** have corresponding meanings 25
- document** has the same meaning as in section 4(1) of the Evidence Act 2006
- Inland Revenue Acts** has the same meaning as in section YA 1 of the Income Tax Act 2007 30
- instrument** includes—
- (a) an enactment (other than this Act, the Westpac New Zealand Act 2006, and the Westpac Banking Corporation Act 1982), or the equivalent of an enactment in a country other than New Zealand; and 35
  - (b) an instrument of any kind 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 enactment, or under the equivalent of an enactment in a country other than New Zealand; and

(c) a judgment, order, award, or process of a court, tribunal, or regulatory body; and 5

(d) an undertaking, communication, notice, instruction, order, direction, mandate, authority, negotiable instrument, order for payment of money, register, and record

**intellectual property** means all patents, designs, copyright, know-how, trade secrets, trade marks, service marks, and other intellectual or industrial property rights of any kind, and any rights in relation to them 10

**liabilities** means liabilities, debts, charges, duties, and obligations of every description (whether present or future, actual, contingent, or prospective) 15

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the Reserve Bank of New Zealand Act 1989

**rights** includes all rights, powers, privileges, interests, leases, licences, approvals, consents, designations, permissions, dispensations, authorisations, benefits, defences, immunities, claims, remedies, and equities of any kind, 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 25

**security interest** means a security interest (including a security interest as defined in the Personal Property Securities Act 1999), mortgage, submortgage, charge, debenture, bill of exchange, promissory note, guarantee, an indemnity, a defeasance, hypothecation, lien, pledge, or other security for the payment of money or for the discharge of any other liability; and in any case whether legal or equitable, whether upon demand or otherwise, whether present or future, and whether actual, contingent, or prospective; and includes any contract or undertaking to give or execute, whether upon demand or otherwise, any of them 30 35

**transferring employee** means an individual whose contract of employment, to the extent that it provides for the employer's rights and obligations, is to vest in Westpac New Zealand under the proposal approved in accordance with **section 6(1)**  
**vest** means vest by operation of this Act

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**vest** means vest by operation of this Act

**Westpac Banking Corporation** means Westpac Banking Corporation (ABN 33 007 457 141) incorporated in New South Wales, Australia under the Corporations Act 2001 of the Commonwealth of Australia

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**Westpac Banking Corporation's New Zealand institutional banking business** means the institutional banking business and related corporate support operations carried out by the New Zealand branch of Westpac Banking Corporation immediately before the appointed day

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**Westpac New Zealand** means Westpac New Zealand Limited (company number 1763882) incorporated in New Zealand under the Companies Act 1993.

- (2) A reference in this Act to any asset, contract, document, instrument, intellectual property, liability, person, right, or security interest includes an asset, contract, document, instrument, intellectual property, liability, person, right, or security interest which was made in, arose in, is located in, is to be paid, performed, observed, or enforced in, or is governed by the law of, a country other than New Zealand.

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## 5 Act binds the Crown

This Act binds the Crown.

## Part 2

### Vesting of designated assets and liabilities in Westpac New Zealand

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#### 6 Governor-General may approve proposal to vest designated assets and liabilities

- (1) The Governor-General may, by Order in Council made on the advice of the Minister that is given in accordance with a recommendation of the Reserve Bank of New Zealand, approve a proposal.

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- (2) The proposal must—
- (a) specify the appointed day; and
  - (b) describe the designated assets and liabilities; and
  - (c) state either—
    - (i) the consideration payable by Westpac New Zealand for the vesting of the designated assets and liabilities, either individually or as a group or class; or
    - (ii) the method by which the consideration is to be calculated; and
  - (d) state the name of the recipient of the consideration; and
  - (e) be signed by or on behalf of Westpac Banking Corporation and Westpac New Zealand.
- (3) The proposal may also state 1 or more of the following:
- (a) the time at which the designated assets and liabilities, or certain designated assets and liabilities, vest (in which case, references to the appointed day in this Act are references to that time in relation to those designated assets and liabilities); and
  - (b) any assets or liabilities specifically excluded from being designated assets and liabilities; and
  - (c) terms or conditions that relate to the vesting of the designated assets and liabilities.
- (4) The proposal may describe any or all of the designated assets and liabilities by referring to information in 1 or more ledgers or registers maintained by Westpac Banking Corporation immediately before the appointed day.
- (5) A designated asset or designated liability may consist of part only of an asset or liability.
- (6) An Order in Council under **subsection (1)** must identify the proposal and may, but need not, incorporate it in the order.

**7 Governor-General may approve amendment to proposal to vest designated assets and liabilities**

- (1) The Governor-General may, by Order in Council made on the advice of the Minister that is given in accordance with a recommendation of the Reserve Bank of New Zealand, approve a written agreement that has been made between Westpac Bank-

- ing Corporation and Westpac New Zealand to amend the proposal approved in accordance with **section 6(1)**.
- (2) The Governor-General may approve a written agreement under **subsection (1)** on, before, or after the appointed day.
- (3) An amendment to the proposal that forms part of an agreement that has been approved by Order in Council in accordance with **subsection (1)** has effect as if it had been included in the proposal at the time the proposal was approved in accordance with **section 6(1)**. 5
- (4) Westpac Banking Corporation and Westpac New Zealand may only make an agreement to amend the proposal if the amendment is, in their opinion,— 10
- (a) desirable to correct an error in, or clarify, the proposal; or
- (b) of a minor or technical nature only; or 15
- (c) necessary to avoid costs or losses being incurred by Westpac Banking Corporation, Westpac New Zealand, or any other person as a result of the proposal.
- 8 Vesting of designated assets and liabilities**
- (1) The proposal approved in accordance with **section 6(1)** takes effect on and from the appointed day, except to the extent that the proposal provides otherwise. 20
- (2) The designated assets and liabilities described in the proposal vest in Westpac New Zealand on the appointed day in accordance with and subject to any terms and conditions in the proposal. 25
- (3) Westpac New Zealand is the universal successor to the designated assets and liabilities, and all assets and liabilities of Westpac Banking Corporation which have become those of Westpac New Zealand under this Act cease to be assets and liabilities of Westpac Banking Corporation on and from the appointed day. 30
- (4) If a designated asset or designated liability is part only of an asset or liability,—
- (a) the remainder of the asset or liability continues to be an asset or liability of Westpac Banking Corporation as if this Act had not been enacted; and 35

- (b) Westpac New Zealand and Westpac Banking Corporation must each use their best endeavours to co-operate in exercising their rights, and performing their obligations, in respect of that asset or liability.

- 9 Relationship with customers and customers' rights and liabilities** 5
- (1) The relationship between Westpac Banking Corporation and a customer in relation to the designated assets and liabilities immediately before the appointed day becomes the same relationship between Westpac New Zealand and that customer on and from the appointed day. 10
- (2) An account between Westpac Banking Corporation and a customer that is comprised within the designated assets and liabilities, on and from the appointed day, becomes an account between Westpac New Zealand and that customer, and is deemed for all purposes to be a single continuing account. 15
- (3) The rights and liabilities between Westpac Banking Corporation and a customer in relation to the designated assets and liabilities immediately before the appointed day are the same rights and liabilities between Westpac New Zealand and that customer on and from the appointed day. 20
- (4) **Subsection (3)** does not limit Westpac New Zealand's rights of set-off, combination, appropriation, or counterclaim in relation to the designated assets and liabilities.
- (5) **Subsections (1) to (4)** apply except to the extent otherwise agreed in writing between a customer, Westpac Banking Corporation, and Westpac New Zealand. 25
- (6) At any time before the seventh anniversary of the appointed day, a person who was a customer of Westpac Banking Corporation immediately before the appointed day may ask Westpac New Zealand whether any of that person's accounts vested in Westpac New Zealand. 30
- (7) Westpac New Zealand must, as soon as practicable, advise a person who makes an enquiry under **subsection (6)** whether any of that person's accounts vested in Westpac New Zealand. 35

**10 Effect of vesting on security interests**

- (1) A security interest held by Westpac Banking Corporation, or a right of Westpac Banking Corporation in or to a security interest, immediately before the appointed day is, on and from the appointed day, to be held on trust by Westpac Banking Corporation or, if vested in Westpac New Zealand, by Westpac New Zealand,— 5
- (a) for the benefit of both Westpac Banking Corporation and Westpac New Zealand; and
- (b) as continuing security for the discharge of any liability that it secured before the appointed day. 10
- (2) If the security interest, or the right in or to a security interest, extends to future, contingent, or prospective liabilities, it is also security for the discharge of any liabilities to each of Westpac Banking Corporation and Westpac New Zealand incurred or agreed to on or after the appointed day that it would have been security for if— 15
- (a) this Act had not been enacted; and
- (b) Westpac Banking Corporation and Westpac New Zealand were a single legal entity. 20
- (3) All rights or priorities relating to the security interest continue on and from the appointed day for the benefit of Westpac Banking Corporation and Westpac New Zealand in relation to all liabilities secured by that security interest, whether or not the liability was incurred or agreed to before, on, or after the appointed day. 25
- (4) Westpac Banking Corporation and Westpac New Zealand may determine how those rights and priorities are exercised as between Westpac Banking Corporation and Westpac New Zealand. 30

**11 Meaning of contract, document, and instrument in sections 12 to 14**

In **sections 12 to 14**,—

**contract, document, or instrument** means a contract, document, or instrument — 35

- (a) that is entered into by, made with, given to or by, addressed to or by, or which refers to Westpac Banking

- Corporation, whether alone or with any other person;  
and
- (b) that exists immediately before the appointed day; and
  - (c) whether or not it is in writing.
- 12 Effect of vesting on contracts, documents, and instruments** 5
- (1) A contract, document, or instrument that is included (in whole or in part) in the designated assets and liabilities is binding on and enforceable by, against, or in favour of Westpac New Zealand as fully and effectually as if, instead of Westpac Banking Corporation, Westpac New Zealand had been the person by whom it was entered into, with whom it was made, to or by whom it was given or addressed, or to whom it referred. 10
  - (2) **Subsection (1)** has effect—
    - (a) on and from the appointed day; and
    - (b) to the extent that the contract, document, or instrument relates to the designated assets and liabilities, or any other existing or future assets, liabilities, or operations of Westpac New Zealand. 15
- 13 References to Westpac Banking Corporation in contracts, documents, and instruments** 20
- (1) A reference (express or implied) to Westpac Banking Corporation, the holder of a particular office within Westpac Banking Corporation, the auditor or a representative of Westpac Banking Corporation, or the place of business of Westpac Banking Corporation in a contract, document, or instrument that relates to the designated assets and liabilities, or any other existing or future assets, liabilities, or operations of Westpac New Zealand, is to be read as a reference to, as the case may be,—
    - (a) Westpac New Zealand; or
    - (b) the person for the time being holding a corresponding or equivalent office in Westpac New Zealand; or 30
    - (c) the place of business of Westpac New Zealand.
  - (2) **Subsection (1)** applies—
    - (a) unless the context of the reference requires otherwise; and 35
    - (b) on and from the appointed day; and

- (c) to the extent that the contract, document, or instrument relates to the designated assets and liabilities, or any other existing or future assets, liabilities, or operations of Westpac New Zealand.

- 14 Contracts for supply of goods or services** 5
- A contract that immediately before the appointed day provided for the supply of goods or services to Westpac Banking Corporation (whether or not that contract is vested in Westpac New Zealand) is to be regarded as permitting the on-supply of those goods and services between Westpac Banking Corporation and Westpac New Zealand to the same extent that that on-supply would have been permitted if Westpac Banking Corporation and Westpac New Zealand were a single legal entity. 10
- 15 Transfer of employees** 15
- (1) A transferring employee ceases to be an employee of Westpac Banking Corporation and becomes an employee of Westpac New Zealand on the appointed day.
- (2) For the purposes of every enactment, law, determination, and contract relating to the employment of a transferring employee,— 20
- (a) his or her employment contract is to be regarded as not having been broken by any provision of this Act; and
- (b) the period of his or her service with Westpac Banking Corporation is to be regarded as having been a period of service with Westpac New Zealand. 25
- (3) A transferring employee's terms and conditions of employment with Westpac New Zealand on and from the appointed day are identical to the terms and conditions of his or her employment with Westpac Banking Corporation immediately before the appointed day, and are capable of variation in the same manner. 30
- (4) A transferring employee is not entitled to receive any payment or other benefit by reason only of ceasing, by operation of this Act, to be an employee of Westpac Banking Corporation. 35

- (5) The employment of a transferring employee is not new employment for the purposes of the KiwiSaver Act 2006.

**16 Legal proceedings not affected by vesting**

- (1) This section applies to any claim, action, arbitration, or proceeding that either— 5
- (a) immediately before the appointed day, is pending or existing by, against, or in favour of Westpac Banking Corporation or is one to which Westpac Banking Corporation is or could be a party and that is included (in whole or in part) in the designated assets and liabilities; 10  
or
- (b) arises on or after the appointed day in respect of the designated assets and liabilities and that would, but for this Act, have been available to, against, or in favour of Westpac Banking Corporation or is one to which Westpac Banking Corporation could have been a party. 15
- (2) A claim, action, arbitration, or proceeding—
- (a) does not abate, and is not discontinued or prejudicially affected, by this Act; and
- (b) may be prosecuted and, without amendment of any writ, pleading, or other document, continued and enforced by, against, or in favour of Westpac New Zealand in its own name to the same extent that it might have been prosecuted, continued, and enforced by, against, or in favour of Westpac Banking Corporation if this Act had not been enacted and Westpac Banking Corporation and Westpac New Zealand were a single legal entity. 20 25

**17 Documents, matters, and things to remain evidence**

Any document, matter, or thing which, if this Act had not been enacted and Westpac Banking Corporation and Westpac New Zealand were a single legal entity, would have been admissible in evidence in respect of any matter for or against that entity is, on and after the appointed day, admissible in evidence in respect of the same matter for or against Westpac Banking Corporation or Westpac New Zealand. 30 35

**18 Storage of information concerning designated assets and liabilities included in proposal**

- (1) If the proposal approved in accordance with **section 6(1)** describes designated assets and liabilities by referring to information in a ledger or in a register, as permitted by **section 6(4)**, all information contained in that ledger or register must be stored by Westpac New Zealand. 5
- (2) The information may be stored in electronic form.
- (3) Westpac New Zealand must ensure that the information—
- (a) is kept in New Zealand in good condition for at least 7 10 years from the appointed day; and
  - (b) is readily available throughout that period.

**19 Registers and evidence of vesting**

- (1) No Registrar-General of Land, Registrar of Personal Property Securities, or any other person charged with the keeping of any books or registers is obliged solely by reason of this Act to change the name of Westpac Banking Corporation to that of Westpac New Zealand in those books or registers or in any other document. 15
- (2) The presentation to any court, tribunal, registrar, regulatory body, or other person of an instrument is, in the absence of evidence to the contrary, sufficient evidence that the assets or liabilities to which the instrument relates are vested in Westpac New Zealand. 20
- (3) In this section, instrument means an instrument, whether or not comprising an instrument of transfer,— 25
- (a) executed or purporting to be executed by or on behalf of Westpac New Zealand; and
  - (b) relating to any assets or liabilities held by Westpac Banking Corporation immediately before the appointed 30 day; and
  - (c) containing a recital that those assets or liabilities have vested in Westpac New Zealand.

**20 Further provisions as to registers and evidence of vesting**

- (1) **Subsection (2)** applies— 35

- (a) to any security issued by, and any rights or interests in assets of, any person (a **relevant person**) that are held by Westpac Banking Corporation immediately before the appointed day; and
- (b) despite any other enactment or rule of law or the provisions of any instrument. 5
- (2) If Westpac New Zealand or Westpac Banking Corporation presents a relevant person with a certificate signed by or on behalf of Westpac New Zealand stating that a security or a right or interest to which this subsection applies has vested in Westpac New Zealand, that person must register Westpac New Zealand as the holder of that security or as the person entitled to that right or interest. 10
- (3) Neither Westpac Banking Corporation nor Westpac New Zealand is required to give a copy of a verification statement in respect of a financing change statement to any debtor, as required by section 148 of the Personal Property Securities Act 1999, if— 15
- (a) Westpac Banking Corporation or Westpac New Zealand registers that financing change statement under that Act in respect of a security interest held by Westpac Banking Corporation immediately before the appointed day; and 20
- (b) the only change recorded in the financing change statement is the change of secured party.
- (4) In **subsections (1) and (2)**, **security** has the same meaning as in section 2D of the Securities Act 1978. 25
- (5) Unless the context requires otherwise, terms used in **subsection (3)** and defined in the Personal Property Securities Act 1999 have the same meanings as in that Act.
- 21 Purpose of sections 22 and 23** 30
- The purpose of **sections 22 and 23** is to ensure that the vesting of the designated assets and liabilities in Westpac New Zealand under this Act does not give rise to tax consequences under the Inland Revenue Acts for Westpac Banking Corporation or Westpac New Zealand that would not have arisen if they were the same person. 35

**22 Financial arrangements**

- (1) For the purposes of the financial arrangements rules in the Income Tax Act 2007, for each financial arrangement to which Westpac Banking Corporation is a party immediately before the appointed day and which vests in Westpac New Zealand,— 5
- (a) if the financial arrangement is an asset of Westpac Banking Corporation, Westpac New Zealand is to be treated as having paid to Westpac Banking Corporation, as consideration for the financial arrangement, an amount equal to the tax book value of the financial arrangement on the appointed day; and 10
- (b) if the financial arrangement is a liability of Westpac Banking Corporation, Westpac Banking Corporation is to be treated as having paid to Westpac New Zealand, as consideration for the financial arrangement, an amount equal to the tax book value of the financial arrangement on the appointed day; and 15
- (c) Westpac Banking Corporation must, on the appointed day, calculate a base price adjustment under section EW 31 of the Income Tax Act 2007; and 20
- (d) when Westpac New Zealand is required to calculate a base price adjustment under section EW 31 of the Income Tax Act 2007, that base price adjustment must be calculated as if Westpac Banking Corporation and Westpac New Zealand were the same person; and 25
- (e) sections EW 38, EW 42, and GB 21 of the Income Tax Act 2007 do not apply.
- (2) In this section,—
- financial arrangements rules** has the same meaning as in section YA 1 of the Income Tax Act 2007 30
- tax book value** means, in respect of the appointed day and a financial arrangement, the value for tax purposes of that financial arrangement on the appointed day determined consistently with the method used in subpart EW of the Income Tax Act 2007 to calculate and allocate income and expenditure under that financial arrangement as if the day immediately preceding the appointed day were the last day of an income year. 35
- (3) To avoid doubt, **tax book value** includes any interest accrued immediately before the appointed day but, except to the extent

that an amount has been written off in accordance with section DB 31 of the Income Tax Act 2007 or is permitted by section EW 15D(2)(a) of that Act to be allocated to an income year ending before the appointed day (including an income year treated under **subsection (2)** as having ended on a day immediately preceding the appointed day), does not include any adjustment for—

- (a) a decline in the other party's creditworthiness between the date on which the financial arrangement was entered into and the appointed day; or
- (b) an increase in the possibility that the other party will not meet an obligation under the financial arrangement between the date on which the financial arrangement was entered into and the appointed day.

## **23 Application of provisions relating to taxes and duties** 15

(1) For the purposes of the Income Tax Act 2007,—

- (a) the amount of any expenditure in connection with any designated assets and liabilities for which Westpac Banking Corporation has been allowed a deduction and that is unexpired immediately before the appointed day (that amount to be calculated by applying section EA 3(4) to (7) of that Act as if the day immediately before the appointed day (the **preceding day**) were the last day of an income year) is—
  - (i) income of Westpac Banking Corporation under section CH 2 of that Act in the income year in which the preceding day falls; and
  - (ii) an amount for which Westpac New Zealand is allowed a deduction under section DB 50 of that Act in the income year which includes the appointed day; and
- (b) for any income year the last day of which is the preceding day, section EA 3(3) of that Act does not apply to an amount of expenditure to which **paragraph (a)** applies; and
- (c) for any income year the last day of which falls on or after the appointed day, section EA 3 of that Act applies—

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- (i) to Westpac New Zealand as if Westpac New Zealand had been allowed a deduction under that Act for the amount of expenditure to which **paragraph (a)** applies; and
- (ii) to Westpac Banking Corporation as if Westpac Banking Corporation had not been allowed a deduction for that amount. 5
- (2) For the purposes of the Income Tax Act 2007, if Westpac New Zealand incurs an amount of expenditure or loss on or after the appointed day in respect of a designated asset or designated liability, Westpac New Zealand is entitled to a deduction for the amount of that expenditure or loss if Westpac Banking Corporation would have been allowed a deduction for that amount if the designated asset or designated liability had not vested in Westpac New Zealand and Westpac Banking Corporation had incurred the expenditure or loss. 10 15
- (3) For the purposes of the Income Tax Act 2007, if Westpac New Zealand derives an amount on or after the appointed day in respect of a designated asset or designated liability, that amount is income of Westpac New Zealand if it would have been income of Westpac Banking Corporation if the designated asset or designated liability had not vested in Westpac New Zealand and Westpac Banking Corporation had derived the amount. 20
- (4) For the purposes of sections CG 3 and DB 31 of the Income Tax Act 2007, on and from the appointed day Westpac Banking Corporation and Westpac New Zealand must be treated as the same person in respect of any obligation that is owed to Westpac Banking Corporation immediately before the appointed day and that vests in Westpac New Zealand. 25
- (5) The amount of tax payable by Westpac New Zealand under the Goods and Services Tax Act 1985 in respect of, or in relation to, any of the designated assets and liabilities must be determined as if Westpac New Zealand and Westpac Banking Corporation were the same person. 30
- (6) The vesting of the designated assets and liabilities in Westpac New Zealand— 35
- (a) is to be treated as not being a supply for the purposes of the Goods and Services Tax Act 1985; and

- (b) does not give rise to a dutiable gift for the purposes of the Estate and Gift Duties Act 1968; and
- (c) does not give rise to a dividend for the purposes of the Income Tax Act 2007.
- (7) For the purposes of subpart EE of the Income Tax Act 2007, 5  
for any designated asset which is depreciable property,—
- (a) Westpac Banking Corporation is entitled to a deduction for an amount of depreciation loss for the period beginning on the first day of the income year in which the appointed day occurs and ending on the day before the 10  
appointed day; and
- (b) Westpac Banking Corporation does not derive any income or have any deductions under sections EE 44 to EE 49, and EE 51 and EE 52 as a result of the vesting of the designated assets and liabilities in Westpac New 15  
Zealand; and
- (c) on and from the appointed day, Westpac New Zealand must calculate its amount of depreciation loss and depreciation recovery income (if any) for the designated asset as if Westpac New Zealand and Westpac Banking 20  
Corporation were the same person.
- (8) For the purposes of the continuity provisions and of any other provision of the Income Tax Act 2007, the application of which depends on the extent of any person's shareholding or other ownership interest in any company, the question 25  
of whether any change in shareholding or ownership has occurred is to be determined as if the proposal approved in accordance with **section 6(1)** had not been approved and as if the vesting of the designated assets and liabilities had not occurred. 30
- (9) For the purposes of the Income Tax Act 2007, whether or not any designated asset or designated liability is revenue account property of Westpac New Zealand is to be determined as if Westpac Banking Corporation and Westpac New Zealand were the same person. 35
- (10) For the purposes of the Income Tax Act 2007 and the Stamp and Cheque Duties Act 1971, any transaction that has been registered as a registered security by Westpac Banking Corporation, and any class of transactions that has been registered

- as registered securities by Westpac Banking Corporation, is to be treated as having also been registered as a registered security or registered securities by Westpac New Zealand; and Westpac New Zealand is deemed to be an approved issuer in respect of those registered securities. 5
- (11) Westpac Banking Corporation and Westpac New Zealand are deemed to be the same person for the purposes of the making, giving, or receiving of any elections, notices, certificates, and filings required or provided for under the Inland Revenue Acts, except any returns that are required to be filed after the appointed day by either Westpac Banking Corporation or Westpac New Zealand with the Commissioner of Inland Revenue under the Tax Administration Act 1994 or the Goods and Services Tax Act 1985. 10
- (12) In this section, the terms **company**, **continuity provisions**, **depreciable property**, **depreciation loss**, **depreciation recovery income**, **registered security**, and **revenue account property** have the same meanings as in section YA 1 of the Income Tax Act 2007. 15
- 24 Use of information and intellectual property** 20
- (1) Westpac Banking Corporation and Westpac New Zealand may each collect, use, disclose, or send any information if that collection, use, disclosure, or sending would be permitted if Westpac Banking Corporation and Westpac New Zealand were a single legal entity. 25
- (2) Westpac Banking Corporation and Westpac New Zealand may each use or modify any intellectual property if that use or modification would be permitted if Westpac Banking Corporation and Westpac New Zealand were a single legal entity.
- (3) **Subsection (1)** does not apply if the collection, use, disclosure, or sending of the information is only permitted by reason of a consent given after the appointed day. 30
- (4) **Subsections (1) and (2)** apply despite—
- (a) the Privacy Act 1993:
  - (b) any other enactment, equivalent of an enactment in a country other than New Zealand, or rule of law: 35
  - (c) the provisions of any contract.

**25 Effect of this Act**

Nothing effected, authorised, or required by this Act—

- (a) places Westpac Banking Corporation, Westpac New Zealand, or any other person—
  - (i) in breach of, or default under, any contract, or in breach of trust, or in breach of confidence, or in the position of having committed a civil wrong; or 5
  - (ii) in breach of an enactment, equivalent of an enactment in a country other than New Zealand, rule of law, or contractual provision prohibiting, restricting, or regulating the assignment or transfer of an asset or liability; or 10
  - (iii) in breach of the Privacy Act 1993 or any other enactment, equivalent of an enactment in a country other than New Zealand, rule of law, or contractual provision relating to the collection, use, disclosure, or sending of any information; or 15
- (b) releases any surety or other person (other than Westpac Banking Corporation) wholly or in part from all or any of the surety's or other person's liabilities; or 20
- (c) gives rise to a right for any person to—
  - (i) terminate, cancel, suspend, or modify a contract or instrument; or
  - (ii) enforce, accelerate, suspend, or postpone the performance of an obligation or liability; or 25
  - (iii) require the performance of an obligation not otherwise arising for performance; or
- (d) invalidates or discharges any contract or instrument.

**Part 3**

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**Inter-relationship with other Acts****26 Banking legislation continues to apply**

Nothing in this Act exempts Westpac Banking Corporation or Westpac New Zealand from the provisions of any enactment relating to banks or banking.

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**27 Amendments to Westpac New Zealand Act 2006**

- (1) This section amends the Westpac New Zealand Act 2006.
  - (2) Section 19(4) is amended by omitting “DB 23 of the Income Tax Act 2004” and substituting “DB 31 of the Income Tax Act 2007”. 5
  - (3) Section 19(12) is amended by omitting “**adjusted tax value**”.
  - (4) **Subsection (2)** applies with effect from 31 March 2008.
  - (5) **Subsection (3)** applies with effect from 13 September 2006.
  - (6) Except as set out in this section, nothing in this Act affects the Westpac New Zealand Act 2006. 10
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