

# BANKING ACT 1974

## No. 132 of 1974

An Act to amend the *Banking Act* 1959-1973, and for purposes connected therewith.

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

Short title  
and citation.

1. (1) This Act may be cited as the *Banking Act* 1974.<sup>1</sup>

(2) The *Banking Act* 1959-1973<sup>2</sup> is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the *Banking Act* 1959-1974.

Commence-  
ment.

2. This Act shall come into operation on a date to be fixed by Proclamation.

3. Part III of the Principal Act is repealed and the following Part substituted:—

“PART III—FOREIGN EXCHANGE, FOREIGN INVESTMENT,  
ETC.

Power to  
make  
regulations.

“39. (1) Where the Governor-General considers it expedient to do so for purposes related to—

- (a) foreign exchange or the foreign exchange resources of Australia;
- (b) the protection of the currency or the protection of the public credit or revenue of Australia; or
- (c) foreign investment in Australia, Australian investment outside Australia, foreign ownership or control of property in Australia or of Australian property outside Australia or Australian ownership or control of property outside Australia or of foreign property in Australia,

he may make regulations, not inconsistent with this Act, in accordance with this section.

“(2) The regulations authorized to be made by this section are regulations (being regulations with respect to matters with respect to which the Parliament has power to make laws) making provision for or in relation to—

- (a) rates of exchange;

- (b) the control or prohibition of the buying, borrowing, selling, lending or exchanging in Australia of, or other dealing in Australia with, foreign currency by or on behalf of any person, and of the buying, borrowing, selling, lending or exchanging outside Australia of, or other dealing outside Australia with, foreign currency by or on behalf of a person who is a resident;
- (c) the control or prohibition of any transaction that has the effect of or involves a purchase, borrowing, sale, loan or exchange of, or that otherwise relates to, foreign currency, being a transaction that takes place in whole or in part in Australia or to which a person who is a resident is a party;
- (d) the control or prohibition of the buying, borrowing, selling, lending or exchanging outside Australia of, or other dealing outside Australia with, Australian currency by or on behalf of any person, and of the buying, borrowing, selling, lending or exchanging in Australia, or other dealing in Australia with, Australian currency by or on behalf of a person who is not a resident;
- (e) the control or prohibition of any transaction that has the effect of or involves a purchase, borrowing, sale, loan or exchange of, or that otherwise relates to, Australian currency, being a transaction that takes place in whole or in part outside Australia or to which a person who is not a resident is a party;
- (f) the control or prohibition of the taking or sending out of Australia, and of the bringing or sending into Australia, of Australian currency or foreign currency;
- (g) requiring any person who is a resident and who has power to sell, or to procure the sale of, any foreign currency, or any person (whether a resident or not) who has power to sell in Australia, or to procure the sale in Australia of, any foreign currency, to sell, or to procure the sale of, that currency as prescribed;
- (h) requiring any person who is not a resident and who has power to sell, or to procure the sale of, any Australian currency, or any person (whether a resident or not) who has power to sell outside Australia, or to procure the sale outside Australia of, any Australian currency, to sell, or to procure the sale of, that currency as prescribed;
- (i) the control or prohibition of the taking, sending or transfer of any securities to a place outside Australia (including the transfer of securities from a register in Australia to a register outside Australia), and of the bringing, sending or transfer of any securities to Australia from a place outside Australia (including the transfer of securities from a register outside Australia to a register in Australia);
- (j) the control or prohibition of the buying, borrowing, selling, lending or exchanging of, or other dealing with, property that is

- in Australia, or of Australian securities that are outside Australia, by or on behalf of a person who is not a resident;
- (k) the control or prohibition of any transaction that has the effect of or involves a purchase, borrowing, sale, loan or exchange of, or that otherwise relates to, property that is in Australia, or of Australian securities that are outside Australia, being a transaction to which a person who is not a resident is a party;
  - (l) the control or prohibition of the buying, borrowing, selling, lending or exchanging of, or other dealing with, property that is outside Australia, or of foreign securities that are in Australia, by or on behalf of a person who is a resident;
  - (m) the control or prohibition of any transaction that has the effect of or involves a purchase, borrowing, sale, loan or exchange of, or that otherwise relates to, property that is outside Australia, or of foreign securities that are in Australia, being a transaction to which a person who is a resident is a party;
  - (n) requiring any person who is a resident and by whom moneys are payable to a person who is not a resident to pay those moneys within such time as is fixed by or under the regulations;
  - (o) the control or prohibition of the importation or exportation of goods;
  - (p) the obtaining by the Reserve Bank (or by a person authorized by the Bank for the purpose) of information, and the examination by the Bank (or by a person authorized by the Bank for the purpose) of accounts, books, documents or other papers, for purposes related to the exercise of the Bank's powers or the performance of the Bank's functions under the regulations;
  - (q) prescribing penalties not exceeding a fine of \$100,000, or imprisonment for a period not exceeding 5 years, for offences against regulations made under this section; and
  - (r) empowering a court to order the forfeiture, or the disposal in accordance with the directions of the Reserve Bank, of Australian currency, foreign currency, goods or other property in respect of which an offence against the regulations made under this section has been committed.

“(3) Without limiting the generality of the power of the Governor-General to make regulations under this section, the regulations may—

- (a) for any purpose of the regulations, prohibit the doing of any act or thing (including the importation or exportation of goods) specified in the regulations either absolutely or subject to conditions, being conditions which may prohibit the doing of the act or thing without the authority of the Reserve Bank or except in pursuance of a licence granted under the regulations;
- (b) make provision for or in relation to terms and conditions subject to which such authorities or licences shall or may be granted,

being terms and conditions which may require the deposit of money with the Reserve Bank; and

- (c) make provision for or in relation to the granting of exemptions, either unconditionally or subject to conditions determined by the Reserve Bank, from the application of any provision of the regulations.

“(4) Regulations under this section may provide—

- (a) that the regulations, or a particular provision of the regulations specified in the regulations, shall apply, without modification or with such modifications as are prescribed, to and in relation to a resident included in a prescribed class of persons as if the person were not a resident; and
- (b) that the regulations, or a particular provision of the regulations specified in the regulations, shall apply, without modification or with such modifications as are prescribed, to and in relation to a person who is not a resident but is included in a prescribed class of persons, as if the person were a resident.

“(5) Regulations under this section may provide—

- (a) that, where a body corporate that is not a resident has a place of business in Australia, the body corporate shall be deemed, for the purposes of the regulations or a particular provision of the regulations specified in the regulations, to be a resident in relation to the affairs of the body corporate conducted by the body corporate at or through that place of business, including any business carried on, transactions entered into and acts and things done by the body corporate at or through that place of business; and
- (b) that, where a body corporate that is a resident has a place of business outside Australia, the body corporate shall be deemed, for the purposes of the regulations or a particular provision of the regulations specified in the regulations, not to be a resident in relation to the affairs of the body corporate conducted by the body corporate at or through that place of business, including any business carried on, transactions entered into and acts and things done by the body corporate at or through that place of business.

“(6) Regulations under this section may provide that no act or thing done, or contract or other transaction entered into, is invalid or unenforceable by reason only that the provisions of the regulations have not, or a particular provision of the regulations specified in the regulations has not, been complied with, but regulations so made shall not be construed as having the effect of preventing a person from being convicted of an offence against the regulations by reason of his having failed to comply with a provision of the regulations.

“(7) Regulations under this section may provide that, in the exercise of its powers or the performance of its functions under the regulations, or under a particular provision of the regulations specified in the regulations, the Reserve Bank is subject to the directions of the Treasurer.

“(8) In this section—

‘Australian currency’ includes notes, coins, postal notes, money orders, bills of exchange, promissory notes, drafts, letters of credit and travellers’ cheques payable or expressed in Australian money, and also includes rights, and instruments of title, to Australian money;

‘Australian securities’ means securities or other property included in a class of securities or property specified in the regulations as Australian securities;

‘foreign currency’ includes notes, coins, postal notes, money orders, bills of exchange, promissory notes, drafts, letters of credit and travellers’ cheques payable or expressed otherwise than in Australian money, and also includes rights, and instruments of title, to money other than Australian money;

‘foreign securities’ means securities or other property included in a class of securities or property specified in the regulations as foreign securities;

‘property’ includes securities and rights under securities;

‘resident’ means—

(a) a person, not being a body corporate, who is ordinarily resident in Australia; and

(b) a body corporate which is incorporated in Australia;

‘securities’ include shares, stock, bonds, debentures, debenture stock, treasury bills and notes, and units or sub-units of a unit trust, and also includes deposit receipts in respect of the deposit of securities and documents of title to securities.

“(9) Nothing in Part IV shall be taken as limiting the power of the Governor-General to make regulations under this section for or in relation to the control or prohibition of the importation or exportation of gold, or otherwise with respect to gold.

“(10) A reference in this section to property that is in Australia shall be read as including a reference to a right, not being property, that is exercisable in Australia, and a reference in this section to property that is outside Australia shall be read as including a reference to a right, not being property, that is not exercisable in Australia.

“(11) Nothing in sub-section (1) shall be taken to affect, by implication or otherwise, the interpretation or operation of regulations made under this section.

“39A. (1) Regulations made under section 39 shall, except where the contrary intention appears, apply both within and without Australia.

Extra-territorial application of regulations.

“(2) A provision of the *Judiciary Act* 1903-1973 by which a court of a State is invested with jurisdiction with respect to offences against the laws of Australia has effect, in relation to offences against the regulations made under section 39 of this Act not committed within any State, as if that jurisdiction were so invested without limitation as to locality.

“(3) Subject to the Constitution, jurisdiction is conferred on the several courts of a Territory, within the limits of their several jurisdictions other than limits as to locality, with respect to offences against the regulations made under section 39 not committed within a State or within another Territory.

“(4) The trial on indictment of an offence against the regulations made under section 39 not committed within a State may be held by a court of competent jurisdiction at any place where the court may sit.

“39B. (1) Where regulations made under section 39 contain a provision prohibiting the doing of an act or thing without the authority of the Reserve Bank and an application is made to the Bank for the authority of the Bank to do that act or thing, then—

Granting of authorities by Reserve Bank subject to taxation clearance.

(a) if the act or thing is of a kind specified in a notice in force under sub-section (2) of this section—the Bank shall not grant that authority unless there is produced to the Bank, in respect of that act or thing, a tax clearance certificate issued under section 14C of the *Taxation Administration Act* 1953-1974 in respect of that act or thing; or

(b) in any other case—the Bank may refuse to grant that authority unless there is produced to the Bank such a certificate,

but the foregoing shall not be taken as limiting the discretion of the Bank to refuse to grant any such authority on any other ground.

“(2) The Treasurer may, by notice in writing published in the *Gazette*, direct that acts or things of a kind specified in the notice are, on and after the date of publication of the notice or such later date as is specified in the notice, acts or things of a kind to which this section applies.”.

4. (1) Notwithstanding the repeal of Part III of the Principal Act effected by section 3 of this Act—

Saving of Banking (Foreign Exchange) Regulations.

(a) the Banking (Foreign Exchange) Regulations as in force, or purporting to be in force, immediately before the commencement of this Act shall, after the commencement of this Act, continue in force, and be as valid and effectual, as if they had been made under section 39 of the Principal Act as amended by this Act, and may be amended or repealed by regulations under that section; and

- (b) any instrument in force, or purporting to be in force, under or by virtue of those regulations immediately before the commencement of this Act shall, after the commencement of this Act, continue in force, and may be revoked or varied under those regulations as continued in force.

(2) For the purposes of Part III and of section 70 of the Principal Act as amended by this Act and of Part IV of the *Taxation Administration Act 1953-1974*, the regulations continued in force by sub-section (1) of this section shall be deemed to be regulations made under section 39 of the Principal Act as so amended.

Validation  
and  
transitional  
provisions.

5. (1) No act or thing done, and no contract or other transaction entered into, before the commencement of this Act, shall be deemed to be, or ever to have been, invalid or unenforceable by reason only that a provision of the Banking (Foreign Exchange) Regulations has not been complied with, but the foregoing—

- (a) does not apply to any act, thing, contract or other transaction the validity of which, has, before 3 December 1974, been called in question, for that reason, in any proceedings, whether or not the proceedings have been completed before that date, except proceedings in which the court holds that it is just and equitable that the act, thing, contract or other transaction should be treated as being valid; and
- (b) shall not be construed as having the effect of preventing a person from being convicted of an offence against the Banking (Foreign Exchange) Regulations by reason of his having failed to comply with a provision of those regulations.

(2) Notwithstanding the repeal of Part III of the Principal Act effected by section 3 of this Act, where, before the commencement of this Act, application had been made to the Reserve Bank for the granting by the Bank of the authority of the Bank to the doing of an act or thing prohibited by the Banking (Foreign Exchange) Regulations except with the authority of the Bank and the Bank had not granted or refused the application, sub-sections (3) and (4) of section 39 of the Principal Act continue to apply to and in relation to the granting by the Bank of that authority.

(3) In this section, the Banking (Foreign Exchange) Regulations means the regulations continued in force by virtue of section 29 of the *Banking (Transitional Provisions) Act 1959*, being those regulations as amended and in force from time to time before the commencement of this Act.

6. At any time after this Act receives the Royal Assent, and before the date fixed under section 2 of this Act, regulations may be made under the Principal Act as amended by this Act as if this Act had come into operation on the date on which it receives the Royal Assent, but regulations so made shall not come into operation before the date fixed under that section.

Making of regulations before proclaimed date.

---

#### NOTES

1. Act No. 132, 1974; assented to 9 December 1974.
2. Act No. 6, 1959, as amended by No. 127, 1965; No. 93, 1966; No. 84, 1967; Nos. 116 and 193, 1973; and No. 216, 1973 (as amended by No. 20, 1974).