



Banking Legislation Amendment Act 1992

No. 193 of 1992

An Act to amend certain Acts relating to banking

[Assented to 21 December 1992]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Banking Legislation Amendment Act 1992*.

Commencement

2.(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Subsections 4(2) and 5(1) and sections 16, 17 and 35 commence on a day to be fixed by Proclamation, being a day not earlier than the day on which the State Act commences.

(3) If the provisions referred to in subsection (2) do not commence under that subsection within the period of 6 months beginning on the day on which the State Act commences, they commence on the first day after the end of that period.

(4) Subsections 4(3) and 5(2) commence on a day to be fixed by Proclamation.

(5) Part 3 commences on a day to be fixed by Proclamation.

(6) In this section:

“**State Act**” means an Act of New South Wales that refers to the Parliament the matter of State banking in so far as it applies to State Bank of New South Wales Limited.

PART 2—AMENDMENTS OF THE BANKING ACT 1959

Principal Act

3. In this Part, “**Principal Act**” means the *Banking Act 1959*¹.

Interpretation

4.(1) Section 5 of the Principal Act is amended:

- (a) by omitting from the definition of “bank” in subsection (1) “, the Commonwealth Development Bank and the Australian Resources Development Bank Limited” and substituting “and the Commonwealth Development Bank”;
- (b) by omitting from subsection (1) the definition of “Australian Resources Development Bank Limited”;
- (c) by inserting in subsection (1) the following definition:
 - “**foreign bank**’ means a body corporate that:
 - (a) is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution; and
 - (b) is authorised to carry on banking business in a foreign country; and
 - (c) has been granted an authority under section 9 to carry on banking business in Australia;”.

(2) Section 5 of the Principal Act is amended:

- (a) by inserting in the definition of “bank” in subsection (1) “State Bank Limited,” after “includes”;
- (b) by inserting in subsection (1) the following definition:
 - “**State Bank Limited**’ means State Bank of New South Wales Limited, being the body of that name constituted as a bank under the State Bank (Corporatisation) Act 1989 (NSW);”.

(3) Section 5 of the Principal Act is amended by omitting from the definition of “bank” in subsection (1) “State Bank Limited,”.

Application of Act

5.(1) Section 6 of the Principal Act is amended:

- (a) by omitting “Nothing” from subsection (1) “ and substituting “Subject to subsection (1A), nothing”;
- (b) by inserting after subsection (1) the following subsection:

Banking Legislation Amendment No. 193, 1992

“(1A) Part II (other than Division 1), Part V and sections 61, 62, 64, 65, 68 and 69 apply to State Bank Limited.

Note: The matter of State banking in so far as it applies to State Bank Limited has been referred to the Parliament of the Commonwealth by the Parliament of New South Wales.”

- (2) Section 6 of the Principal Act is amended:
- (a) by omitting from subsection (1A) “Part II (other than Division 1), Part” and substituting “Parts II and”;
 - (b) by inserting in subsection (1A) “, 63” after “62”.

Authority to carry on banking business

6. Section 9 of the Principal Act is amended:
- (a) by omitting from subsection (7) “the addition of the name of the body corporate” and substituting “inserting the name of the body corporate in the appropriate alphabetical position, determined on a letter-by-letter basis, in Part 1 or Part 2 of that Schedule (as the case requires)”;
 - (b) by inserting after subsection (8A) the following subsection:

“(8B) The Governor-General may, on the recommendation of the Treasurer, revoke the authority granted to a foreign bank if:

 - (a) the bank does not comply with:
 - (i) a condition imposed on the authority; or
 - (ii) a requirement of this Act or the regulations; or
 - (b) the Governor-General is satisfied that it would be contrary to the national interest for the bank to continue carrying on banking business in Australia.”;
 - (c) by omitting “so” from subsection (9);
 - (d) by adding at the end the following subsection:

“(11) The Treasurer may, from time to time, publish a list of banks:

 - (a) in the *Gazette*; or
 - (b) in such other manner as the Treasurer determines.”.

Repeal of section 9A

7. Section 9A of the Principal Act is repealed.

Treasurer to be supplied with certain documents

8. Section 10 of the Principal Act is amended by omitting subsection (4).

9. After Division 1A of Part II of the Principal Act the following Division is inserted:

“Division 1B—Provisions relating to certain foreign banks

Interpretation

“11D. In this Division:

‘foreign bank’ does not include:

- (a) the Bank of China; or
- (b) the Bank of New Zealand.

Division 2 not applicable to foreign banks

“11E.(1) Division 2 does not apply to a foreign bank.

“(2) Before accepting a deposit from a person in Australia, a foreign bank must inform the person, in a manner approved by the Governor of the Reserve Bank, of the requirements of this Act to which the bank is not subject because of subsection (1).

Assets of foreign banks

“11F. If a foreign bank (whether in or outside Australia) suspends payment or becomes unable to meet its obligations, the assets of the bank in Australia are to be available to meet the bank’s liabilities in Australia in priority to all other liabilities of the bank.”.

Repeal of section 63A

10. Section 63A of the Principal Act is repealed.

Unclaimed moneys

11. Section 69 of the Principal Act is amended:

- (a) by adding at the end of each of paragraphs (4)(a) and (b) “and”;
- (b) by omitting from paragraph (4)(c) “and”;
- (c) by omitting paragraph (4)(d);
- (d) by omitting from paragraph (9)(b) “as is prescribed” and substituting “as the Treasurer determines”.

Offences

12. Section 69A of the Principal Act is amended:

- (a) by omitting from subsection (4) “in” and substituting “is”;
- (b) by inserting immediately after the entries relating to item 5 in the table at the end of the section:
 - (i) in the column headed “Item”—“5A”;
 - (ii) in the column headed “Column 2”—“subsection 11E(2)”;
 - (iii) in the column headed “Column 3”—“B”.

13. After section 69C of the Principal Act the following section is inserted:

Disclosure of information

“69D.(1) This section applies to any fact or document that relates to:

- (a) a bank; or
- (b) a body corporate applying for an authority to carry on banking business.

“(2) It is the duty of an officer not to disclose any fact or document to which this section applies and that has come to his or her knowledge, or into his or her possession, because he or she is an officer unless it is necessary for the officer to publish or communicate that fact or document in performing a function or duty, or exercising a power, under this Act.

“(3) An officer is not required:

- (a) to produce in a court a document to which this section applies; or
- (b) to communicate to a court any fact to which this section applies;

unless the court decides that it is necessary to do so for the purposes of this Act or the regulations.

“(4) In this section:

‘court’ includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

‘officer’ means:

- (a) the Governor or a Deputy Governor of the Reserve Bank, the Secretary to the Department of the Treasury or any other member of the Reserve Bank Board; or
- (b) an officer, or a temporary or casual employee, of the Reserve Bank; or
- (c) an officer or employee within the meaning of the *Public Service Act 1922*;

‘produce’ includes permit access to.”.

First Schedule

14. The First Schedule to the Principal Act is repealed and the Schedule set out in the Schedule to this Act is substituted.

Australian Resources Development Bank Limited—deposit liabilities

15. All deposit liabilities of the Australian Resources Development Bank Limited existing immediately before the commencement of this section become, when this section commences, deposit liabilities of National Australia Bank Limited.

Certain assets of State Bank Limited not available to meet deposit liabilities

16.(1) In spite of subsections 6(1A) and 16(1) of the Principal Act as amended by this Act, so much of the assets of State Bank Limited in Australia as is required to meet the liabilities of that bank under the State Bank debentures is not available to meet that bank's deposit liabilities in Australia.

(2) In this section:

“State Bank debentures” means the debentures that:

- (a) were issued by the State Bank of New South Wales (being the bank that was constituted under the State Bank Act 1981 (NSW)) under section 22 of that Act; and
- (b) mature on 13 March 1993;

“State Bank Limited” means State Bank of New South Wales Limited, being the body of that name constituted as a bank under the State Bank (Corporatisation) Act 1989 (NSW).

Transitional—non-callable deposit ratio applicable to State Bank Limited

17.(1) The Reserve Bank may, by notice in the *Gazette*, determine that the non-callable deposit ratio applicable to State Bank Limited in respect of a period beginning on the commencement of this section and ending at the end of 18 December 1994 is, in spite of section 20 of the Principal Act, such percentage as is specified in the determination.

(2) A determination under subsection (1) has effect as if it were a determination under section 20 of the Principal Act.

(3) The Reserve Bank may not give a notice under this section without the approval of the Treasurer.

(4) In this section:

“State Bank Limited” means State Bank of New South Wales Limited, being the body of that name constituted as a bank under the State Bank (Corporatisation) Act 1989 (NSW).

Unclaimed moneys standing to the credit of the Trust Fund

18.(1) In spite of subsection 20(2) of the *Banking Legislation Amendment Act 1989*, any amount of unclaimed moneys:

- (a) paid to the Commonwealth, and credited to the Trust Fund, before 7 November 1989, under section 69 of the Principal Act; and
- (b) standing to the credit of the Trust Fund immediately before the commencement of this section;

is to be paid into the Consolidated Revenue Fund.

(2) In subsection (1):

“Trust Fund” means the Trust Fund kept under section 60 of the *Audit Act 1901*;

“unclaimed moneys” has the same meaning as in section 69 of the Principal Act.

PART 3—AMENDMENT OF THE COMMONWEALTH BANKS ACT 1959

Principal Act

19. In this Part, **“Principal Act”** means the *Commonwealth Banks Act 1959*².

20. Section 32 of the Principal Act is repealed and the following section is substituted:

Declaration of dividends

“32.(1) Before declaring a dividend to be paid to shareholders in the Commonwealth Bank, the Board must notify the Treasurer, in writing, of the proposed amount of the dividend.

“(2) The Treasurer must, not later than 14 days after being notified of the proposed amount of the dividend:

- (a) accept the proposed amount of the dividend; or
- (b) vary the proposed amount of the dividend by specifying an amount of dividend that does not exceed 45% of the consolidated profit (excluding abnormal items of a capital nature and extraordinary items and after income tax expense), according to the relevant accounts, of the Commonwealth Bank and all its subsidiaries.

“(3) Before making a decision under paragraph (2)(b), the Treasurer must:

- (a) try to reach agreement with the Board; and
- (b) take into consideration the reasons for the Board’s proposed amount of dividend.

“(4) If the Treasurer varies the proposed amount of dividend, the Board must declare a dividend of the same amount as the amount specified by the Treasurer.”.

Use of certain names

21. Section 128 of the Principal Act is amended by adding at the end of the definition of “protected name” in subsection (6) the following paragraphs:

- “; (f) Commonwealth Savings Bank of Australia;
- (g) Commonwealth Savings Bank;
- (h) CSB”.

PART 4—AMENDMENTS OF THE RESERVE BANK ACT 1959

Principal Act

22. In this Part, “Principal Act” means the *Reserve Bank Act 1959*³.

Interpretation

23. Section 5 of the Principal Act is amended:

- (a) by omitting from subsection (1) the definition of “the Deputy Governor”;
- (b) by inserting in subsection (1) the following definition:
“ ‘Deputy Governor’ means a Deputy Governor of the Bank;”.

Management of the Bank

24. Section 12 of the Principal Act is amended:

- (a) by omitting from subsection (1) “a Deputy Governor” and substituting “2 Deputy Governors”;
- (b) by omitting from subsection (3) “The Deputy Governor” and substituting “A Deputy Governor”;
- (c) by inserting in subsection (3) “designated by the Treasurer” after “Deputy Governor” (second occurring).

Membership of Board

25. Section 14 of the Principal Act is amended by omitting from paragraph (1)(b) “Governor” and substituting “Governors”.

Remuneration of members

26. Section 15 of the Principal Act is amended by omitting from subsection (4) “the Deputy Governor” and substituting “a Deputy Governor”.

Chairperson and Deputy Chairperson

27. Section 20 of the Principal Act is amended by inserting in subsection (1) “designated by the Governor” after “Deputy Governor”.

Exclusion of Governor and Deputy Governor from certain deliberations

28. Section 21A of the Principal Act is amended:

- (a) by omitting from subsection (1) “the Deputy Governor” (first occurring) and substituting “the Deputy Governors”;
- (b) by omitting from subsection (1) “the Deputy Governor” (last occurring) and substituting “a Deputy Governor”;
- (c) by omitting from subsection (2) “Deputy Governor” and substituting “Deputy Governors”.

Governor and Deputy Governor

29. Section 24 of the Principal Act is amended by omitting “Deputy Governor” and substituting “Deputy Governors”.

Terms and conditions of employment not provided for by Act

30. Section 24A of the Principal Act is amended by omitting “Deputy Governor” and substituting “Deputy Governors”.

Vacation of Office

31. Section 25 of the Principal Act is amended by omitting “the Deputy Governor” and substituting “a Deputy Governor”.

Signature on notes

32. Section 37 of the Principal Act is amended by omitting from subsection (1) “or an officer of the bank” and substituting “, or an officer of the bank,”.

Audit

33. Section 80 of the Principal Act is amended by omitting from subsection (6) “the Deputy Governor” and substituting “a Deputy Governor”.

Information relating to remuneration of Governor and Deputy Governors

34. Section 81A of the Principal Act is amended by omitting from paragraph (2)(b) “Deputy Governor” and substituting “Deputy Governors”.

Certain liabilities of State Bank Limited to be paid in priority to debts due to Reserve Bank

35.(1) In spite of section 86 of the Principal Act, in the event of a winding-up of State Bank Limited while it is a bank specified in the First Schedule to the *Banking Act 1959*, the liabilities of State Bank Limited under the State Bank debentures are to be paid in priority to any debt due to the Reserve Bank by State Bank Limited.

(2) In subsection (1):

“**State Bank debentures**” means the debentures that:

- (a) were issued by the State Bank of New South Wales (being the bank that was constituted under the State Bank Act 1981 (NSW)) under section 22 of that Act; and
- (b) mature on 13 March 1993;

“**State Bank Limited**” means State Bank of New South Wales Limited, being the body of that name constituted as a bank under the State Bank (Corporatisation) Act 1989 (NSW).

SCHEDULE

Section 14

**SCHEDULE TO BE SUBSTITUTED FOR FIRST SCHEDULE TO
THE BANKING ACT 1959**

FIRST SCHEDULE

Section 9

**BODIES CORPORATE GRANTED AN AUTHORITY UNDER
SECTION 9**

PART 1

BANKS SUBJECT TO DIVISION 2 OF PART II OF THIS ACT

Advance Bank Australia Limited
Australia and New Zealand Banking Group Limited
Bankers Trust Australia Limited
Bank of America Australia Limited
Bank of China
Bank of Melbourne Limited
Bank of New Zealand
Bank of New Zealand Savings Bank Limited
Bank of Queensland Limited
Bank of Queensland Savings Bank Limited
Bank of Singapore (Australia) Limited
Bank of Tokyo Australia Limited
Barclays Bank Australia Limited
Challenge Bank Limited
Chase Manhattan Bank Australia Limited
Citibank Limited
Citibank Savings Limited
Deutsche Bank Australia Limited
HongkongBank of Australia Limited
IBJ Australia Bank Limited
Lloyds Bank NZA Limited
Macquarie Bank Limited
Metway Bank Limited
Mitsubishi Bank of Australia Limited
National Australia Bank Limited
NatWest Australia Bank Limited
Primary Industry Bank of Australia Limited
Standard Chartered Bank Australia Limited
St George Bank Limited

SCHEDULE—continued

Town & Country Bank Limited
Trust Bank
Westpac Banking Corporation
Westpac Savings Bank Limited

PART 2

**FOREIGN BANKS NOT SUBJECT TO DIVISION 2 OF PART II
OF THIS ACT**

Banque Nationale de Paris

NOTES

1. No. 6, 1959 as amended. For previous amendments, see No. 127, 1965; No. 93, 1966; No. 84, 1967; Nos. 116, 193 and 216, 1973; No. 132, 1974; No. 156, 1977; No. 78, 1978; No. 19, 1979; No. 80, 1982; No. 76, 1984; No. 166, 1986; No. 105, 1987; No. 129, 1989; No. 118, 1990; and No. 210, 1991.
2. No. 5, 1959 as amended. For previous amendments, see No. 75, 1961; No. 3, 1962; No. 57, 1963; No. 132, 1965; Nos. 58 and 93, 1966; No. 144, 1968; Nos. 117 and 216, 1973; No. 81, 1974; No. 37, 1976; Nos. 36 and 77, 1978; No. 177, 1980; No. 29, 1981; No. 92, 1983; Nos. 63 and 76, 1984; No. 194, 1985; No. 182, 1987; No. 123, 1988; No. 129, 1989; No. 118, 1990; and No. 210, 1991.
3. No. 4, 1959, as amended. For previous amendments, see No. 96, 1965; No. 93, 1966; Nos. 118, and 216, 1973; No. 36, 1978; No. 155, 1979; No. 70, 1980; No. 122, 1981; Nos. 63 and 76, 1984; No. 65, 1985; No. 166, 1986; No. 23, 1988; No. 129, 1989 and No. 118, 1990.

*[Minister's second reading speech made in—
House of Representatives on 15 October 1992
Senate on 4 November 1992]*