

Western Australia

**Bank of Western Australia Amendment  
Act 2012**

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As at 03 Jul 2012

No. 14 of 2012

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# Bank of Western Australia Amendment Act 2012

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Western Australia

## **Bank of Western Australia Amendment Act 2012**

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**No. 14 of 2012**

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**An Act to amend the *Bank of Western Australia Act 1995* and to make a consequential amendment to the *Freedom of Information Act 1992*.**

[Assented to 3 July 2012]

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Bank of Western Australia Amendment Act 2012*.

### **2. Commencement**

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

**Part 2 — *Bank of Western Australia Act 1995* amended**

**3. Act amended**

This Part amends the *Bank of Western Australia Act 1995*.

**4. Long title amended**

In the long title after “**privatisation,**” insert:

**to make provisions relating to the transfer of the bank’s  
business and the conduct of an ongoing banking business,**

**5. Section 19 amended**

In section 19 delete the definition of **Bank** and insert:

**Bank** means the public company registered under the  
*Corporations Act 2001* (Commonwealth) by the name  
“Bank of Western Australia Ltd”;

**6. Section 26A inserted**

At the end of Part 3 Division 3 insert:

**26A. Expiry of Division**

This Division expires at the beginning of the transfer day (as defined in section 42A).

**7. Part 5A inserted**

After Part 4 insert:

**Part 5A — Provisions relating to transfer of  
BWA business and conduct of  
Bankwest business**

**Division 1 — Preliminary**

**42A. Terms used**

In this Part —

**Bankwest business** means the banking business carried on using the Bankwest name in accordance with section 42D(1);

**Bankwest name** means —

- (a) the name “Bankwest”; or
- (b) any other name used by Bank of Western Australia Ltd in the conduct of the BWA business before the transfer day; or
- (c) a name that is substantially similar to, or a derivative of, a name referred to in paragraph (a) or (b);

**Bankwest owner** means the person who, from time to time, owns the Bankwest business;

**BWA business** means the banking business conducted by Bank of Western Australia Ltd ACN 050 494 454;

**CBA** means Commonwealth Bank of Australia ACN 123 123 124;

**head office**, of the Bankwest business, means the place where day-to-day management of that business is carried out;



**managing officer**, of the Bankwest business, means the person responsible for the day-to-day management of that business;

**point of presence** means premises used principally for the conduct of the Bankwest business with members of the public, and includes premises described as a Bankwest branch, Bankwest store or Bankwest business centre, but does not include the following —

- (a) an automatic teller machine;
- (b) premises described as a neighbourhood bank;
- (c) premises at which that business is conducted pursuant to an agency agreement;

**points of presence threshold** means 88 points of presence;

**relevant period** means the period of 5 years after the transfer day;

**transfer day** means the day on which the certificate of transfer relating to the transfer of the BWA business to CBA comes into force under the *Financial Sector (Business Transfer and Group Restructure) Act 1999* (Commonwealth) Part 3 Division 3.

**42B. Transfer of BWA business to CBA**

Nothing in this Act prevents the transfer of the BWA business to CBA under the *Financial Sector (Business Transfer and Group Restructure) Act 1999* (Commonwealth).

**42C. More than one owner of Bankwest business**

If, at a particular time, the Bankwest business is owned by 2 or more persons, the obligations imposed by this Part on the Bankwest owner are imposed on each of those persons jointly and severally and are enforceable accordingly.

## **Division 2 — Long term obligations**

### **42D. Banking business to be carried on using Bankwest name**

- (1) CBA must, on and after the transfer day, carry on in Western Australia a banking business using the Bankwest name.
- (2) Subsection (1) does not prevent the transfer of the Bankwest business to another person.
- (3) If the Bankwest business is transferred to another person, the obligation imposed by subsection (1) becomes an obligation of the Bankwest owner.

### **42E. Type and scale of Bankwest business**

The Bankwest owner must ensure that the Bankwest business is of substantially the same type as, and is conducted on a scale not significantly less than, the BWA business in Western Australia as at 30 June 2011.

### **42F. Head office of Bankwest business**

The Bankwest owner must ensure that the head office of the Bankwest business is located in Western Australia.

### **42G. Managing officer of Bankwest business**

The Bankwest owner must ensure that the managing officer of the Bankwest business, while holding office, is ordinarily resident in Western Australia.

### **42H. Use of names**

- (1) The Bankwest owner must not use any name in connection with the Bankwest business that suggests it is associated with the Government.

- (2) The use of the Bankwest name does not contravene subsection (1).

**42I. Records**

The Bankwest owner must ensure that sufficient records of the Bankwest business are kept in Western Australia to enable the Bankwest owner to comply with any notice given to it under section 42O(2).

**Division 3 — Obligations relating to 5 year period after transfer day**

**42J. Minimum points of presence**

- (1) The Bankwest owner must ensure that, at all times during the relevant period, the number of points of presence in Western Australia is equal to or greater than the points of presence threshold except to the extent that the Minister approves in writing.
- (2) The Minister must not give approval for the purposes of subsection (1) unless the Minister is satisfied that any proposed reduction below the points of presence threshold is consistent with market trends in the financial services industry.

**42K. Points of presence in regional areas**

- (1) The Bankwest owner must not, at any time during the relevant period, close a point of presence that —
  - (a) is not in the metropolitan region as defined in the *Planning and Development Act 2005* section 4(1); and
  - (b) is not in the Mandurah local government district.

- (2) Subsection (1) does not prevent the closure of a point of presence if the closure results from —
- (a) the relocation of the point of presence to a place within 5 km of its previous location; or
  - (b) the amalgamation of the point of presence with another point of presence within 5 km of its previous location.
- (3) In subsection (2) —
- previous location* means the place where the point of presence was located immediately before the closure.

**42L. Head office personnel**

The Bankwest owner must ensure that, for the relevant period, the following functional positions (however they may be designated) are maintained at the head office of the Bankwest business —

- (a) chief information officer for that business;
- (b) chief financial officer for that business;
- (c) chief risk officer for that business;
- (d) head of human resources for that business.

**42M. Local sponsorship and community development initiatives**

The Bankwest owner must ensure that, in each year of the relevant period, the Bankwest business expends an aggregate amount on local sponsorship and community development initiatives in Western Australia that is not less than the aggregate amount expended on such initiatives by the BWA business in the year ending on 30 June 2011.

**Division 4 — Monitoring compliance**

**42N. Certificate as to compliance**

- (1) The Bankwest owner must, within 90 days after the end of each financial year of the Bankwest business, give the Minister a certificate to the effect that it has complied with the obligations imposed by this Part.
- (2) The certificate must be —
  - (a) signed by the managing officer of the Bankwest business and the chief financial officer of the Bankwest owner; and
  - (b) verified by each of those persons by statutory declaration; and
  - (c) laid before each House of Parliament by the Minister or dealt with in accordance with subsection (3) within 30 days after receipt of the certificate referred to in subsection (1).
- (3) If —
  - (a) a House of Parliament is not sitting at the commencement of the period referred to in subsection 2(c) in respect of a certificate; and
  - (b) the Minister is of the opinion that that House will not sit during that period,the Minister is to transmit a copy of the certificate to the Clerk of that House.
- (4) A copy of a certificate transmitted to the Clerk of a House is to be taken to have been laid before that House.
- (5) The laying of a copy of a certificate that is regarded as having occurred under subsection (4) is to be recorded in the Votes and Proceedings, or Minutes, of the House on the first sitting day of the House after the Clerk received the copy.

**420. Minister may require information**

- (1) In this section —  
*business information* means statistical information about the operation of the Bankwest business as at 30 June or 31 December in a particular year, including information about the following —
  - (a) points of presence in Western Australia;
  - (b) the number of customers in Western Australia and the gross value of the business with those customers;
  - (c) the number of full-time equivalent employees in Western Australia.
- (2) The Minister may, by written notice, require the Bankwest owner to give business information to the Minister for the purpose of enabling the Minister to assess the Bankwest owner's compliance with the obligations imposed by this Part.
- (3) A notice under subsection (2) must give a brief description of the business information sought.
- (4) The Bankwest owner must comply with a notice under subsection (2) within —
  - (a) 60 days after the notice is given; or
  - (b) any longer period that the Minister, in a particular case, allows.
- (5) The Minister must not disclose information provided in compliance with a notice under subsection (2) for any purpose other than the purpose for which it was given unless the disclosure is authorised by subsection (6).
- (6) The disclosure is authorised if —
  - (a) it is made with the consent of the Bankwest owner; or

- (b) it is required under another written law; or
  - (c) it is made for the purpose of —
    - (i) answering a question asked in a House of Parliament; or
    - (ii) complying with an order or resolution of a House of Parliament that requires information to be given to a House of Parliament.
- (7) Before making a disclosure authorised by subsection (6)(b) or (c), the Minister must give the Bankwest owner written notice of the proposed disclosure if it is reasonably practicable to do so.

### **Division 5 — Enforcement of Divisions 2, 3 and 4**

#### **42P. Methods of enforcement**

- (1) The obligations imposed by Divisions 2 and 4 are enforceable under section 42Q and not otherwise.
- (2) The obligations imposed by Division 3 are enforceable under section 42R and not otherwise.

#### **42Q. Injunctions**

- (1) The Supreme Court may, on the application of the Minister, grant an injunction in such terms as the court thinks fit where the court is satisfied that the Bankwest owner —
  - (a) has done or omitted to do or is proposing or attempting to do or omit to do any thing that amounts to, or would amount to, a contravention of a provision of Division 2 or 4; or
  - (b) is involved in a contravention of a provision of Division 2 or 4.

- (2) An interim or interlocutory injunction may be granted before final determination of an application.
- (3) If the Minister applies to the Supreme Court for an injunction under this section, the court is not to require the Minister, as a condition of granting an interim injunction, to give an undertaking as to damages.
- (4) A reference in subsection (1) to a person being involved in a contravention is a reference to a person who —
  - (a) has aided, abetted, counselled or procured the contravention; or
  - (b) has induced the contravention, whether by threats or promises or otherwise; or
  - (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
  - (d) has conspired with others to effect the contravention; or
  - (e) has attempted to do any act of a kind referred to in paragraph (a), (b), (c) or (d).

**42R. Monetary penalties**

- (1) If the Minister believes on reasonable grounds that the Bankwest owner is contravening or has contravened a provision of Division 3, the Minister may give the Bankwest owner a notice (a *contravention notice*) —
  - (a) specifying the provision that the Minister believes is being or has been contravened; and
  - (b) containing a brief description of the contravention; and
  - (c) stating that the Bankwest owner has a period of 28 days after the contravention notice is given within which to satisfy the Minister that the



contravention is not occurring or has not occurred.

- (2) A contravention notice may relate to more than one contravention.
- (3) If the Bankwest owner fails to satisfy the Minister that a contravention specified in a contravention notice is not occurring or has not occurred, the Minister may give the Bankwest owner a further notice (a *penalty notice*) —
  - (a) specifying the contravention to which it relates; and
  - (b) stating that the Bankwest owner is liable to pay to the Minister an amount in respect of the contravention; and
  - (c) fixing the amount that the Bankwest owner is liable to pay in respect of the contravention at \$2 million; and
  - (d) requiring the Bankwest owner to pay the amount to the Minister within 14 days after the penalty notice is given.
- (4) A penalty notice may relate to more than one contravention and, if it does, the references in subsection (3)(b) and (c) to the contravention are to be read as references to each contravention.
- (5) If the Bankwest owner fails to comply with the penalty notice, the Minister may lodge a certified copy of it in the Supreme Court.
- (6) When lodged, the penalty notice is to be taken to be a judgment of the Supreme Court for a debt payable by the Bankwest owner to the Minister of an amount equal to the aggregate amount fixed in the penalty notice, and may be enforced accordingly.

- (7) An amount paid to, or recovered by, the Minister under this section is to be credited to the Consolidated Account.

**Division 6 — Other provisions**

**42S. Notification of transfer day**

- (1) The Minister is to cause notification of the transfer day to be published in the *Gazette*.
- (2) Failure to comply with subsection (1) does not affect the operation of the other provisions of this Part.

**42T. Certain matters excluded from operation of Corporations Act 2001 (Commonwealth)**

The matters dealt with in Divisions 2 and 3 are declared to be excluded matters for the purposes of the *Corporations Act 2001* (Commonwealth) section 5F in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies.

**Part 3 — *Freedom of Information Act 1992* amended**

**8. Act amended**

This Part amends the *Freedom of Information Act 1992*.

**9. Schedule 1 amended**

Delete Schedule 1 clause 4A and insert:

**4A. Information provided under *Bank of Western Australia Act 1995***

Matter is exempt matter if it consists of information provided to —

- (a) the Treasurer under the *Bank of Western Australia Act 1995* section 22; or
  - (b) the Minister under the *Bank of Western Australia Act 1995* section 42O.
-