

Western Australia

**The Commercial Bank of Australia Limited
(Merger) Act 1982**

As at 06 Jul 1998

Version 00-a0-06

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The Commercial Bank of Australia Limited (Merger) Act 1982

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Schedule

NOTES

Western Australia

The Commercial Bank of Australia Limited (Merger) Act 1982

An Act to supplement *The Commercial Bank of Australia Limited (Merger) Act 1982* of the State of New South Wales which provides for the transfer to Bank of New South Wales of the undertaking of The Commercial Bank of Australia Limited, and for the transfer to Bank of New South Wales Savings Bank Limited of the undertaking of The Commercial Savings Bank of Australia Limited, and for connected purposes.

WHEREAS The Commercial Bank of Australia Limited became on or about the 12th day of February 1981 a wholly owned subsidiary of Bank of New South Wales in pursuance of action under Part VIB of the Companies Act 1961 of the State of Victoria:

AND WHEREAS The Commercial Savings Bank of Australia Limited is a wholly owned subsidiary of The Commercial Bank of Australia Limited, and Bank of New South Wales Savings Bank Limited is a wholly owned subsidiary of Bank of New South Wales:

AND WHEREAS it is expedient in the interest of banking efficiency that the banking business conducted by The Commercial Bank of Australia Limited should be transferred to Bank of New South Wales, and the banking business conducted by The Commercial Savings Bank of Australia Limited should be transferred to Bank of New South Wales Savings Bank Limited:

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

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Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows: —

1. Short title

This Act may be cited as *The Commercial Bank of Australia Limited (Merger) Act 1982*.

2. Commencement

This Act shall come into operation on a day to be fixed by proclamation.

3. Interpretation

In this Act, unless the contrary intention appears: —

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

“**CBA**” means The Commercial Bank of Australia Limited;

“**CBA Savings Bank**” means The Commercial Savings Bank of Australia Limited;

“**corporation**” includes any body, corporate or unincorporate;

“**excluded assets**” means —

- (a) documents required by law to be kept by CBA or CBA Savings Bank;
- (b) prescribed securities held, immediately before the appointed day, by or on behalf of CBA or CBA Savings Bank otherwise than by way of security;
- (c) land held, immediately before the appointed day, by or on behalf of CBA or CBA Savings Bank otherwise than by way of security;
- (d) property held, immediately before the appointed day, by CBA upon trust pursuant to subsection (11) of

section 180X of the *Companies Act 1961* of the State of Victoria; and

- (e) property held, immediately before the appointed day, by CBA for the trustees of the CBA Staff Superannuation Fund, the CBA Female Staff Superannuation Fund and the CBA Wages Staff Superannuation Fund;

“instrument” means an instrument (other than this Act) that creates, evidences, modifies or extinguishes rights or liabilities, or would do so if it or a copy thereof were lodged, filed or registered under any Act or other law, and includes any judgment, order or process of a court;

“land” includes any estate or interest in land, or an interest in respect of land;

“legal proceedings” includes an arbitration;

“liabilities” means all liabilities, duties and obligations, whether actual, contingent or prospective;

“prescribed securities” means securities within the meaning of the *Securities Industry (Western Australia) Code*;

“property” 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;

“rights” means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

“Schedule” means Schedule to this Act;

“security” 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

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liability, and includes an agreement or undertaking to give or execute any of the foregoing whether upon demand or otherwise;

“subsidiary” has the same meaning as in the *Companies (Western Australia) Code*;

“the continuing bank” means the body politic and corporate incorporated by the Bank of New South Wales Act of 1850 of New South Wales;

“the continuing savings bank” means the corporation incorporated in New South Wales under the name Bank of New South Wales Savings Bank Limited;

“transferred employee” means an employee of CBA who becomes an employee of the continuing bank in pursuance of this Act;

“undertaking” in relation to CBA or CBA 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. Savings relating to certain property etc.

Nothing in this Act applies to or in respect of —

- (a) any property, rights or liabilities arising from, accruing under, created or evidenced by, or the subject of, any of the instruments described in the Schedule; or
- (b) any of those instruments.

5. Crown to be bound

This Act binds the Crown.

6. Vesting of undertaking of merging bank and savings bank

- (1) On the appointed day —

- (a) the undertaking of CBA is vested in the continuing bank; and
 - (b) the undertaking of CBA Savings Bank is vested in the continuing savings bank.
- (2) On and after the appointed day —
 - (a) a reference to CBA in any instrument made, passed or executed before that day shall (except to the extent, if any, that the instrument relates to an excluded asset, and unless the context otherwise requires be read and construed as a reference to the continuing bank;
 - (b) a reference to CBA Savings Bank in any instrument made, passed or executed before that day shall (except to the extent, if any, that the instrument relates to an excluded asset, and unless the context otherwise requires) be read and construed as a reference to the continuing savings bank;
and
 - (c) a reference to the holder for the time being of a particular office (other than the office of a director, secretary or auditor) within CBA or CBA Savings Bank in any instrument made or executed before that day shall be read and construed as a reference to the person for the time being holding office as Chief General Manager of the continuing bank or such other officer of the continuing bank or the continuing savings bank as is designated from time to time by the Chief General Manager of the continuing bank or by any other officer acting under delegation from him.
- (3) On and after the appointed day —
 - (a) any place of business of CBA, wherever located, shall be deemed to be a place of business of the continuing bank; and

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- (b) any place of business of CBA Savings Bank, wherever located, shall be deemed to be a place of business of the continuing savings bank.
- (4) Without prejudice to the generality of subsection (1) of this section, but notwithstanding anything to the contrary in any other Act or law —
 - (a) where any registered estate or interest in land (being land under the provisions of the *Transfer of Land Act 1893*) is by virtue of this Act vested in the continuing bank or in the continuing savings bank —
 - (i) the continuing bank shall be deemed to be the registered proprietor of any such estate or interest of which CBA is the registered proprietor; and
 - (ii) the continuing savings bank shall be deemed to be the registered proprietor of any such estate or interest of which CBA Savings Bank is the registered proprietor,and the estate or interest may be dealt with accordingly;
 - (b) the Registrar of Titles shall, upon the application of the continuing bank or the continuing 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; and
 - (c) an instrument relating to land (being land under the provisions of the *Transfer of Land Act 1893*) that has vested in the continuing bank or the continuing savings bank in pursuance of this section shall, if the instrument is executed by the continuing bank or the continuing savings bank, as the case may require, 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 paragraph (b) of this subsection.

- (5) Where for any reason —
- (a) a liability to CBA immediately before the appointed day remains a liability to CBA on or after that day; or
 - (b) a liability to CBA Savings Bank immediately before the appointed day remains a liability to CBA Savings Bank on or after that day,

CBA or CBA Savings Bank, as the case may be, shall have and may enforce the same rights in respect of that liability (including rights under any security relating thereto) as if this Act had not been enacted.

7. Transitional provision — CBA

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, order, direction, mandate or authority given to CBA (other than in relation to an excluded asset) and subsisting immediately before the appointed day shall be deemed to have been given to the continuing bank;
- (b) an instrument given or addressed to CBA (other than in relation to an excluded asset) on or after the appointed day shall be deemed to have been given or addressed to the continuing bank;
- (c) a security held by CBA as security for a debt or other liability owed to CBA incurred before the appointed day shall be available to the continuing bank as security for the discharge of that debt or liability and, where the security extends to future or prospective debts or liabilities, shall be available as security for the discharge of debts owed to or liabilities to the continuing bank and incurred on or after the appointed day; and in relation to a security the continuing bank shall be entitled to all the rights and priorities (howsoever arising) and shall be

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- subject to all liabilities to which CBA would have been entitled or subject if this Act had not been enacted;
- (d) all the rights and liabilities of CBA as bailee of documents or chattels shall be transferred to and assumed by the continuing bank;
 - (e) a negotiable instrument or order for payment of money which, whether before, on or after the appointed day, is drawn on or given to or accepted or endorsed by CBA, or payable at a place of business of CBA, 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 the continuing bank instead of CBA, or was payable at the place of business of the continuing bank (which the first-mentioned place of business is by this Act deemed to be);
 - (f) the relationship between CBA and a customer or depositor shall become the same relationship between the continuing bank and the customer or depositor, and the same rights and liabilities including rights of set-off shall exist between the continuing bank and the customer or depositor as existed immediately before the appointed day between CBA and the customer or depositor;
 - (g) all contracts, agreements, conveyances, deeds, leases, licences, instruments, undertakings and notices (whether or not in writing) entered into by, made with, given to or by or addressed to CBA (whether alone or with any other person) before the appointed day and in effect immediately before the appointed day (except to the extent that they relate to an excluded asset) shall, to the extent that they were previously binding on and enforceable by, against or in favour of CBA, be binding on and enforceable by, against or in favour of the continuing bank as fully and effectually in every respect as if, instead of CBA, the continuing bank had been the person by whom they were entered into, with whom they

were made, to or by whom they were given or to whom they were addressed, as the case may be;

- (h) no legal proceedings commenced before the appointed day by, against or in favour of CBA shall abate or be otherwise prejudiced by reason of this Act;
- (j) nothing effected by this Act —
 - (i) shall be regarded as placing CBA or the continuing bank in breach of contract or confidence, or as otherwise rendering either of them liable for a civil wrong;
 - (ii) shall be regarded as placing either of them in breach of any Act or other law, or of any contractual provision, prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information; or
 - (iii) shall release any surety wholly or in part from all or any of his obligations; and
- (k) nothing done or suffered by CBA or the continuing bank pursuant to this Act (not being something effected by this Act) —
 - (i) shall be regarded as a breach of contract or confidence or otherwise as a civil wrong;
 - (ii) shall be regarded as a breach of any Act or other law, or of any contractual provision, prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information; or
 - (iii) shall release any surety wholly or in part from all or any of his obligations,

if it would not have had that effect had it been done or suffered by CBA if this Act had not been enacted.

8. Transitional provision — CBA Savings Bank

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, order, direction, mandate or authority given to CBA Savings Bank (other than in relation to an excluded asset) and subsisting immediately before the appointed day shall be deemed to have been given to the continuing savings bank;
- (b) an instrument given or addressed to CBA Savings Bank (other than in relation to an excluded asset) on or after the appointed day shall be deemed to have been given or addressed to the continuing savings bank;
- (c) a security held by CBA Savings Bank as security for a debt or other liability owed to CBA Savings Bank incurred before the appointed day shall be available to the continuing savings bank as security for the discharge of that debt or liability and, where the security extends to future or prospective debts or liabilities, shall be available as security for the discharge of debts owed to or liabilities to the continuing savings bank and incurred on or after the appointed day; and in relation to a security the continuing savings bank shall be entitled to all the rights and priorities (howsoever arising) and shall be subject to all liabilities to which CBA Savings Bank would have been entitled or subject if this Act had not been enacted;
- (d) all the rights and liabilities of CBA Savings Bank as bailee of documents or chattels shall be transferred to and assumed by the continuing savings bank;
- (e) a negotiable instrument or order for payment of money which, whether before, on or after the appointed day, is drawn on or given to or accepted or endorsed by CBA Savings Bank, or payable at a place of business of CBA 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 the continuing savings bank instead of CBA Savings Bank, or was payable at the place of business of the continuing savings bank (which the first-mentioned place of business is by this Act deemed to be);

- (f) the relationship between CBA Savings Bank and a customer or depositor shall become the same relationship between the continuing savings bank and the customer or depositor, and the same rights and liabilities including rights of set-off shall exist between the continuing savings bank and the customer or depositor as existed immediately before the appointed day between CBA Savings Bank and the customer or depositor;
- (g) all contracts, agreements, conveyances, deeds, leases, licences, instruments, undertakings and notices (whether or not in writing) entered into by, made with, given to or by or addressed to CBA Savings Bank (whether alone or with any other person) before the appointed day and in effect immediately before the appointed day (except to the extent that they relate to an excluded asset) shall, to the extent that they were previously binding on and enforceable by, against or in favour of CBA Savings Bank, be binding on and enforceable by, against or in favour of the continuing savings bank as fully and effectually in every respect as if, instead of CBA Savings Bank, the continuing savings bank had been the person by whom they were entered into, with whom they were made, to or by whom they were given or to whom they were addressed, as the case may be;
- (h) no legal proceedings commenced before the appointed day by, against or in favour of CBA Savings Bank shall abate or be otherwise prejudiced by reason of this Act;
- (j) nothing effected by this Act —

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- (i) shall be regarded as placing CBA Savings Bank or the continuing savings bank in breach of contract or confidence, or as otherwise rendering either of them liable for a civil wrong;
 - (ii) shall be regarded as placing either of them in breach of any Act or other law, or of any contractual provision, prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information; or
 - (iii) shall release any surety wholly or in part from all or any of his obligations; and
- (k) nothing done or suffered by CBA Savings Bank or the continuing savings bank pursuant to this Act (not being something effected by this Act) —
 - (i) shall be regarded as a breach of contract or confidence or otherwise as a civil wrong;
 - (ii) shall be regarded as a breach of any Act or other law, or of any contractual provision, prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information; or
 - (iii) shall release any surety wholly or in part from all or any of his obligations,if it would not have had that effect had it been done or suffered by CBA Savings Bank if this Act had not been enacted.

9. Assignment and subletting of leases

- (1) Where, under the provisions of a lease, licence or other contract or agreement, CBA or CBA Savings Bank has rights in respect of the occupation or use of land, being an excluded asset, those rights may, notwithstanding that there has been no assignment, transfer, underletting or other disposition by CBA or CBA Savings Bank, be exercised by the continuing bank or the continuing Savings bank, as the case may be.

- (2) For the purposes of a lease, licence or other contract or agreement relating to the occupation or use of land, CBA or CBA Savings Bank does not part with possession of land by permitting the continuing bank or the continuing savings bank, as the case may be, to exercise rights under subsection (1) of this section in respect of the land.

10. Continuity of legal proceedings

- (1) Legal proceedings to which CBA or CBA Savings Bank was a party immediately before the appointed day may be continued by or against the continuing bank or the continuing savings bank, as the case may be.
- (2) A judgment, order or award obtained by or against CBA or CBA Savings Bank in legal proceedings commenced before the appointed day may be enforced by or against the continuing bank or the continuing savings bank, as the case may be.

11. Evidence

- (1) Documentary or other evidence which would have been admissible for or against the interests of CBA or CBA Savings Bank if this Act had not been enacted shall be admissible for or against the interests of the continuing bank or the continuing savings bank, as the case may be.
- (2) Notwithstanding the transfer of the undertakings of CBA and CBA Savings Bank to the continuing bank and the continuing savings bank, the provisions of sections 89 to 96 (inclusive) of the *Evidence Act 1906* shall continue to apply with respect to the bankers' books of CBA and CBA Savings Bank and to entries made in those bankers' books before the appointed day.
- (3) In subsection (2) of this section, "bankers' books" has the same meaning as in the *Evidence Act 1906*.

12. Officers and employees

Notwithstanding any other provision of this Act —

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- (a) on the appointed day each employee of CBA shall cease to be an employee of CBA and shall become an employee of the continuing bank, but for the purposes of every Act and other law, award, determination, contract and agreement relating to the employment of each such employee his contract of employment shall be deemed to be unbroken and the period of his service with CBA shall be deemed to have been a period of service with the continuing bank;
- (b) the terms and conditions of the employment of each transferred employee with the continuing bank shall —
 - (i) on the appointed day (and thereafter until varied) be identical with the terms and conditions of his employment with CBA immediately before the appointed day, and be capable of variation in the same manner as they were immediately before that day;
and
 - (ii) subject to any Act or other law, award or determination relating to those terms and conditions, also be capable of variation in the same manner as the general terms and conditions of employment of other persons employed by the continuing bank are capable of variation;
- (c) a transferred employee shall not be entitled to receive any payment or other benefit by reason only of his ceasing by virtue of this Act to be an employee of CBA;
- (d) nothing in this Act, other than paragraph (c) of this section, affects rights or liabilities under any provident, benefit, superannuation or retirement fund or scheme relating to employees of CBA; and
- (e) a director, secretary or auditor of CBA or CBA Savings Bank does not by virtue of this Act become a director, secretary or auditor of the continuing bank or the continuing savings bank.

13. Appointment of new trustees

- (1) The continuing bank may at any time within three months after the appointed day by instrument executed under its seal declare that a corporation, which is a subsidiary of the continuing bank and is named in the instrument as new trustee of such trusts as are specified in the instrument, is appointed in the place of another corporation which is a subsidiary of the continuing bank and is named in the instrument as the retiring trustee of those trusts.
- (2) Upon any such instrument being so executed and notice thereof being published in the *Government Gazette*—
 - (a) the corporation named therein as the retiring trustee shall be wholly discharged as trustee of all the property vested by virtue of paragraph (c) of this subsection in the trustee named therein as new trustee;
 - (b) the corporation named therein as new trustee shall be trustee of the trusts therein specified in the place of the corporation named therein as retiring trustee and shall have the same powers, authorities and discretions, in relation to each such trust as the retiring trustee had immediately before being discharged; and
 - (c) all property in, or subject to the laws of the State, held pursuant to the said trusts and vested in the retiring trustee shall be vested in the corporation named therein as new trustee.
- (3) Any discharge or appointment of a trustee and any vesting of property by virtue of this section shall have effect notwithstanding anything to the contrary in any instrument or in any other Act or law.
- (4) In this section, a reference to a corporation holding as trustee includes a reference to a corporation acting as trustee as defined in the *Trustees Act 1962*, and as a custodian trustee, a nominee and a person charged with the management or administration of property.

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- (5) Without prejudice to the generality of the provisions of this section and notwithstanding anything to the contrary in any other Act or law, where any registered estate or interest in land (being land under the provisions of the *Transfer of Land Act 1893*) is by virtue of this section vested in a corporation, that corporation shall be deemed to be the registered proprietor of that estate or interest and the estate or interest may be dealt with accordingly.

14. Transfer of certain shares etc.

- (1) Where prescribed securities are by virtue of this Act vested in the continuing bank, the continuing savings bank or a subsidiary of the continuing bank, a certificate signed by the Chief General Manager of the continuing bank, or by an officer acting under delegation from him, stating that the prescribed securities have so vested shall, notwithstanding any other Act or law or the provisions of any instrument, be deemed to be a sufficient duly stamped instrument of transfer of those prescribed securities.
- (2) Subsection (1) of this section applies only to and in respect of prescribed securities —
- (a) which, when vested in the continuing bank or the continuing savings bank, will be held by way of security; or
 - (b) which are vested in a subsidiary of the continuing bank by the operation of section 13 of this Act.

15. Registration authority to give effect

The Registrar of Titles, the Registrar of Deeds, the Commissioner for Corporate Affairs, the Registrar of Bills of Sale, the Mining Registrar and any other person authorized 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.

16. Company charges

The provisions of subsection (1) of section 206 of the *Companies (Western Australia) Code* shall be deemed to have been complied with in respect of all charges of which the continuing bank or the continuing savings bank becomes the holder by virtue of this Act if there is lodged in the manner specified in paragraph (a) of that subsection a certificate, in a form acceptable to the Commissioner for Corporate Affairs, signed by the Chief General Manager of the continuing bank, or by an officer acting under delegation from him, stating that by virtue of this Act the undertaking of CBA has become vested in the continuing bank and the undertaking of CBA Savings Bank has become vested in the continuing savings bank.

17. Protection of persons in respect of dealings with certain assets

- (1) No person dealing —
- (a) with the continuing bank or CBA (in any capacity whatsoever); or
 - (b) with the continuing savings bank or CBA Savings Bank (in any capacity whatsoever),

nor the Registrar of Titles, 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, shall, in respect of any dealing or transaction entered into or purporting to be entered into by the continuing bank, the continuing savings bank, CBA or CBA Savings Bank, be concerned to see or enquire into 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, or be affected by any notice, express, implied or constructive, that any such property is or is not an excluded asset.

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- (2) If any dealing or transaction is entered into by the continuing bank or the continuing savings bank with any person, in relation to or in connection with an excluded asset, it shall be deemed in favour of that person and any person claiming through or under him that the continuing bank or the continuing savings bank, as the case may be, has full power and authority to enter into that dealing or transaction as if the excluded asset had vested in the continuing bank or the continuing savings bank, as the case may be, under this Act.
- (3) If any dealing or transaction is entered into by CBA or CBA Savings Bank with any person, in relation to or in connection with any property which has vested in the continuing bank or the continuing savings bank, as the case may be, under this Act it shall be deemed in favour of that person and any person claiming through or under him that CBA or CBA Savings Bank, as the case may be, has full power and authority to enter into that dealing or transaction as if the asset were an excluded asset.
- (4) Nothing in this section affects the liability of the continuing bank, the continuing savings bank, CBA or CBA Savings Bank, or any of them, in respect of anything done, or purporting to have been done, by the continuing bank, the continuing savings bank, CBA or CBA Savings Bank, as the case may be, in relation to or in connection with an excluded asset or any other property.

Schedule

Deed dated 27 June 1978 made between the continuing bank of the one part and CBA of the other part entitled “Equity Participants’ Deed”.

Agreement dated 27 June 1978 made between the continuing bank and CBA of the one part and Chase-N.B.A. Group Limited of the other part entitled “Management Agreement”.

Agreement dated 27 June 1978 made between Qantas Airways Limited of the one part and the continuing bank and CBA of the other part entitled “Equipment Purchase Agreement”.

Deed of Assignment dated 27 June 1978 between Qantas Airways Limited of the one part and the continuing bank and CBA of the other part.

Agreement dated 27 June 1978 made between the continuing bank and CBA of the first part, Government Insurance Office of New South Wales of the second part and Qantas Airways. Limited of the third part entitled “Loan Agreement”.

Deed of Lease dated 27 June 1978 made between the continuing bank and CBA of the one part and Qantas Airways Limited of the other part.

Notes

- ^{1.} This is a compilation of the *Commercial Bank of Australia Limited (Merger) Act 1982* and includes all amendments effected by the other Acts referred to in the following Table.

Compilation table

| Short title | Number and year | Assent | Commencement |
|---|------------------------|---------------|---|
| <i>The Commercial Bank of Australia Limited (Merger) Act 1982</i> | 53 of 1982 | 27 Aug 1982 | 1 Oct 1982 (see <i>Gazette</i> 24 Sep 1982 p. 3785) |