



Commonwealth Banks Restructuring Act 1990

Act No. 118 of 1990 as amended

This compilation was prepared on 27 September 2011
taking into account amendments up to Act No. 100 of 2011

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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An Act to give effect to an agreement between Victoria and the Commonwealth Bank relating to the succession of the Commonwealth Bank to the State Bank of Victoria, and for other purposes

Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Commonwealth Banks Restructuring Act 1990*.

2 Commencement [see Note 1]

- (1) Sections 1, 2, 3, 4, 5 and 6 commence on the day on which this Act receives the Royal Assent.
- (2) The amendments made by paragraphs 48(b) and (c) come into operation at the time when the first guidelines under section 6 of the *Superannuation Benefits (Supervisory Mechanisms) Act 1990* come into force in relation to the fund referred to in section 110 of the amended Act.
- (3) Each of the remaining provisions of this Act commences on a day, or at a time, fixed by Proclamation in relation to the provision concerned.
- (4) The *Acts Interpretation Act 1901* applies in relation to this Act as if references in that Act to the date of commencement of a provision of an Act included references to the time of commencement.

3 Interpretation

In this Act:

amended Act means the *Commonwealth Banks Act 1959*, as amended by this Act.

Commonwealth Bank means the Commonwealth Bank of Australia.

Section 4

Development Bank means the Commonwealth Development Bank of Australia.

4 Extension to external Territories

This Act extends to all external Territories.

5 Crown to be bound

This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

Part 2—Amendments of the Commonwealth Banks Act 1959

Sections 6–61

Note:

The amendments made by this Part are incorporated in the compilation on ComLaw.

Commonwealth Banks Act 1959

For access to the wording of the amendments made by this Part *see* Act No. 118, 1990.

Part 3—Consequential amendment of other Acts

62 Amendment of other Acts

The Acts specified in the Schedule are amended as set out in the Schedule.

Part 4—Transfer of staff of the Commonwealth Banking Corporation to the Commonwealth Bank

63 Interpretation

In this Part:

staff transfer time means the commencement of this Part.

64 Transfer of staff

- (1) A person who, immediately before the staff transfer time, was an officer of the Commonwealth Banking Corporation Service is to be regarded as:
 - (a) having been appointed by the Commonwealth Bank under section 88 of the amended Act, with effect from the staff transfer time; and
 - (b) having been so appointed on the same terms and conditions as those that applied to the person, immediately before the staff transfer time, as an officer of the Commonwealth Banking Corporation Service; and
 - (c) having accrued an entitlement to benefits, in connection with that appointment as an officer of the Commonwealth Bank, that is equivalent to the entitlement that the person had accrued, as an officer of the Commonwealth Banking Corporation Service, immediately before the staff transfer time.
- (2) Where, because of subsection (1), a person is regarded as having been appointed as an officer of the Commonwealth Bank with effect from the staff transfer time, that service as an officer of the Commonwealth Bank is to be regarded for all purposes as having been continuous with the service of the person, immediately before the staff transfer time, as an officer of the Commonwealth Banking Corporation Service.

Part 5—Commonwealth Bank to become successor in law of the State Bank of Victoria

65 Interpretation

In this Part:

authorised person means:

- (a) the Treasurer; or
- (b) a person authorised by the Treasurer, in writing, for the purposes of this Part.

instrument includes a document and an oral agreement.

liabilities means all liabilities, duties and obligations, whether actual, contingent or prospective.

property means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description.

rights means all rights, powers, privileges and immunities, whether actual, contingent or prospective.

State Bank means the State Bank of Victoria.

State Bank instrument means an instrument (including a legislative instrument other than this Act) subsisting immediately before the succession day:

- (a) to which the State Bank was a party; or
- (b) that was given to or in favour of the State Bank; or
- (c) that refers to the State Bank; or
- (d) under which:
 - (i) money is, or may become, payable to or by the State Bank; or
 - (ii) other property is to be, or may become liable to be, transferred to or by the State Bank.

succession day means the day on which this Part comes into operation.

transferred employee means a person who, under section 72, is regarded as having been appointed by the Commonwealth Bank.

66 Extra-territorial operation of Part

It is the intention of the Parliament that the operation of this Part should, as far as possible, include operation in relation to the following:

- (a) land situated outside Australia;
- (b) things situated outside Australia;
- (c) acts, transactions and matters done, entered into or occurring outside Australia;
- (d) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of a foreign country.

67 Commonwealth Bank to become successor in law of the State Bank

On the succession day:

- (a) all property and rights of the State Bank, wherever located, vest in the Commonwealth Bank; and
- (b) all liabilities of the State Bank, wherever located, become liabilities of the Commonwealth Bank; and
- (c) the Commonwealth Bank becomes the successor in law of the State Bank.

68 State Bank instruments

Each State Bank instrument continues to have effect according to its tenor on and after the succession day as if a reference in the instrument to the State Bank were a reference to the Commonwealth Bank.

69 Places of business

On and after the succession day, a place, wherever located, that, immediately before that day, was a place of business of the State Bank is to be taken to be a place of business of the Commonwealth Bank.

70 Pending proceedings

Where, immediately before the succession day, proceedings (including arbitration proceedings) to which the State Bank was a party were pending or existing in any court or tribunal, then, on and after the succession day, the Commonwealth Bank is substituted for the State Bank as a party to the proceedings and has the same rights in the proceedings as the State Bank had.

71 Registration of interests in land

Where:

- (a) under this Part, land that is situated in a State or Territory, or an interest in such land, becomes land, or an interest in land, of the Commonwealth Bank; and
- (b) there is lodged with the Registrar of Titles or other proper officer of the State or Territory in which the land is situated a certificate that:
 - (i) is signed by an authorised person; and
 - (ii) identifies the land or interest, whether by reference to a map or otherwise; and
 - (iii) states that the land or interest has, under this section, become land, or an interest in land, of the Commonwealth Bank;

the officer with whom the certificate is lodged may:

- (c) register the matter in like manner to the manner in which dealings in land or interests in land of that kind are registered; and
- (d) deal with, and give effect to, the certificate.

72 Transfer of State Bank staff to Commonwealth Bank

- (1) A person who was an employee of the State Bank immediately before the succession day is to be regarded as:
 - (a) having been appointed by the Commonwealth Bank under section 88 of the amended Act, with effect from the succession day; and
 - (b) having been so appointed on the same terms and conditions as those that applied to the person, immediately before the succession day, as an employee of the State Bank; and

- (c) having accrued an entitlement to benefits, in connection with that appointment by the Commonwealth Bank, that is equivalent to the entitlement that the person had accrued, as an employee of the State Bank, immediately before the succession day.
- (2) The service of a transferred employee as an officer of the Commonwealth Bank is to be regarded for all purposes as having been continuous with the service of the employee, immediately before the succession day, as an employee of the State Bank.
- (3) A transferred employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of the State Bank because of this Act.
- (4) A director, secretary or auditor of the State Bank does not, because of the operation of this Act, become a director, secretary or auditor of the Commonwealth Bank.
- (5) In this section:

employee means a person appointed or employed by the State Bank.

73 Application of Income Tax Assessment Act

- (1) If, before the succession day, section 128F of the *Income Tax Assessment Act 1936* applied to interest paid by the State Bank in respect of debentures issued by the State Bank, that section applies on and after the succession day to interest paid by the Commonwealth Bank in respect of those debentures.
- (2) For the purposes of the *Income Tax Assessment Act 1936*, nothing in this Part affects the continuity of any partnership in which the State Bank was a partner immediately before the succession day.

75 Regulations

- (1) The Governor-General may make regulations, not inconsistent with this Act, in relation to the preservation of rights of transferred employees.
- (2) Regulations made under this section have effect despite any inconsistency with Acts other than this Act.

Part 6—Miscellaneous

76 Compensation for acquisition of property

- (1) Where, but for this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms, there is payable to the person by the Commonwealth Bank such reasonable amount of compensation as is agreed on between the person and the Commonwealth Bank or, failing agreement, as is determined by a court of competent jurisdiction.
- (2) Any damages or compensation recovered, or other remedy given, in proceedings that are instituted otherwise than under this section must be taken into account in assessing compensation payable in proceedings that are instituted under this section and that arise out of the same event or transaction.
- (3) In this section:

acquisition of property and *just terms* have the same respective meanings as in paragraph 51(31) of the Constitution.

77 Exemption from taxes and charges

- (1) No tax is payable under a law of the Commonwealth or of a State or Territory in respect of:
 - (a) an exempt matter; or
 - (b) anything done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, an exempt matter.
- (2) An authorised person may, by signed writing, certify that:
 - (a) a specified matter or thing is an exempt matter; or
 - (b) a specified thing was done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, a specified exempt matter.

(3) For all purposes and in all proceedings, a certificate under subsection (2) is conclusive evidence of the matter certified, except to the extent to which the contrary is established.

(4) In this section:

authorised person means:

- (a) the Treasurer; or
- (b) a person authorised by the Treasurer, in writing, for the purposes of this section.

exempt matter means:

- (a) the operation of this Act; or
- (b) giving effect to this Act.

tax includes:

- (a) sales tax; and
- (b) tax imposed by the *Debits Tax Act 1982*; and
- (d) stamp duty; and
- (e) any other tax, fee, duty, levy or charge;

but does not include income tax imposed as such by a law of the Commonwealth.

78 Franking debit to arise for Commonwealth Bank and Development Bank

- (1) For the purposes of the *Income Tax Assessment Act 1936*, a franking debit of a converting body arises on the shareholder creation day of an amount equal to the difference between:
- (a) the franking surplus of the converting body immediately before the shareholder creation day (calculated without regard to this section); and
 - (b) the amount that would be the franking surplus of the converting body immediately before the shareholder creation day if all amounts paid by the converting body as dividends under this Act on or after 1 July 1987 and before the shareholder creation day were treated as frankable dividends for the purposes of Part IIIAA of the *Income Tax Assessment Act 1936*.

Section 78

(2) In this section:

converting body means the Commonwealth Bank or the Development Bank.

shareholder creation day means:

- (a) for the Commonwealth Bank—the day on which the Commonwealth becomes a shareholder of the Commonwealth Bank; or
- (b) for the Development Bank—the day on which the Commonwealth Bank becomes a shareholder of the Development Bank.

Schedule—Amendment of Acts

Section 62

Note:

The amendments made by this Schedule are incorporated in the compilations on ComLaw.

Administrative Decisions (Judicial Review) Act 1977

Banking Act 1959

Banks (Shareholdings) Act 1972
[repealed by Act No. 54, 1998, Sch. 3]

Freedom of Information Act 1982

National Crime Authority Act 1984
[now cited as *Australian Crime Commission Act 2002*]

Papua New Guinea (Transfer of Banking Business) Act 1973

Reserve Bank Act 1959

Sales Tax Assessment Act (No. 1) 1930
[repealed by Act No. 101, 2006, Sch. 5 (item 1)]

For access to the wording of the amendments made by this Schedule *see* Act No. 118, 1990.

Table of Acts**Notes to the *Commonwealth Banks Restructuring Act 1990*****Note 1**

The *Commonwealth Banks Restructuring Act 1990* as shown in this consolidation comprises Act No. 118, 1990 amended as indicated in the Tables below.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Commonwealth Banks Restructuring Act 1990</i>	118, 1990	28 Dec 1990	Ss. 1–6: Royal Assent Ss. 63–78: (see s. 2(3) and <i>Gazette</i> 1990, No. S346) Remainder: (see s. 2(2), (3) and <i>Gazettes</i> 1990, No. S346, 1991, No. S72, 1991, No. S114, 1992, No. GN45)	
<i>Statute Stocktake Act 1999</i>	118, 1999	22 Sept 1999	22 Sept 1999	—
<i>Statute Stocktake Act (No. 1) 2011</i>	100, 2011	15 Sept 2011	Schedule 1 (item 5): 16 Sept 2011	—

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 5	
S. 74	rep. No. 100, 2011
Part 6	
S. 77	am. No. 118, 1999
