

AUSTRALIAN CAPITAL TERRITORY  
THE COMMERCIAL BANK OF AUSTRALIA LIMITED  
(MERGER) ORDINANCE 1982  
81 of 1982  
EXPLANATORY STATEMENT

The purpose of The Commercial Bank of Australia Limited (Merger) Ordinance is to facilitate the merger in the ACT of the undertaking of The Commercial Bank of Australia Limited ("CBA") and The Commercial Savings Bank of Australia Limited ("CBA Savings Bank") with Bank of New South Wales ("Wales") and Bank of New South Wales Savings Bank Limited ("Wales Savings Bank"). This legislation removes the administrative burden that would otherwise be involved not only for the banks themselves but also for their many customers in amalgamating their businesses in the ACT. Similar legislation has been passed in each of the States and the Northern Territory to facilitate the merger within their respective jurisdictions.

As a result of take-over offers made by Wales in June 1981 Wales now controls all the issued shares in CBA and CBA is therefore a wholly-owned subsidiary of Wales. The Commercial Savings Bank of Australia Limited is a wholly-owned subsidiary of CBA and by reason of the take-over of CBA is now controlled by Wales. Wales Savings Bank is a wholly-owned subsidiary of Wales. Wales and CBA intend that the business of CBA in the Territory should be conducted by Wales and that the business of CBA Savings Bank in the Territory should be conducted by Wales Savings Bank. To achieve this it is necessary that the undertakings, assets, rights and liabilities of CBA be transferred to Wales and that the undertakings, assets, rights and liabilities of CBA Savings Bank be transferred to Wales Savings Bank.

Details of the Ordinance are set out below:

Section 1 provides for the short title of the proposed Ordinance.

Section 2 provides for the Ordinance to come into operation on 1 October 1982 (the commencing date).

Section 3 provides for the definition of terms used in the Ordinance, including the titles of the banks. Five definitions are of particular importance to the operation of the Ordinance. They are;

"Excluded assets" which is a term used to describe assets which are excluded from the amalgamation and which will therefore remain vested in either CBA or CBA Savings Bank. Land and shares held otherwise than by way of security will remain vested in CBA or CBA Savings Bank, as will property held under certain trust arrangements;

"Instrument" which means an instrument, other than this Ordinance, 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 law in force in the Territory and includes a judgment, order or process of a court;

"Property" which means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal and, without limiting the generality of the foregoing, includes choses in action, goodwill, rights, interests and claims of every kind in or to property 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;

"Security" which means a mortgage or charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, indemnity, lien, pledge or other security for the payment of money or for the discharge of any other liability, and includes an agreement or undertaking to give or execute any of the foregoing whether upon demand or otherwise; and

"Undertaking" which means all property and all rights and liabilities of CBA and CBA Savings Bank, except for property which is "excluded assets" and rights and liabilities relating to such "excluded assets". It is the "undertaking" thus defined of CBA and CBA Savings Bank that is to be vested by the legislation in either Wales or Wales Savings Bank as appropriate.

Section 4 excludes certain instruments described in the Schedule or property rights or liabilities arising from these instruments and referred to therein from the operation of the Ordinance. These instruments are involved in a financing transaction which depends for its continued viability on separate ownership of the property, rights or liabilities by the two banks.

Section 5 provides that the Ordinance shall bind the Crown.

Section 6(1) effects the vesting of the undertaking of CBA and CBA Savings Bank in Wales and Wales Savings Bank respectively. It is thus the central provision of the legislation, being the principal means by which the transfer of each asset and the assumption or renewal of each liability of CBA and CBA Savings Bank is achieved.

Section 6(2) contains certain provisions concerning the interpretation of references in instruments made before the commencing date following upon the vesting of the "undertakings" of CBA and CBA Savings Bank pursuant to section 6(1). Paragraphs 6(2)(a) and (b) provide that (except in respect of excluded assets) wherever the name of CBA or CBA Savings Bank appears in such an instrument, it is to be interpreted as referring to Wales or Wales Savings Bank respectively. Paragraph 6(2)(c) provides that where there is in any such instrument a reference to a particular officer of CBA or CBA Savings Bank, that reference is to be interpreted as a reference to the Chief General Manager of Wales or such other officer as he nominates.

Section 6(3) provides that a place of business of CBA or CBA Savings Bank is, on the commencing date, to be deemed a place of business of Wales or Wales Savings Bank as the case may be.

Section 6(4) provides that where any estate or interest in land is registered under the Real Property Ordinance 1925 and that estate or interest in land is transferred to Wales or Wales Savings Bank, by virtue of this Ordinance, Wales or Wales Savings Bank respectively shall be taken to be the registered proprietor of the estate or interest.

Section 6(5) ensures that where, for any reason, a liability to CBA or CBA Savings Bank remains a liability to those banks after the commencing date the respective banks will continue to have the same rights and may enforce those rights in respect of the liability.

Section 7 is a transitional provision relating to CBA. Paragraphs (a) and (b) ensure that instructions, orders, directions, mandates, authorities or instruments given to CBA and in force before the commencing date are to be treated as having been given to Wales.

Paragraphs (c) and (d) of section 7 provide that securities held by CBA before the commencing date will be available as security for discharge of those debts or liabilities transferred to Wales on or after that date. Where the security held by CBA relates to future or prospective debts or liabilities it is to be available to Wales for the discharge of debts or liabilities to Wales incurred after the commencing date.

Paragraph (e) of section 7 provides for the transfer to Wales of the rights or liabilities of documents or chattels held by CBA as bailee before the commencing date.

Paragraph (f) of section 7 provides that where a negotiable instrument or other order for payment of money is drawn on CBA or given to or accepted or endorsed by CBA or payable at a place of business of CBA it is to be treated after the commencing date as if it had been drawn on Wales or given to or accepted or endorsed by Wales or payable at a place of business of Wales.

Paragraph (g) of section 7 ensures that all banker-customer/depositor relationships existing between CBA and its customers immediately before the commencing date will become, on or after that date, identical relationships between Wales and the relevant customers/depositors.

Paragraph (h) of section 7 deals with all contracts, agreements, conveyances, deeds, leases, licences, instruments and undertakings to which CBA is a party before the commencing date, and puts Wales in the same position as CBA in relation to those documents.

Paragraph (i) of section 7 ensures legal proceedings to which CBA was a party before the commencing date are not affected by the Ordinance.

Paragraph (j) of section 7 ensures that nothing effected by the Ordinance places the CBA or Wales in a position whereby they would be in breach of contract or confidence or otherwise guilty of a civil wrong, or would be in breach of any law in force in the Territory or of any contractual provision regarding assignment or transfer of any property or disclosure of information. It also ensures that any surety is not by reason of the Ordinance released from liability.

Paragraph (k) of section 7 makes like provision as paragraph (j) in respect of anything that might be done or suffered by CBA or Wales in pursuance of this Ordinance.

Section 8 makes in relation to CBA Savings Bank, the same transitional provisions as will be made by section 7 in relation to CBA.

Section 9 provides that where CBA or CBA Savings Bank has, under the provisions of a lease, licence or other contract or agreement, rights in respect of the occupation or use of land that is an excluded asset, those rights may in any event be exercised by Wales or Wales Savings Bank, as the case may be. Section 9(1) covers cases where a leasehold interest in land is an "excluded asset" and, by virtue of the amalgamation, Wales occupies and uses that land as a place of business, for example, where CBA or CBA Savings Bank holds a lease of banking premises which, by virtue of the amalgamation, becomes Wales or Wales Savings Bank banking premises. In such a case, CBA or CBA Savings Bank, as the case may be, is not to be regarded as being in breach of its lease by reason only of the fact that Wales or Wales Savings Bank occupies and uses the relevant premises. Section 9(2) ensures CBA or CBA Savings Bank rights to the possession of the land are not affected by permitting Wales or Wales Savings Bank to exercise rights under section 9(1). [act.gov.au](http://act.gov.au)

The purpose of section 10 is to ensure that legal proceedings involving CBA or CBA Savings Bank may be continued against Wales or Wales Savings Bank after the commencing date and that judgments, orders or awards for or against the former banks may be enforced by or against the latter banks.

Section 11(1) ensures that, evidence admissable for or against CBA or CBA Savings Bank interests may be admitted for or against Wales or Wales Savings Bank interests. Section 11(2) ensures the provision of Part V of the Evidence Ordinance which relates to proof of the attestation of documents will continue to apply to bankers' books kept by CBA and CBA Savings Bank and entries made therein before the commencing date. Section 11(3) is an interpretation provision defining the meaning of "bankers' books" for the purposes of section 11(2).

Section 12 concerns the rights of employees of CBA (CBA Savings Bank not having employees of its own). Paragraph (a) provides that employees previously in the service of CBA will become employees of Wales. It also specifically provides that where an employee of CBA who, by virtue of the Ordinance becomes an employee of Wales, for the purpose of any law in force in the Territory or any award, contract or determination relating to his employment, his contract of employment will be deemed to be unbroken and the period of his service with CBA will be deemed to have been a period of service with Wales.

Paragraph (b) of section 12 expressly provides that the terms and conditions of the employment of each relevant employee with Wales will be, on the commencing date (and thereafter until varied), identical with the terms and conditions of employment with CBA immediately before that date. Paragraph (b) also provides that those terms and conditions are capable of alteration in the same manner as they could have been varied before the commencing date had the employees continued with the CBA or in the same manner as the general terms and conditions of employment of other persons employed by Wales can be varied.

Paragraph (c) of section 12 provides that an employee of CBA who becomes an employee of Wales is not entitled to receive benefits (eg. long service leave) by reason only of ceasing by virtue of this Ordinance to be an employee of CBA. His ultimate entitlement, taking account of the whole of his combined service with CBA and Wales, will become available to him in the normal course as an employee of Wales.

By virtue of paragraph (d) of section 12 superannuation entitlements of CBA employees will continue to be governed by the rules of the funds concerned. Thus, former CBA employees who have not elected to become members of the Wales superannuation fund continue to be members of the relevant CBA fund, with the result that their entitlements continue to accrue as if they had continued to be CBA employees. Any employee who wishes to remain indefinitely under existing CBA superannuation arrangements will be entitled to so do. In this way there will be no diminution of benefits.

Paragraph (e) of section 12 provides that a director, secretary, or auditor of CBA or CBA Savings Bank will not by virtue of the Ordinance become a corresponding officer of Wales or Wales Savings Bank.

Section 13(1) permits the Wales to transfer from a subsidiary of CBA to a subsidiary of Wales such trusts existing immediately before the commencing date as are specified in an instrument executed under its seal and published in the Gazette.

Section 13(2) provides that the corporation, named in the instrument referred to in section 13(1) as the retiring trustee, shall be wholly discharged from the trusts specified in the instrument and vests in the corporation, named in the instrument as the new trustee, all the powers, authorities and discretions in relation to those trusts as the retiring trustee had immediately before being discharged. Paragraph (c) of section 13(2) provides that all property subject to those trusts shall be vested in the new trustee.

Section 13(3) provides that sub-sections (1) and (2) of section 13 have effect notwithstanding anything to the contrary in any instrument or in any law in force in the Territory.

Where, pursuant to such an assumption of nominee positions, a Wales nominee company becomes entitled to a registered estate or interest in land, by virtue of section 13(4) that corporation shall be taken to be the registered proprietor of that estate or interest.

Section 13(5) provides that section 13(4) will not take effect until a copy of the instrument referred to in section 13(1) has been lodged with the Registrar of Titles.

Section 13(6) is an interpretation provision, defining the meaning of "trustee" for the purposes of the section.

Section 14 is a machinery provision designed to facilitate the registration of Wales and Wales Savings Bank as the holders of shares, debentures and other company interests that will be vested in them by virtue of the legislation. It provides that a certificate signed by the Chief General Manager of Wales or his delegate shall be taken to be a duly stamped instrument of transfer of the securities.

Section 15 deals with a particular point arising under the Companies Act 1981. In the absence of this provision, it would be necessary for Wales and Wales Savings Bank to file separate notifications of acquisition of each company charge to which they will succeed by virtue of the legislation. The purpose of this section is to ensure that, by filing with the National Companies and Securities Commission a statement that the undertakings of CBA and CBA Savings Bank have vested pursuant to the legislation, Wales and Wales Savings Bank will be deemed to have satisfied the obligation otherwise binding on them.

Section 16(1) ensures that any person involved with the Wales or Wales Savings Bank or CBA or CBA Savings Bank in respect of any dealing or transaction is not required to be concerned to ascertain whether any property the subject of the dealing or transaction (whether or not that property is or includes an estate or interest in land) is or is not an excluded asset. Neither will any person be affected by any notice to the effect that any such property is or is not an excluded asset. The public at large will thus be protected against the possibility of dealing with the wrong owner.

Section 16(2) permits Wales or Wales Savings Bank to enter into any dealing or transaction in relation to or in connection with an excluded asset as if the excluded asset had vested in Wales or Wales Savings Bank by virtue of this Ordinance.

Section 16(3) permits CBA or CBA Savings Bank to enter into any dealing or transaction in relation to or in connection with any property that by virtue of this Ordinance has been vested in Wales or Wales Savings Bank as if the property were an excluded asset.

Section 16(4) provides that nothing in the section alters the liability of any one or all of the banks in respect of anything they have or might have done in relation to or in connection with any excluded asset or any other property.

Section 17 declares that no duties will be payable in respect of any document or transactions executed or entered into for the purpose of the Ordinance.

Consistent with the responsibilities of the Treasurer in relation to banking matters, section 18 amends the Seat of Government (Administration) Ordinance 1930 to provide for the Commercial Bank of Australia Limited (Merger) Ordinance 1982 to be administered by the Treasurer. The opportunity is also being taken to delete the reference in the former Ordinance to the Companies (Life Insurance Holding Companies) Ordinance 1968 which was repealed by the Commonwealth Functions (Statutes Review) Act 1981.

The Schedule to the Ordinance lists those instruments which by virtue of section 4 are to be excluded from the operation of the Ordinance.