

Western Australia

## **The Bank of Adelaide (Merger) Act 1980**

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## The Bank of Adelaide (Merger) Act 1980

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## **The Bank of Adelaide (Merger) Act 1980**

**An Act to supplement *The Bank of Adelaide (Merger) Act 1980* of the State of South Australia which provides for the transfer to Australia and New Zealand Banking Group Limited of the undertaking of The Bank of Adelaide and for the transfer to Australia and New Zealand Savings Bank Limited of the undertaking of The Bank of Adelaide Savings Bank Limited and for connected purposes.**

WHEREAS The Bank of Adelaide became a wholly owned subsidiary of the Australia and New Zealand Banking Group Limited in pursuance of a scheme of arrangement having effect from 30 November 1979:

AND WHEREAS The Bank of Adelaide Savings Bank Limited is a wholly owned subsidiary of The Bank of Adelaide and Australia and New Zealand Savings Bank Limited is a wholly owned subsidiary of Australia and New Zealand Banking Group Limited:

AND WHEREAS it is expedient in the interests of efficiency in banking that the banking business conducted by The Bank of Adelaide should be transferred to Australia and New Zealand Banking Group Limited and the banking business conducted by The Bank of Adelaide Savings Bank Limited should be transferred to the Australia and New Zealand Savings Bank Limited:

AND WHEREAS it is expedient that the transfers be effected by Act of the Parliament:

### **1. Short title**

This Act may be cited as *The Bank of Adelaide (Merger) Act 1980*<sup>1</sup>.

**2. Commencement**

This Act shall come into operation on 1 October 1980.

**3. Interpretation**

In this Act, unless the contrary intention appears —

*the appointed day* means the day of the coming into operation of this Act;

*ANZ* means Australia and New Zealand Banking Group Limited;

*ANZ Savings Bank* means Australia and New Zealand Savings Bank Limited;

*BOA* means The Bank of Adelaide;

*BOA Savings Bank* means The Bank of Adelaide Savings Bank Limited;

*excluded assets* means —

- (a) documents required to be kept by BOA or BOA Savings Bank pursuant to the *Companies Act 1961*<sup>2</sup> or otherwise by law; and
- (b) land held, immediately before the appointed day, by BOA or BOA Savings Bank otherwise than by way of security;

*instrument* means an instrument (other than this Act) that creates, evidences, modifies or extinguishes rights or liabilities and includes any judgment, order or process of a court;

*land* includes an estate or interest in land, or an interest in respect of land;

*legal proceedings* includes an arbitration;

*liabilities* includes duties and obligations;

*the merging trading banks* means BOA and ANZ;

*the merging savings banks* means BOA Savings Bank and ANZ Savings Bank;

*property* means real and personal property;

**rights** includes powers and privileges;

**security** means a mortgage or charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, lien, pledge or other security for the payment of money or for the discharge of an actual or contingent obligation or liability;

**transferred employee** means an officer or employee of BOA who becomes an officer or employee of ANZ in pursuance of this Act;

**undertaking** in relation to BOA or BOA Savings Bank means —

- (a) all property of the relevant bank (apart from excluded assets); and
- (b) all rights and liabilities of the relevant bank (apart from rights and liabilities relating to excluded assets).

**4. Crown to be bound**

This Act binds the Crown.

**5. Vesting of undertakings of merging banks**

- (1) On the appointed day —
  - (a) the undertaking of BOA is vested in ANZ; and
  - (b) the undertaking of BOA Savings Bank is vested in ANZ Savings Bank.
- (2) On and after the appointed day —
  - (a) a reference to BOA in any instrument made or executed before that day shall (except to the extent that the instrument relates to an excluded asset and unless the context otherwise requires) be read and construed as a reference to ANZ; and
  - (b) a reference to BOA Savings Bank in any instrument made or executed before that day shall (except to the extent that the instrument relates to an excluded asset

and unless the context otherwise requires) be read and construed as a reference to ANZ Savings Bank.

- (3) The Registrar of Titles shall, upon the application of ANZ or ANZ Savings Bank register the applicant as the proprietor of land in the State (being land under the provisions of the *Transfer of Land Act 1893*) that has vested in the applicant in pursuance of this section.
- (4) An instrument relating to land (being land under the provisions of the *Transfer of Land Act 1893*) that has vested in ANZ or ANZ Savings Bank in pursuance of this section shall, if the instrument is executed by ANZ or ANZ Savings Bank and is otherwise in registrable form, be registered by the Registrar of Titles notwithstanding that the relevant bank has not been registered as the proprietor of the land in pursuance of subsection (3).

**6. Transitional trading banks**

Without prejudice to the generality of other provisions of this Act the following provisions shall have effect on and after the appointed day —

- (a) an instruction, mandate or authority given to BOA and subsisting on the appointed day shall be deemed to have been given to ANZ;
- (b) a security held by BOA as security for a debt or other liability owed to BOA shall be available to ANZ as security for the discharge of that debt or liability and, where the security extends to future debts or liabilities, shall be available as security for the discharge of debts or liabilities owed to ANZ and incurred on or after the appointed day; and in relation to a security ANZ shall be entitled to all the rights and priorities and shall be subject to all liabilities to which BOA would have been entitled or subject if this Act had not been passed;



- (c) all the rights and obligations of BOA as bailee of documents or chattels shall be transferred to and assumed by ANZ;
- (d) a negotiable instrument or order for payment of money which is drawn on or given to or accepted or endorsed by BOA or payable at any place of business of BOA shall have the same effect on and after the appointed day as if it had been drawn on or given to or accepted or endorsed by ANZ or was payable at the place of business of ANZ nearest to the place at which it would have been payable if this Act had not been passed; and
- (e) no legal proceedings commenced before the appointed day by or against BOA shall abate or be otherwise prejudiced by reason of this Act.

**7. Transitional savings banks**

Without prejudice to the generality of other provisions of this Act, the following provisions shall have effect on and after the appointed day —

- (a) an instruction, mandate or authority given to BOA Savings Bank and subsisting on the appointed day shall be deemed to have been given to ANZ Savings Bank;
- (b) a security held by BOA Savings Bank as security for a debt or other liability owed to BOA Savings Bank shall be available to ANZ Savings Bank as security for the discharge of that debt or liability and where the security extends to future debts or liabilities, shall be available as security for the discharge of debts or liabilities owed to ANZ Savings Bank and incurred on or after the appointed day; and in relation to a security ANZ Savings Bank shall be entitled to all the rights and priorities and shall be subject to all liabilities to which BOA Savings Bank would have been entitled or subject if this Act had not been passed;

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- (c) all the rights and obligations of BOA Savings Bank as bailee of documents or chattels shall be transferred to and assumed by ANZ Saving Bank;
- (d) a negotiable instrument or order for payment of money which is drawn on or given to or accepted or endorsed by BOA Savings Bank or payable at any place of business of BOA Savings Bank shall have the same effect on and after the appointed day as if it had been drawn on or given to or accepted or endorsed by ANZ Savings Bank or was payable at the place of business of ANZ Saving Bank nearest to the place at which it would have been payable if this Act had not been passed; and
- (e) no legal proceedings commenced before the appointed day by or against BOA Savings Bank shall abate or be otherwise prejudiced by reason of this Act.

**8. Assignment and subletting of leases**

- (1) Where, under the provisions of a lease, licence or other agreement, BOA or BOA Savings Bank has rights in respect of the occupation or use of land, those rights may, notwithstanding that there has been no assignment, transfer, underletting or other disposition by BOA or BOA Savings Bank, be exercised by ANZ.
- (2) For the purposes of a lease, licence or other agreement relating to the occupation or use of land, BOA or BOA Savings Bank does not part with possession of land by permitting ANZ to exercise rights under subsection (1) in respect of the land.

**9. Continuity of legal proceedings**

- (1) While BOA remains a subsidiary of ANZ —
  - (a) where either of the merging trading banks is served with a document the other shall be deemed to have been served as well;

- (b) legal proceedings that have been commenced by or against either of the merging trading banks may be continued by or against the other; and
  - (c) a judgment or order obtained by or against either of the merging trading banks may be enforced by or against the other.
- (2) While BOA Savings Bank remains a subsidiary of ANZ —
- (a) where either of the merging savings banks is served with a document the other shall be deemed to have been served as well;
  - (b) legal proceedings that have been commenced by or against either of the merging savings banks may be continued by or against the other; and
  - (c) a judgment or order obtained by or against either of the merging savings banks may be enforced by or against the other.

**10. Evidence**

A document that could, before the appointed day, have been given in evidence for or against the interests of BOA or BOA Savings Bank may, on or after the appointed day, be given in evidence for or against the interests of ANZ or ANZ Savings Bank.

**11. Officers and employees**

Notwithstanding any other provision of this Act —

- (a) on the appointed day each employee of BOA shall become an employee of ANZ on terms and conditions identical with the terms and conditions of his former employment with BOA and with the benefit of all rights accrued in respect of his employment;
- (b) The Bank of Adelaide Provident Fund established pursuant to deed of trust dated 25 July 1918 shall continue in existence for the benefit of transferred

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employees and their dependants until terminated pursuant to the rules governing the said Fund;

- (c) a transferred employee acquires no rights in respect of a pension scheme or provident fund of ANZ existing before the appointed day; and
- (d) a director, secretary or auditor of BOA or BOA Savings Bank does not by virtue of this Act become a director, secretary or auditor of ANZ or ANZ Savings Bank.

**12. Registration authority to give effect**

The Registrar of Titles, the Registrar of Deeds, the Commissioner for Corporate Affairs, Registrar of Bills of Sale, the Principal Registrar under the *Mining Act 1904*<sup>3</sup>, and any other person authorised by an Act to record and give effect to the registration of documents relating to transactions affecting any estate or interest in land or other property, shall take cognizance of this Act and is empowered to record and register in the appropriate manner such of those documents as are necessary to give effect to this Act in relation to any land or property to which the documents properly relate.

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### Notes

- <sup>1</sup> This is a compilation of *The Bank of Adelaide (Merger) Act 1980*. The following table contains information about that Act.

#### Compilation table

Short title	Number and year	Assent	Commencement
<i>The Bank of Adelaide (Merger) Act 1980</i>	6 of 1980	23 Sep 1980	1 Oct 1980 (see s. 2)

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#### Reprint of *The Bank of Adelaide (Merger) Act 1980* as at 7 Jun 2002

- <sup>2</sup> The *Companies Act 1961* was superseded by the *Companies (Western Australia) Code*, see section 18 of the *Companies (Application of Laws) Act 1981*. The *Companies (Western Australia) Code* was superseded by the Corporations Law which, on 15 July 2001, was superseded by the *Corporations Act 2001* of the Commonwealth. See Part 13 Division 2 of the *Corporations (Western Australia) Act 1990* and Part 2 of the *Corporations (Ancillary Provisions) Act 2001* respectively.
- <sup>3</sup> Repealed by the *Mining Act 1978*.