

Australian Capital Territory

Canberra Advance Bank Limited (Merger) Act 1992 No 24

Republication No 2

Republication date: 16 April 2002

Last amendment made by Act 2001 No 44

Amendments incorporated to 12 September 2001

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Canberra Advance Bank Limited (Merger) Act 1992* as in force on 16 April 2002. It includes any amendment, repeal or expiry affecting the republished law to 12 September 2001 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to
12 September 2001



Australian Capital Territory

Canberra Advance Bank Limited (Merger) Act 1992

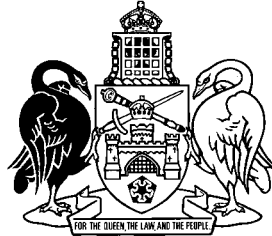
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Amendments incorporated to
12 September 2001



Australian Capital Territory

Canberra Advance Bank Limited (Merger) Act 1992

An Act to provide for the transfer of the undertaking of Canberra Advance Bank Limited to Advance Bank Limited, and for related purposes

Preamble

- 1 Canberra Advance Bank Limited A.C.N. 008 616 779 (**CAB**) is a company incorporated in the Territory and is a company within the meaning of the Corporations Law of the Capital Territory and is a company limited by shares.
- 2 Advance Bank Australia Limited A.C.N. 002 953 335 (**ABA**) is a company incorporated in New South Wales and is a company within the meaning of the Corporations Law of New South Wales and is a company limited by shares.
- 3 CAB is a wholly owned subsidiary of ABA.
- 4 ABA and CAB each carries on the business of banking in the Territory and elsewhere in Australia.
- 5 It is expedient in the interests of banking efficiency that the banking business conducted by CAB should be transferred to ABA.
- 6 It is expedient that the transfer be effected by an Act.

The Legislative Assembly for the Australian Capital Territory therefore enacts as follows:

Part 1 Preliminary

1 Short title

This Act may be cited as the *Canberra Advance Bank Limited (Merger) Act 1992*.

3 Definitions for Act

In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

ABA means Advance Bank Australia Limited.

appointed day means 1 June 1992.

CAB means Canberra Advance Bank Limited.

chief executive officer, in relation to ABA, means the officer in charge of the day-to-day management of the affairs of that bank or a person appointed by him or her in writing.

land includes any estate, interest or right (whether legal or equitable) in, over or under any real or leasehold property.

liabilities includes duties and obligations of every description, whether actual, contingent or prospective, but does not include any liability to the extent to which it is not related to the undertaking of CAB.

property means property and assets of every description, and includes securities, rights and powers of every description.

security includes a mortgage (whether legal or equitable), charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, indemnity, lien, pledge, bill of sale or other means of securing the payment of a debt, whether present or future, or the discharge of an obligation or liability, whether actual, contingent or prospective.

4 Undertaking of CAB

- (1) Subject to subsection (2), for this Act, the undertaking of CAB is so much of the property of CAB vested in or belonging to or held by CAB immediately before the appointed day as consists of—
- (a) goodwill; and
 - (b) amounts which at law or in equity or by statute or otherwise—
 - (i) are payable to CAB; or
 - (ii) are owing but not currently payable to CAB; or
 - (iii) are contingently owing to CAB; or
 - (iv) remain unpaid to CAB; or
 - (v) have been advanced or paid by CAB or any body referred to in schedule 1 at the express or implied request of any person or on behalf of any person or by reason of any act or omission of any person; or
 - (vi) CAB is liable to pay by reason of any act or omission; in connection with any financial accommodation provided by CAB or any body referred to in schedule 1; and
 - (c) all the right, title and interest of CAB to and under any agreement (other than a security) relating directly or indirectly to any amount referred to in paragraph (b); and
 - (d) all the right, title and interest of CAB to and under each security held by CAB for the payment of any amount referred to in paragraph (b) or the discharge of any liability to CAB; and
 - (e) all the right, title and interest of CAB in relation to each current or savings or deposit account with CAB other than a savings or deposit account which forms all or part of any security in favour of ABA; and

- (f) all the estate, interest and right of CAB as lessee, sublessee, under-lessee or licensee of any freehold or leasehold property; together with all the liabilities to which CAB is subject, immediately before the appointed day, relating to amounts, agreements or securities referred to in paragraphs (b), (c) and (d) or to any money deposited with CAB whether on current or savings or deposit account or to financial accommodation raised by CAB.
- (2) The undertaking of CAB does not include—
- (a) any interest (whether capitalised or not) or any costs, fees or charges that, immediately before the appointed day, had accrued but were unpaid in respect of financial accommodation provided to any person by CAB or any body referred to in schedule 1; or
 - (b) any interest that, immediately before the appointed day, had accrued but was unpaid in respect of money on deposit with CAB; or
 - (c) obligations of CAB relating to financial accommodation provided by ABA to CAB; or
 - (d) any estate, interest and right of CAB as a lessee from the Crown.

Part 2 **Vesting of undertaking of CAB in ABA**

Division 2.1 **General**

7 **Vesting of undertaking**

- (1) On the appointed day the undertaking of CAB is, by virtue of this Act, divested from CAB and vested in ABA.
- (2) If any portion of the undertaking of CAB cannot be vested in ABA by virtue of this Act because the vesting of that portion is governed otherwise than by a Territory law, then CAB shall, as soon as is practicable after the appointed day, take all necessary steps for the purpose of securing that the portion is effectively vested in ABA.
- (3) The production of a copy of this Act printed by the Government Printer is on and after the appointed day conclusive evidence in all courts and tribunals and proceedings of the transfer to and the vesting in ABA of that part of the undertaking of CAB effected by the operation of subsection (1).

8 **Effect of contracts and instruments**

- (1) All contracts, agreements, conveyances, deeds, leases, licences and other instruments or undertakings entered into by or made with, or addressed to, CAB (whether alone or with any other person) in force immediately before the appointed day in respect of any part of the undertaking of CAB, are on and after that day to the extent that they were immediately before that day binding on and enforceable by, or against, CAB, binding and of full force and effect in every respect in favour of, or against, ABA, as fully and effectually as if, instead of CAB, ABA had been a party to them or bound by them or entitled to the whole or any portion of the benefit of them.
- (2) Subsection (1) does not apply to a contract, agreement, conveyance, deed, lease, licence, instrument or undertaking relating to a provident, benefit, superannuation or retirement fund.

- (3) A director, secretary or auditor of CAB is not by virtue only of this Act a director, secretary or auditor (as the case may be) of ABA.

9 Consideration for vesting

Nothing in this Act prevents CAB and ABA from entering into an agreement not inconsistent with this Act, in respect of the vesting of the undertaking of CAB in ABA, that includes provision for the payment of consideration by ABA to CAB for any part or all of the undertaking of CAB (including securities) vested in ABA by this Act.

Division 2.2 Transitional

10 Transitional provisions

Without limiting sections 7 and 8, this division has effect in relation to the undertaking of CAB.

11 Relationships with customers

The relationship between CAB and a customer or depositor at any office or branch or agency of CAB is, on and after the appointed day, between ABA and that customer or depositor, and gives rise to the same rights and the same duties (including rights of set-off) as would have existed before that day if that relationship had always been between ABA and the customer or depositor, and so that any instruction, order, direction, mandate or authority given by that customer or depositor to CAB and subsisting on or given after the appointed day shall, unless and until revoked or cancelled, be deemed to have been given to ABA.

12 Securities

- (1) Any security that is part of the undertaking of CAB and is held by CAB as security for the payment of debts or the discharge of liabilities (whether present or future, certain or contingent) of any person is vested or shall be deemed to be vested in ABA on the appointed day, and is to be held by and be available to ABA as

security for the payment of those debts and the discharge of those liabilities to ABA.

- (2) If the security extends to future advances or other financial accommodation provided to, or to future liabilities of, that person, the security is, on and after that day, subject to any agreement between ABA and that person, to be held by and be available to ABA as security for future advances or other financial accommodation provided to that person by, and future liabilities of that person to, ABA, to the same extent to which future advances and financial accommodation provided by, or liabilities to, CAB were secured immediately before that day.

13 Transferred securities

ABA is, in relation to any security vested or deemed to have been vested in it in accordance with, or by virtue of, this Act and the money and liabilities secured by it, entitled to the same rights and priorities and subject to the same obligations and incidents as CAB would have been entitled and subject to, if it had continued to be held by CAB.

14 Custody of documents etc

The custody of any document, goods or thing held by CAB as bailee for any other person at any office or branch or agency of CAB is vested in or shall be deemed to be vested in ABA on the appointed day, and the rights and obligations of CAB under any contract of bailment relating to the document, goods or thing are vested in or shall be deemed to be vested in ABA on that day.

15 Negotiable instruments etc

Any negotiable instrument or order for payment of money, whether drawn, given, accepted or endorsed before, on or after the appointed day, that is part of, or is related to, the undertaking of CAB and that is expressed to be drawn by, drawn on, or given to, or accepted or endorsed by CAB, or payable at any place of business of CAB, has the same effect on and after the appointed day as if it had been

drawn by, drawn on, or given to, or accepted or endorsed by, ABA, or payable at the same place of business of ABA.

Division 2.3 Legal and evidentiary matters

16 Legal proceedings

- (1) This section applies to—
 - (a) any action, arbitration or proceeding or cause of action, arbitration or proceeding that is on the appointed day pending or existing by, against, or in favour of, CAB in respect of any part of the undertaking of CAB; and
 - (b) any cause of action, arbitration or proceeding by, against, or in favour of, CAB that arises after the appointed day in respect of an agreement, arrangement or understanding entered into by CAB before the appointed day, or that arises in respect of anything done or omitted to be done by CAB before the appointed day, in respect of any part of the undertaking of CAB.
- (2) Any action, arbitration or proceeding and any cause of action, arbitration or proceeding to which this section applies, is not abated or discontinued or in any way prejudicially affected because of this Act, but it may, without any further act, deed or instrument other than any appropriate amendment of the records of the relevant court or tribunal, be prosecuted and continued and enforced by, against, or in favour of, ABA, in its own name as and when it may have been prosecuted, continued and enforced by, against, or in favour of, CAB if this Act had not been enacted.
- (3) Notwithstanding subsection (2), the court, tribunal or other person making or entering any judgment, order or award for the payment of any sum of money, whether ascertained or to be ascertained, against ABA in any action, arbitration or proceeding to which this section applies shall, at the request of any party in whose favour the judgment, order or award is being made or entered, make or enter the judgment, order or award against both CAB and ABA, and the

judgment, order or award may, when so made or entered, be enforced against both CAB and ABA.

17 Amendment of documents

- (1) Any party to any action, arbitration or proceeding relating to property of CAB not included in the undertaking of CAB is entitled at any stage of the action, arbitration or proceeding to amend any writ, pleading or other document filed by the party in the action, arbitration or proceeding by substituting for the name of ABA the name of CAB as party.
- (2) No order is to be made against any party so amending to pay to ABA or to CAB any costs occasioned by that amendment.
- (3) The action, arbitration or proceeding is to be continued as if CAB had originally been made a party to it.

18 Evidence

- (1) Any book or document that if this Act had not been enacted would have been evidence in respect of any matter for or against CAB is, on and after the appointed day, to be admissible in evidence in respect of the same matter for or against ABA.
- (2) Without limiting subsection (1), the bankers' books of CAB shall, for the *Evidence Act 1971*, part 5, be deemed to be bankers' books of ABA.
- (3) In this section:
bankers' books—see the *Evidence Act 1971*, part 5.

19 Construction of references

If any Territory law (other than this Act) or any document whenever made or executed (other than a document constituting or relating to a provident, benefit, superannuation or retirement fund) or any register established or kept under any such law contains any reference express or implied to CAB or any body referred to in schedule 1, the reference is, on and after the appointed day, a

reference to ABA, except to the extent that the reference is in relation to property that is not part of the undertaking of CAB or unless the context otherwise requires.

Part 3 General

20 Effect of things done under this Act

Nothing effected by this Act or done or suffered by CAB or ABA under, or in connection with the enactment of, this Act—

- (a) is to be taken—
 - (i) as placing either of them in breach of any agreement, arrangement or understanding; or
 - (ii) as placing either of them in breach of trust, confidence or other equitable obligation; or
 - (iii) as causing any anticipatory breach of any agreement, arrangement or understanding; or
 - (iv) as otherwise making either of them commit a civil wrong; or
- (b) is to be taken as placing either of them in breach of, or as constituting a default under, a Territory law or any provision in any agreement, arrangement or understanding including, without limiting the generality of the foregoing, any provision prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information; or
- (c) is to be taken as fulfilling any condition that allows a person to terminate or otherwise exercise a right or power under or in connection with any agreement or liability; or
- (d) releases any surety or other obligor wholly or in part from any liability, whether actual, contingent or prospective.

21 Service of documents

- (1) Service of a document—
 - (a) on ABA shall be deemed to be service on CAB; and
 - (b) on CAB shall be deemed to be service on ABA.
- (2) Subsection (1) (a) ceases to have any force and effect in relation to CAB on CAB ceasing to be a subsidiary of ABA within the meaning of the Corporations Act, section 9.
- (3) Subsection (1) (b) ceases to have any force and effect on CAB ceasing to be a subsidiary of ABA within the meaning of the Corporations Act, section 9.

22 Assets not part of undertaking

- (1) No person dealing with ABA or CAB (in any capacity whatsoever) nor the registrar-general, nor any other person registering or certifying title to land or having the power or duty to examine or receive evidence as to title to land, is, in respect of any dealing or transaction entered into or purporting to be entered into by ABA or CAB, to be concerned to see, or enquire into, whether any property the subject of the dealing or transaction (whether or not that property is land) is or is not part of the undertaking of CAB, or be affected by any notice, express, implied or constructive, that any such property is or is not part of the undertaking of CAB.
- (2) If any dealing or transaction is entered into by ABA with any person, in relation to or in connection with property or liability that is not part of, or any liability that is related to part of, the undertaking of CAB, it is to be taken to be in favour of that person that ABA has full power and authority to enter into that dealing or transaction as if the property or liability had vested in ABA under this Act.
- (3) Nothing in this section affects the liability of ABA to CAB in respect of anything done, or purporting to be done, by ABA in relation to or in connection with property that was not part of the undertaking of CAB.

23 Identification of undertaking

The chief executive officer of ABA may, by certificate signed by him or her, certify any matter in relation to the operation of this Act and, in particular, may certify whether specified property or liabilities formed or did not form on the appointed day part of the undertaking of CAB.

24 Interests in land

No person dealing with ABA (in any capacity at all), nor the registrar-general, nor any other person registering or certifying title to land or having the power or duty to examine or receive evidence as to title to land, is, in respect of any dealing or transaction in relation to land entered into or purporting to be entered into by ABA, if the registered proprietor of that land is CAB or any body referred to in schedule 1, to be concerned to see, or enquire into, whether the land has vested in ABA.

25 Certificates in relation to charges

The Corporations Act, section 268 (1) is to be taken to have been complied with in respect of all charges of which ABA becomes the holder by virtue of this Act if there is lodged with the Australian Securities and Investment Commission a certificate signed by the chief executive officer of ABA stating that by virtue of this Act the undertaking of CAB has become vested in ABA.

26 Other property

If—

- (a) any property (other than property to which section 24 or 25 applies) becomes, under this Act, the property of ABA; and
- (b) any person or authority has, under a Territory law, responsibility for keeping a register in respect of property of that kind;

then—

- (c) any requirement of that law relating to the transfer of the property from one person to another shall be deemed to have been complied with if there is lodged with that person or authority a certificate signed by the chief executive officer of ABA stating that by virtue of this Act the undertaking of CAB has become vested in ABA; and
- (d) that person or authority, on being requested to do so and on delivery of any relevant instrument, shall make any amendments to that register that are necessary to make it accurately reflect the effect of this Act.

27 Certificates conclusive

- (1) For all purposes and in all courts, tribunals and proceedings, a certificate under this Act is conclusive evidence of the matters certified, except so far as the contrary is established.
- (2) A document purporting to be a certificate under this Act is, unless the contrary is established, to be taken to be such a certificate and to have been properly given.

28 Application of banking laws

Nothing in this Act exempts ABA from the provisions of any Act relating to companies carrying on the business of banking.

29 Exemption from duties and other charges

- (1) Notwithstanding anything to the contrary in any Territory law, no tax, fee, duty, levy or charge of any kind is chargeable or payable on any instrument, certificate or document (including this Act) or in respect of any act or transaction executed, done, suffered or entered into (whether before, on or after the appointed day) for a purpose connected with, or arising out of, the operation or effect of this Act or any corresponding law of a State or another Territory.

Part 3 General

Section 29

- (2) This section does not apply to any fee or charge payable to the registrar-general in respect of any act, dealing or other transaction relating to land.
- (3) Subsection (1) extends to an agreement referred to in section 9.

Schedule 1

(see ss 4, 19 and 24)

- 1 Civic Co-operative Permanent Building Society Limited
- 2 Canberra Permanent Co-operative Building Society Limited
- 3 PA Credit Union Limited
- 4 Capital Permanent Co-operative Building Society Limited
- 5 Hibernian Co-operative Permanent Building and Investment Society (A.C.T.) Limited
- 6 Any other body corporate the undertaking of which has by operation of law been vested in any of the building societies and other bodies named in this schedule

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

Canberra Advance Bank Limited (Merger) Act 1992 No 24

notified 1 June 1992 (Gaz 1992 No S64)

commenced 1 June 1992 (s 2)

as amended by

Acts Revision (Position of Crown) Act 1993 No 44 sch 2

notified 27 August 1993 (Gaz 1993 No S165)

commenced 27 August 1993 (s 2)

Registrar-General (Consequential Provisions) Act 1993 No 64 sch 1

notified 6 September 1993 (Gaz 1993 No S172)

s 1, s 2 commenced 6 September 1993 (s 2 (1))

sch 1 commenced 1 October 1993 (s 2 (2) and see Gaz 1993 No S207)

Legislation (Consequential Amendments) Act 2001 No 44 pt 50

notified 26 July 2001 (Gaz 2001 No 30)

s 1, s 2 commenced 26 July 2001 (IA s 10B)

pt 50 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

4 Amendment history

Commencement

s 2 om 2001 No 44 amdt 1.521

Definitions for Acts 3 def *appointed day* sub 2001 No 44 amdt 1.522**Appointed day**

s 5 om 2001 No 44 amdt 1.523

Act binds the Crown

s 6 om 1993 No 44 sch 2

General

div 2.1 hdg (prev pt 2 div 1 hdg) renum R2 LA

Transitional

div 2.2 hdg (prev pt 2 div 2 hdg) renum R2 LA

Legal and evidentiary matters

div 2.3 hdg (prev pt 2 div 3 hdg) renum R2 LA

Assets not part of undertaking

s 22 am 1993 No 64 sch 1

Endnotes

5 Earlier republications

Interests in land

s 24 am 1993 No 64 sch 1

Exemption from duties and other charges

s 29 am 1993 No 64 sch 1

Schedule 1

sch 1 hdg (prev sch hdg) renum R2 LA

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1993 No 64	31 January 1998

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