

Western Australia

Bank of Western Australia Act 1995

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Bank of Western Australia Act 1995

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Western Australia

Bank of Western Australia Act 1995

An Act to provide for the full or partial privatisation of Bank of Western Australia Ltd, to make provisions applicable to the bank after privatisation, to make provisions relating to the transfer of the bank's business and the conduct of an ongoing banking business, to amend the *Bank of Western Australia Act 1990* and certain other Acts², and for related purposes.

[Long title amended by No. 14 of 2012 s. 4.]

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Bank of Western Australia Act 1995*¹.

2. Commencement

- (1) The long title, this Part, Part 2 (except section 11) and section 43(1) and (2) come into operation on the day on which this Act receives the Royal Assent¹.
- (2) Section 11 comes into operation on such day as is fixed by proclamation^{1a}.
- (3) The other provisions of this Act come into operation on the day of privatisation¹.

3. Interpretation

In this Act, unless the contrary intention appears —

day of privatisation means the day notified by the Treasurer under section 9;

privatisation means full or partial privatisation as defined in section 4;

public authority means a body corporate that —

- (a) is created by a written law;
- (b) is an agent of the Crown; and
- (c) has power to acquire shares in a company.

4. Full and partial privatisation defined

- (1) For the purposes of this Act full privatisation occurs if, in accordance with a privatisation order under section 7 —
 - (a) all of the shares in Bank of Western Australia Ltd become, after the day of privatisation, owned by persons other than the State; or

- (b) the business that is conducted by Bank of Western Australia Ltd becomes, after the day of privatisation, owned by one or more corporations all of the shares in which are held by persons other than the State.
- (2) For the purposes of this Act partial privatisation occurs if, in accordance with a privatisation order under section 7 —
 - (a) some of the shares in Bank of Western Australia Ltd continue, after the day of privatisation, to be owned by the State; or
 - (b) the business that is conducted by Bank of Western Australia Ltd becomes, after the day of privatisation, owned by one or more corporations some of the shares in which are held by the State.
- (3) References in subsections (1) and (2) to the State do not include a public authority that acquires shares in the Bank on or after the day of privatisation.

Part 2 — Privatisation of the Bank

5. Definitions

In this Part, unless the contrary intention appears —

Bank means Bank of Western Australia Ltd referred to in section 22 of the existing Act;

existing Act means the *Bank of Western Australia Act 1990*³;

private placement means the sale of shares in the Bank in a way that would not require R & I Holdings to lodge a notice under section 1043B of the Corporations Law (assuming it were not exempt from the requirements of Chapter 7 of that Law);

privatisation order means an order, and any amendment to it, made under section 7;

public float means the sale of shares in the Bank to the public in a way that would require R & I Holdings to lodge a notice under section 1043B of the Corporations Law (assuming it were not exempt from the requirements of Chapter 7 of that Law);

R & I Holdings means the body corporate referred to in section 6 of the existing Act;

voting share has the meaning given by section 9 of the Corporations Law.

6. Privatisation of Bank

- (1) The Bank may be privatised in accordance with this Part.
- (2) This Part is to have effect despite section 26(4) or (5) of the existing Act.

7. Method of privatisation

- (1) The Treasurer may by order determine that the Bank is to be fully privatised or partially privatised —
 - (a) by public float;
 - (b) by private placement; or

(c) by some other means,

or by any combination of the methods referred to in paragraphs (a), (b) and (c).

- (2) A privatisation order may contain such incidental or supplementary provisions as the Treasurer thinks fit.
- (3) The Treasurer may at any time before the day of privatisation amend or revoke a privatisation order.
- (4) A privatisation order and any amendment or revocation is to be published in the *Gazette*.

8. Extent of State's shareholding

A privatisation order that provides for the partial privatisation of the Bank is to specify the shareholding that is to be retained or held by the State and that is to vest in the Treasurer under section 41.

9. Day of privatisation

- (1) The Treasurer is to notify the day of privatisation in the *Gazette*.
- (2) The Treasurer may change the day notified under subsection (1) to a later day.
- (3) If the day is changed the Treasurer is to notify the change in the *Gazette*.
- (4) Property in shares in the Bank that passes from R & I Holdings to any person on the day of privatisation is to be taken to pass at the beginning of the day of privatisation.

10. Powers exercisable for purposes of privatisation

- (1) R & I Holdings and the Bank are to do all things necessary or convenient to be done in order to comply with a privatisation order.

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- (2) Without limiting the generality of subsection (1) R & I Holdings may —
- (a) enter into agreements including underwriting agreements;
 - (b) issue or cause the issue of a prospectus or other document containing information for potential purchasers of shares in the Bank;
 - (c) require the Bank to make application to the Australian Stock Exchange Limited for admission to the Official List of the Exchange and for official quotation of the shares in the Bank;
 - (d) require the Bank to issue to it further shares pursuant to section 26 of the existing Act in such number and on such terms as to payment as may be agreed between R & I Holdings and the Bank or in the absence of agreement as may be determined by the Treasurer;
 - (e) require the Bank to do anything else necessary or convenient to enable R & I Holdings to comply with a privatisation order.
- (3) The Bank is to comply with any requirement made under subsection (2).

[11. Deleted by No. 8 of 2009 s. 24.]

12. Consultation

R & I Holdings and the board of directors of the Bank must consult fully in relation to all matters necessary or convenient to give effect to a privatisation order.

13. Proceeds

- (1) The proceeds of privatisation of the Bank are to be applied by R & I Holdings —
- (a) first, in meeting the expenses of privatisation as determined by the Treasurer;

- (b) secondly, in the payment to Bank of Western Australia Ltd of any amount determined by the Treasurer; and
 - (c) thirdly, in the repayment of the liabilities of R & I Holdings.
- (2) So much of the proceeds as is not applied under subsection (1) is to be paid into the Consolidated Account.

[Section 13 amended by No. 77 of 2006 s. 4.]

14. Disclosure of information

- (1) A disclosure of information made in accordance with this section for the purposes of facilitating the privatisation of the Bank is not to be regarded —
- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
 - (b) as a contravention of section 232 of the Corporations Law.
- (2) Subsection (1) applies to a disclosure of information made by the Government, R & I Holdings or the Bank or by a person acting with the authority of the Government, R & I Holdings or the Bank but does not apply to any other person to whom the information is given.
- (3) Subsection (1) applies to confidential information or information not publicly known concerning the affairs of the Bank or of any subsidiary of the Bank or of any customer of the Bank or of any subsidiary.
- (4) This section has effect despite section 41 of the existing Act.
- (5) In subsection (3) *Bank*, *subsidiary* and *customer* have the same meanings as they have in section 41 of the existing Act.

15. Auditor General may disclose information

Despite section 46(2) of the *Auditor General Act 2006*, the Auditor General may, for the purpose of facilitating the

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privatisation of the Bank, disclose to any person, or provide any person with access to, information in his or her possession or under his or her control.

[Section 15 amended by No. 77 of 2006 s. 17.]

16. Offence of disclosing information

A person who under section 14 or 15 —

- (a) obtains information in connection with the privatisation of the Bank; and
- (b) has agreed or is otherwise under a duty not to disclose the information to others,

commits an offence if the person breaches the agreement or the duty without lawful excuse.

Penalty: \$100 000.

17. Functions and powers conferred

In addition to their functions and powers under the existing Act, R & I Holdings, the Bank and the board of directors of the Bank —

- (a) have the respective functions conferred on them by this Part; and
- (b) may do, in the State or elsewhere, all things necessary or convenient to be done for or in connection with the performance of those functions.

18. Exemption from stamp duty

If the Bank is privatised either solely by public float or partly by public float and partly by private placement, stamp duty under the *Stamp Act 1921* is not chargeable on any sale and transfer of shares in the Bank by R & I Holdings by way of such public float or private placement.

Part 3 — Provisions applicable to Bank after privatisation

Division 1 — Preliminary

19. Definitions

In this Part, unless the contrary intention appears —

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

mandatory articles means the articles of association required by section 23(1);

subsidiary means a company that is a subsidiary of the Bank as determined in accordance with the *Corporations Act 2001* of the Commonwealth;

the 1990 Act means the *Bank of Western Australia Act 1990*³.

[Section 19 amended by No. 10 of 2001 s. 17; No. 14 of 2012 s. 5.]

Division 2 — Guarantee

20. Guarantee

- (1) Subject to subsections (2) and (4), the payment of the financial obligations of the Bank is guaranteed by the Treasurer.
- (2) The payment of money due —
 - (a) by the Bank in respect of capital stock issued under section 29A of the *Rural and Industries Bank Act 1944*⁵;
 - (b) by a subsidiary of the Bank; or
 - (c) by the Bank in respect of any excluded debt,is not guaranteed under subsection (1).

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Part 3 Provisions applicable to Bank after privatisation

Division 2 Guarantee

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- (3) In subsection (2)(c) *excluded debt* means any financial obligation incurred by Bank of Western Australia Ltd before the day of privatisation on terms which provide that a Treasurer's guarantee does not apply to the financial obligation.
- (4) On and from the day of privatisation the payment of the financial obligations of the Bank is guaranteed under subsection (1) to the extent set out in subsections (5) and (6) and to that extent only.
- (5) On and from the day of privatisation until the fifth anniversary of that day, the payment of money standing to the credit of any account with the Bank that was in existence as an account with Bank of Western Australia Ltd at the close of business on the day preceding the day of privatisation, other than a term deposit, continues to be guaranteed under subsection (1) to the extent of the amount calculated by deducting from the amount that was standing to the credit of the account at the close of business on the day preceding the day of privatisation the aggregate of all amounts debited to the account on or after the day of privatisation.
- (6) On and from the day of privatisation the payment of the financial obligations of the Bank (including contingent liabilities) continues to be guaranteed under subsection (1) to the extent that those obligations arise from —
- (a) any term deposit made with Bank of Western Australia Ltd, or other term liability incurred by Bank of Western Australia Ltd, before the day of privatisation;
 - (b) securities issued by Bank of Western Australia Ltd before the day of privatisation;
 - (c) a deed, agreement, instrument, undertaking or other document entered into, given or issued by Bank of Western Australia Ltd before the day of privatisation; or
 - (d) any other event involving Bank of Western Australia Ltd which occurred, or arrangements which were entered

into by that Bank, before the day of privatisation, other than an account to which subsection (5) applies.

- (7) References in subsection (6)(a), (b), (c) and (d) to the Bank include the Bank as constituted under the *Rural and Industries Bank of Western Australia Act 1987*⁶ and the *Rural and Industries Bank Act 1944*⁵.
- (8) Any liability of the Treasurer arising from the guarantee in subsection (1) is to be met out of the Consolidated Account which is appropriated to the necessary extent.

[Section 20 amended by No. 77 of 2006 s. 4.]

21. Charges for guarantee

- (1) The Treasurer may from time to time, after consultation with the board of directors of the Bank, fix charges to be paid by the Bank to the Treasurer for the benefit of the Consolidated Account in respect of the guarantee under section 20.
- (2) The Treasurer may agree with the Bank that a charge fixed under subsection (1) will not be increased under that subsection for a stipulated period, and the exercise of the power in that subsection is subject to any such agreement.
- (3) Payments by the Bank to the Treasurer in respect of any such charges are required to be made at such times, and in such instalments, as the Treasurer determines.

[Section 21 amended by No. 77 of 2006 s. 4.]

22. Treasurer may require information to be given

- (1) The Treasurer may request the Bank to give prescribed information to the Treasurer, including prescribed information by way of periodical returns at prescribed times, to enable the Treasurer to be informed of or assess the extent of the liability, or risk of or exposure to liability, from time to time existing under section 20.
- (2) The power in subsection (1) ceases to be exercisable on —

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Part 3 Provisions applicable to Bank after privatisation

Division 3 Entrenched provisions in articles of association

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- (a) the day on which the guarantee under section 20(1) no longer applies to securities, term deposits or term borrowings; or
 - (b) the fifth anniversary of the day of privatisation,
- whichever is the later.
- (3) A request under subsection (1) must —
 - (a) be made by written notice given to the Bank; and
 - (b) specify the time before which the information is to be given.
 - (4) The Bank must comply with any request under subsection (1).
 - (5) The Bank is to provide information under subsection (1) in a manner that does not disclose the identity and affairs of any person or might enable the identity and affairs of any person to be ascertained.

Division 3 — Entrenched provisions in articles of association

23. Bank's articles of association to include certain provisions

- (1) The articles of association of the Bank must at all times —
 - (a) require the Bank to be taken to be registered in Western Australia;
 - (b) require the Bank to carry on in Western Australia a banking business of substantially the same type as, and on a scale not significantly less than, the banking business conducted by Bank of Western Australia Ltd immediately before the day of privatisation;
 - (c) require that the head office of the Bank, that is the place where central management and control of the Bank are exercised, be located in Western Australia;
 - (d) require that —
 - (i) at least a majority of the board of directors of the Bank; and

- (ii) the managing director,
while holding office be ordinarily resident in Western Australia; and
 - (e) prohibit the alteration of the mandatory articles by any means.
- (2) If there is any conflict or inconsistency between this Division and a provision of the memorandum or articles of association of the Bank, this Division prevails.
- (3) The articles of association of the Bank are to be taken —
 - (a) to have been amended so as to include the provisions required by subsection (1); and
 - (b) as amended, to bind the Bank and its members accordingly.

[Section 23 amended by No. 10 of 2001 s. 18.]

24. Incapacity of Bank to alter or avoid mandatory articles

- (1) A special resolution of the Bank that would, apart from this subsection, have the effect of altering the Bank's articles of association so that the articles would not comply with section 23 has no effect.
- (2) A special resolution or resolution of the Bank that —
 - (a) would, if acted on and apart from this subsection, result in a contravention of section 23(1) or of the mandatory articles; or
 - (b) would, apart from this subsection, ratify an act or omission that contravenes section 23(1) or the mandatory articles,has no effect.

25. Operation of sections 23 and 24 excluded from the Corporations legislation

The following matters are declared to be excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies —

- (a) the articles of association of the Bank to the extent that they are governed by sections 23 and 24;
- (b) resolutions of the Bank to the extent that they are governed by section 24.

[Section 25 inserted by No. 10 of 2001 s. 19.]

26A. Expiry of Division

This Division expires at the beginning of the transfer day¹⁵ (as defined in section 42A).

[Section 26A inserted by No. 14 of 2012 s. 6.]

Division 4 — Use of names

26. Use of names

- (1) The Bank or a subsidiary of the Bank must not use any name in connection with its business which suggests that it is associated with the Government.
- (2) The use of the name “Bank of Western Australia Ltd” or “BankWest” does not contravene subsection (1).

27. Use of former name and derivatives of it

- (1) A person must not —
 - (a) use the name “The Rural and Industries Bank of Western Australia” or the name “R & I Bank of Western Australia Ltd”; or

- (b) use any company, corporate, business, trading or other name substantially similar to either of the names referred to in paragraph (a); or
 - (c) use the prefix “R & I” as part of any bank description without the approval in writing of the Minister.
- (2) In subsection (1)(c) **bank description** means any company, corporate, business, trading or other name, or other trade description or symbol, used in connection with banking business or the provision of financial services.
- (3) The prohibition in subsection (1) extends to the Crown.
- (4) The use of names and descriptions, as governed by this section, is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies.

[Section 27 amended by No. 10 of 2001 s. 20.]

28. Saving

- (1) The Bank, or any officer or other person acting on behalf of the Bank, shall not be taken to be in breach of section 27 of this Act or section 219 of the Corporations Law by reason of the use of any instrument or document of any kind or any sign or other form of publication bearing the name “R & I Bank of Western Australia Ltd”.
- (2) Subsection (1) expires on 25 October 1996⁷.

Division 5 — Enforcement of Divisions 3 and 4

29. Enforcement only by injunction

The obligations created by sections 23, 26 and 27 are enforceable under section 30 and not otherwise.

30. 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 Bank or any person —
 - (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 breach of section 23, 26 or 27 or of the mandatory articles; or
 - (b) is involved in a breach of section 23, 26 or 27 or of the mandatory articles.
- (2) An interim or interlocutory injunction may be granted before final determination of an application.
- (3) If the Minister applies to the 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 breach is a reference to a person who —
 - (a) has aided, abetted, counselled or procured the breach;
 - (b) has induced the breach, whether by threats or promises or otherwise;
 - (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the breach;
 - (d) has conspired with others to effect the breach; or
 - (e) has attempted to do any act of a kind referred to in paragraph (a), (b), (c) or (d).

Division 6 — Continuation of certain provisions

31. Definitions

In this Division —

appointed day has the meaning given by section 4 of the 1990 Act;

former Bank means the Bank as defined in section 3 of the 1987 Act;

the 1987 Act means the *Rural and Industries Bank of Western Australia Act 1987*⁶.

32. Intent of this Division

This Division re-enacts certain provisions of Schedule 2 to the 1990 Act⁸, relating to the transition from the former Bank to Bank of Western Australia Ltd, so that they will continue in force despite the repeal of that Schedule.

33. Evidence

- (1) Documentary or other evidence which would have been admissible for or against the interests of the former Bank if the 1990 Act had not been enacted is admissible for or against the interests of the Bank.
- (2) Sections 89 to 96 (inclusive) of the *Evidence Act 1906* continue to apply with respect to the banker's books of the former Bank and to entries made in those banker's books before the appointed day.
- (3) In subsection (2) *banker's books* has the same meaning as in the *Evidence Act 1906*.

34. Administration etc. of capital stock, debentures and inscribed stock

- (1) The provisions of the repealed Acts relating to —
 - (a) the administration of the capital stock, debentures and inscribed stock issued under section 29A or 30 of the *Rural and Industries Bank Act 1944*⁵; and
 - (b) the determination of rights and obligations in respect of the same,

that applied to such capital stock, debentures and inscribed stock immediately before the appointed day are to be taken to be in force, with all necessary changes, so far as is necessary for the purposes referred to in paragraphs (a) and (b), but for no other purpose.

- (2) In subsection (1) *the repealed Acts* means —
- (a) the 1987 Act and the Act repealed by section 36 of that Act;
 - (b) the *Rural and Industries Bank of Western Australia Debentures and Inscribed Stock Regulations 1964*;
 - (c) the *Rural and Industries Bank (Capital Stock) Regulations 1986*.
- (3) The Governor may, by further regulations, amend or repeal the regulations referred to in subsection (2).

35. Reference to officers

A reference in any other Act, in any instrument made under any Act or in any instrument or document of any kind to the holder for the time being of a particular office of the former Bank is to be read, if there is no equivalent office of the Bank, as a reference to the managing director of the Bank.

36. Immunity etc. to continue

Despite the repeal of the 1987 Act, where the former Bank had the benefit of any immunity or privilege in respect of an act, matter or thing done or omitted before the appointed day, that immunity or privilege continues in that respect for the benefit of the Bank.

37. Former Bank to complete necessary transactions

- (1) Despite the repeal of the 1987 Act the former Bank —
- (a) continues as if there had been no such repeal, for the purpose of performing the function described in subsection (2); and

- (b) has all such powers as are necessary or convenient for that purpose.
- (2) Where any asset, right or liability to which Schedule 2 to the 1990 Act applied could not be properly vested in or succeeded to by Bank of Western Australia Ltd by the operation of that Act (whether because the matter was governed otherwise than by the law of the State, or for any other reason) and the asset, right or liability was not vested in or succeeded to by Bank of Western Australia Ltd before the repeal of that Schedule the former Bank —
 - (a) is to be taken to continue to hold or be liable for that asset, right or liability until the same is effectively vested in or succeeded to by the Bank; and
 - (b) is to take all practicable steps for the purpose of securing that such asset, right or liability is effectively vested in or succeeded to by the Bank.
- (3) The former Bank is to perform the function described in subsection (2)(b) through the managing director of the Bank.
- (4) The performance of the functions of the former Bank under this section does not constitute or continue the former Bank as a bank and is not to be construed as the conduct of State banking or banking business by the former Bank.

Division 7 — Miscellaneous

38. References to former name

A reference in —

- (a) any Act or any other instrument made under any Act; or
- (b) a document of any kind,

to the R & I Bank of Western Australia Ltd or to The Rural and Industries Bank of Western Australia or a predecessor of that Bank is to be construed as if it had been amended to be, or to

include, a reference to the name of the Bank, except where the context requires otherwise.

39. Saving

A failure by Bank of Western Australia Ltd to comply with section 22(2)(b) or 30 or clause 2, 3 or 4 of Schedule 1⁹ of the 1990 Act does not affect the validity or enforceability of any contract, arrangement or other transaction, and a person dealing with the Bank on any matter is not, and has never been, bound to inquire whether any such provision has been complied with in respect of that matter.

Part 4 — State's shareholding in Bank on partial privatisation

40. Definition

A reference to the Bank —

- (a) where it first occurs in section 41(1) is to Bank of Western Australia Ltd; and
- (b) elsewhere in that section is to the Bank as defined in section 19.

41. Treasurer's shareholding

- (1) If the Bank is partially privatised the shareholding in the Bank specified under section 8 vests in the Treasurer by force of this section on the day of privatisation.
- (2) For the purpose of holding shares in the Bank under this section the Treasurer is a corporation sole with perpetual succession and an official seal.
- (3) The Treasurer may exercise any right, power or option attached to ownership of the shares in the Bank vested in him or her.
- (4) The Treasurer must not transfer or otherwise dispose of —
 - (a) the shares that vest in the Treasurer under subsection (1);
 - (b) any further shares in the Bank that are taken up under subsection (3); or
 - (c) any interest in the shares referred to in paragraphs (a) and (b).

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

[Heading inserted by No. 14 of 2012 s. 7.]

Division 1 — Preliminary

[Heading inserted by No. 14 of 2012 s. 7.]

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.

[Section 42A inserted by No. 14 of 2012 s. 7.]

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).

[Section 42B inserted by No. 14 of 2012 s. 7.]

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.

[Section 42C inserted by No. 14 of 2012 s. 7.]

Division 2 — Long term obligations

[Heading inserted by No. 14 of 2012 s. 7.]

Bank of Western Australia Act 1995

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

Division 2 Long term obligations

s. 42D

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.

[Section 42D inserted by No. 14 of 2012 s. 7.]

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.

[Section 42E inserted by No. 14 of 2012 s. 7.]

42F. Head office of Bankwest business

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

[Section 42F inserted by No. 14 of 2012 s. 7.]

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.

[Section 42G inserted by No. 14 of 2012 s. 7.]

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).

[Section 42H inserted by No. 14 of 2012 s. 7.]

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).

[Section 42I inserted by No. 14 of 2012 s. 7.]

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

[Heading inserted by No. 14 of 2012 s. 7.]

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.

[Section 42J inserted by No. 14 of 2012 s. 7.]

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.

Bank of Western Australia Act 1995

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

Division 4 Monitoring compliance

s. 42L

- (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.

[Section 42K inserted by No. 14 of 2012 s. 7.]

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.

[Section 42L inserted by No. 14 of 2012 s. 7.]

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.

[Section 42M inserted by No. 14 of 2012 s. 7.]

Division 4 — Monitoring compliance

[Heading inserted by No. 14 of 2012 s. 7.]

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.

[Section 42N inserted by No. 14 of 2012 s. 7.]

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.

[Section 42O inserted by No. 14 of 2012 s. 7.]

Division 5 — Enforcement of Divisions 2, 3 and 4

[Heading inserted by No. 14 of 2012 s. 7.]

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.

[Section 42P inserted by No. 14 of 2012 s. 7.]

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.

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

Division 5 Enforcement of Divisions 2, 3 and 4

s. 42R

- (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).

[Section 42Q inserted by No. 14 of 2012 s. 7.]

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.

[Section 42R inserted by No. 14 of 2012 s. 7.]

Division 6 — Other provisions

[Heading inserted by No. 14 of 2012 s. 7.]

Bank of Western Australia Act 1995

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

Division 6 Other provisions

s. 42S

42S. Notification of transfer day

- (1) The Minister is to cause notification of the transfer day¹⁵ 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.

[Section 42S inserted by No. 14 of 2012 s. 7.]

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.

[Section 42T inserted by No. 14 of 2012 s. 7.]

Part 5 — General

42. Regulations

The Governor may make regulations prescribing all matters that are required or are necessary or convenient to be prescribed for giving effect to this Act.

43. *Bank of Western Australia Act 1990* amended

[(1)-(3) Omitted under the Reprints Act 1984 s. 7(4)(e).]

- (4) Division 2 of Schedule 1 has effect to make transitional provisions.

44. Consequential amendments to other Acts

[(1) Omitted under the Reprints Act 1984 s. 7(4)(e).]

- (2) Part B of Schedule 2 has effect to make transitional provisions.

Schedule 1 — Provisions relating to *Bank of Western Australia Act 1990*

[s. 43(3) and (4)]

[*Heading amended by No. 19 of 2010 s. 4.*]

[*Division 1 omitted under the Reprints Act 1984 s. 7(4)(e).*]

Division 2 — Transitional provisions

11. Definitions

In this Division —

Bank has the meaning given by section 19;

the 1990 Act means the *Bank of Western Australia Act 1990*³.

12. Auditor General may disclose information

- (1) Despite section 91 of the *Financial Administration and Audit Act 1985*, the Auditor General may disclose to another auditor or provide another auditor with access to, information in his or her possession or under his or her control for the purposes of the audit of the Bank's accounts for the financial year during which the Bank is privatised under Part 2.
- (2) In subsection (1) **another auditor** means an auditor, other than the Auditor General, who is appointed by the Bank to audit the Bank's accounts for the financial year referred to in subclause (1).

13. Payments under repealed section 31 up to day of privatisation

- (1) The repeal of section 31 of the 1990 Act¹⁰ does not affect the liability of the Bank under that section in respect of the period from the preceding 1 October to the day on which the Bank becomes liable to tax referred to in that section.
- (2) For the purposes of subsection (1), section 31 has effect, despite its repeal, as if the period referred to in subsection (1) were a financial year.

14. Agreements under section 33(4a)

The repeal of section 33 of the 1990 Act ¹¹ does not affect any agreement made under subsection (4a) of that section so far as it applies to a period after the repeal, and any such agreement continues in force as if it had been made under section 21(2) of this Act.

15. Securities taken as agent of Crown

- (1) Any security for the repayment of advances vested in the Bank immediately before the commencement of section 43 that was taken by the Bank or a predecessor of the Bank as agent, trustee or nominee of the Crown in right of the State is vested in the Treasurer on the commencement of that section.
- (2) Any relevant official who records or registers documents under a written law is to take cognizance of subclause (1) and is authorised to make any entry or memorial or register any document necessary to show the effect of that subclause.
- (3) A statement in an instrument executed by or on behalf of the Treasurer that any security has become vested in the Treasurer under subclause (1) is evidence of that fact.
- (4) If any question arises as to whether a security comes within subclause (1) the question is to be determined by the Treasurer after consultation with the Bank.

Schedule 2 — Provisions relating to other Acts

[s. 44]

[Heading amended by No. 19 of 2010 s. 4.]

[Part A omitted under the Reprints Act 1984 s. 7(4)(e).]

Part B — Transitional Provisions

1. Provision relating to *Industry (Advances) Act 1947*

- (1) Any security for the repayment of advances taken under the *Industry (Advances) Act 1947*¹² and vested in the Bank immediately before the commencement of section 44 is vested in the Treasurer on the commencement of that section.
- (2) Any relevant official who records and registers documents under a written law is to take cognizance of subclause (1) and is authorised to make any entry or memorial or register any document necessary to show the effect of that subclause.
- (3) A statement in an instrument executed by or on behalf of the Treasurer that any security has become vested in the Treasurer under subclause (1) is evidence of that fact.

2. Provisions relating to *Superannuation and Family Benefits Act 1938*

- (1) Despite the amendment made by item 13 of Part A of this Schedule¹³, the Bank is to be deemed to be a department under section 6(1) of the Act in respect of any employee who was a contributor under that Act immediately before the day of privatisation.
- (2) A person who was such a contributor may continue to be a contributor after the day of privatisation so long as the person remains an employee of the Bank.
- (3) The Bank, the Government Employees Superannuation Board and the Treasurer are to enter into an agreement —
 - (a) defining the entitlement to benefits that are to have effect for the purposes of the Act in respect of contributors referred to

in subclause (1) and persons referred to in section 62 of the Act in relation to such contributors; and

- (b) fixing the value of the amount required to fund those benefits.
- (4) To the extent that any matter referred to in subclause (3) is not agreed under that subclause within a period that the Treasurer thinks is reasonable the matter is to be determined by the Treasurer.
- (5) The Bank is to pay to the Treasurer the amount agreed under subclause (3)(b) or determined under subclause (4) at such time as is provided for in the agreement or determination.
- (6) Subclauses (1) to (5) and any agreement under subclause (3) or determination under subclause (4) have effect despite any provision of the Act.
- (7) In subclauses (1) to (6) —
Act means the *Superannuation and Family Benefits Act 1938*;
Bank has the meaning given by section 19 and includes the Bank in its capacity as trustee of the Bank West State Superannuation Scheme;
employee has the same meaning as it has in the Act.

Notes

- ¹ This is a compilation of the *Bank of Western Australia Act 1995* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Bank of Western Australia Act 1995</i>	14 of 1995	4 Jul 1995	Long title, Pt. 1 & 2 (other than s. 11), s. 43(1) and (2): 4 Jul 1995 (see s. 2(1)); balance (other than s. 11): 1 Dec 1995 (see s. 2(3) and 9 and <i>Gazette</i> 29 Nov 1995 p. 5529)
<i>Corporations (Consequential Amendments) Act 2001 Pt. 6</i>	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
Reprint 1: The <i>Bank of Western Australia Act 1995</i> as at 7 May 2004 (includes amendments listed above)			
<i>Financial Legislation Amendment and Repeal Act 2006 s. 4 and 17</i>	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2 and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 24</i>	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
<i>Standardisation of Formatting Act 2010 s. 4</i>	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Bank of Western Australia Amendment Act 2012 Pt. 2</i>	14 of 2012	3 Jul 2012	11 Aug 2012 (see s. 2(b) and <i>Gazette</i> 10 Aug 2012 p. 3803)

^{1a} On the date on which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 75 ¹⁴	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))

- ² The provisions in this Act amending the *Bank of Western Australia Act 1990* and other Acts have been omitted under the *Reprints Act 1984* s. 7(4)(e).
- ³ The *Bank of Western Australia Act 1990*, the short title of which was changed to the *R & I Holdings Act 1990* by the *Bank of Western Australia Act 1995*, was repealed in *Gazette* 26 Jun 2001 p. 3063 under s. 22(2) of the *R & I Holdings Act 1990*.
- ⁴ Footnote no longer applicable.
- ⁵ Repealed by the *Rural and Industries Bank of Western Australia Act 1987* s. 36.
- ⁶ Repealed by the *R & I Bank Act 1990* s. 43.
- ⁷ Section 28 expired 25 Oct 1996.
- ⁸ The provision of this Act repealing Schedule 2 of the 1990 Act has been omitted under the *Reprints Act 1984* s. 7(4)(e).
- ⁹ These provisions were repealed by Schedule 1, Division 1 of this Act and were omitted under the *Reprints Act 1984* s. 7(4)(e).
- ¹⁰ The provision of this Act repealing s. 31 of the 1990 Act has been omitted under the *Reprints Act 1984* s. 7(4)(e).
- ¹¹ The provision of this Act repealing s. 33 of the 1990 Act has been omitted under the *Reprints Act 1984* s. 7(4)(e).
- ¹² The *Industry (Advances) Act 1947* was repealed by the *Industry and Technology Development Act 1998*.

¹³ Schedule 2 Part A Item 13 has been omitted under the *Reprints Act 1984* s. 7(4)(e). It reads as follows:

“

13. *Superannuation and Family Benefits Act 1938*

In section 6(1) in the definition of “department” delete “the Bank of Western Australia Ltd referred to in section 22 of the *Bank of Western Australia Act 1990*.”

”.

¹⁴ On the date as at which this compilation was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 75 had not come into operation. It reads as follows:

“

75. Various provisions repealed

The provisions listed in the Table to this section are repealed.

Table of provisions repealed

Act	Provision
<i>Bank of Western Australia Act 1995</i>	Sch. 2, Part B, cl. 2
.....

”.

¹⁵ The transfer day as defined in s. 42A is 1 Oct 2012 (see *Gazette* 9 Nov 2012 p. 5393)

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
Act.....	Sch. 2, cl. 2(7)
another auditor	Sch. 1, cl. 12(2)
appointed day.....	31
Bank.....	5, 14(5), 19, 19, Sch. 1, cl. 11, Sch. 2, cl. 2(7)
bank description	27(2)
banker's books	33(3)
Bankwest business	42A
Bankwest name	42A
Bankwest owner.....	42A
business information	42O(1)
BWA business.....	42A
CBA	42A
contravention notice.....	42R(1)
customer.....	14(5)
day of privatisation	3
employee.....	Sch. 2, cl. 2(7)
excluded debt	20(3)
existing Act	5
former Bank	31
head office.....	42A
managing officer	42A
mandatory articles.....	19
penalty notice.....	42R(3)
point of presence	42A
points of presence threshold.....	42A
previous location.....	42K(3)
private placement.....	5
privatisation	3
privatisation order.....	5
public authority	3
public float	5
R & I Holdings.....	5
relevant period	42A
subsidiary	14(5), 19
the 1987 Act.....	31
the 1990 Act.....	19, Sch. 1, cl. 11
the repealed Acts.....	34(2)

Defined Terms

transfer day	42A
voting share.....	5