

Western Australia

**Westpac Banking Corporation (Challenge Bank)
Act 1996**

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Westpac Banking Corporation (Challenge Bank) Act 1996

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Schedule 1

NOTES

Westpac Banking Corporation (Challenge Bank) Act 1996

An Act to provide for the transfer to Westpac Banking Corporation of the banking business of Challenge Bank Limited and for connected purposes.

Reasons for enactment

1. Challenge Bank Limited ACN: 009 230 433 (“Challenge”) is a company incorporated in Western Australia and is a company within the meaning of the Corporations Law and is a company limited by shares.
2. Westpac Banking Corporation ARBN: 007 457 141 (“Westpac”) is a body corporate constituted by an Act of the Parliament of New South Wales.
3. Westpac carries on the business of banking throughout Australia and elsewhere in the world, and Challenge carries on the business of banking principally in Western Australia and Victoria but also in the other States and Territories of Australia.
4. On 21 December 1995 Westpac became the beneficial owner of the whole of the issued share capital of Challenge and since that date Challenge has been a wholly owned subsidiary of Westpac.
5. Under the conditions imposed on the authority of Challenge to carry on banking business in Australia, Challenge is required to surrender that authority.
6. Accordingly it is necessary and expedient to transfer the banking business of Challenge to Westpac, but at the same time to facilitate the preservation of the character of the business of Challenge.

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7. On 22 November 1995 the Treasurer of Australia consented pursuant to section 63 of the *Banking Act 1959* of the Commonwealth to the amalgamation of the banking business of Challenge with that of Westpac.
8. It is expedient to enact legislation to provide for the vesting of the banking business of Challenge in Westpac.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Westpac Banking Corporation (Challenge Bank) Act 1996*.

2. Commencement

- (1) Subject to subsections (2), (3) and (4) this Act comes into operation on such day as is fixed by proclamation and at 12 noon Eastern Standard Time, within the meaning of the Victorian Act, on that day.
- (2) Sections 3 and 17 come into operation on the day on which this Act receives the Royal Assent.
- (3) The day fixed under subsection (1) is to be after the day on which a certificate is given by the Treasurer under section 17.
- (4) Section 12 comes into operation, or is deemed to have come into operation, on the day on which section 13 of the *Consumer Credit (Western Australia) Act 1996* comes into operation.

3. Interpretation

In this Act —

“Challenge” means Challenge Bank Limited
(ACN: 009 230 433);

“Challenge employee” means a person employed by Challenge immediately before the commencement time;

“Chief Executive Officer”, in relation to a bank, means the officer in charge of the day to day management of the affairs of that bank or a person appointed by that officer in writing;

“commencement time” means the time referred to in subsection (1) of section 2 on the day fixed by proclamation under that subsection;

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“excluded assets” means —

- (a) any document required to be kept by Challenge under the Corporations Law or any other law;
- (b) shares held by Challenge in —
 - (i) CBL Financial Services Ltd (ACN: 009 340 390);
 - (ii) CBL Securities Ltd (ACN: 009 124 341);
 - (iii) Challase Pty Ltd (ACN: 059 339 641);
 - (iv) Challenge Finance Limited (ACN: 000 032 735);
 - (v) Challenge Funds Management Ltd (ACN: 009 065 990);
 - (vi) Challenge Information Technology Pty Ltd (ACN: 007 258 488);
 - (vii) Challenge Insurance Services (Agency) Pty Ltd (ACN: 009 086 444);
 - (viii) Cold Storage Construction Pty Ltd (ACN: 001 122 005);
 - (ix) Herston Pty Ltd (ACN: 009 041 650);
 - (x) National Permanent Management Services Pty Ltd (ACN: 009 076 653);
 - (xi) Olsona Ltd (ACN: 003 409 756);
 - (xii) Westman Enterprises Pty Ltd (ACN: 008 915 099);
- (c) units held by Challenge in National Permanent Property Trust, a trust created by a deed dated 21 August 1982 between Herston Pty Ltd and National Permanent Funds Management Pty Ltd;
- (d) the Challenge logo registered under the *Trade Marks Act 1995* of the Commonwealth as a trade mark in classes 16, 36 and 39 under numbers A486912, A486911 and A486910 respectively;

- (e) the trade mark “Challenge” registered under the *Trade Marks Act 1995* of the Commonwealth as a trademark in class 36 under number A533638; and
- (f) such other assets as are listed in a certificate signed by the Chief Executive Officer of Westpac and received by the Treasurer before the commencement time;

“land” includes any estate, interest or right (whether legal or equitable) in, over or under any real or leasehold property;

“liabilities” includes duties, obligations and incidents of every description, whether actual, contingent or prospective, but does not include any duty, obligation or incident relating to an excluded asset;

“property” means property and assets of every description, and includes securities, rights and powers of every description;

“register” includes a book of registry and an index relating to registration;

“security” includes a mortgage (whether legal or equitable), charge, debenture, bill of exchange, promissory note, guarantee, lien, pledge or other means of securing the payment of a debt, whether present or future, or the discharge of an obligation or liability, whether actual or contingent;

“transition period” means the period beginning at the commencement time and ending —

- (a) 4 months later; or
- (b) on such later day as, at the request of the Chief Executive Officer of Westpac, is approved in writing by the Minister responsible for the administration of the *Credit Act 1984*;

“Treasurer” means the Treasurer of the State;

“undertaking of Challenge” means the business and all of the property of Challenge (except any excluded assets and any right or power of Challenge relating to any excluded assets)

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vested in or belonging to or held by that bank immediately before the commencement time and all of the liabilities to which that bank is subject immediately before the commencement time;

“Victorian Act” means the *Westpac and Bank of Melbourne (Challenge Bank) Act 1996* of the Parliament of Victoria;

“Westpac” means Westpac Banking Corporation (ARBN: 007 457 141);

“Westpac employee” means a person employed by Westpac in Western Australia immediately before the commencement time and who will be employed by Challenge at the commencement time as a result of section 10 (1).

4. Act binds the Crown

This Act binds the Crown in right of the State and, so far as the legislative power of the State permits, in all its other capacities.

5. Territorial application of Act

- (1) This Act applies both within and outside the State.
- (2) Subject to section 6, this Act applies outside the State to the full extent of the extra-territorial legislative power of the State.

6. Application of Act in relation to banking business transferred under the Victorian Act

This Act does not apply to, or in relation to, the banking business of Challenge transferred to Westpac by operation of the Victorian Act.

Part 2 — Vesting of undertaking of Challenge in Westpac

7. Vesting of undertaking

- (1) At the commencement time the undertaking of Challenge is by virtue of this Act divested from Challenge and vested in Westpac.
- (2) Subsection (1) has no effect in relation to the employment of Challenge employees.

8. Effect of contracts and instruments

- (1) All contracts, agreements, conveyances, deeds, leases, licences and other instruments or undertakings entered into by or made with, or addressed to, Challenge (whether alone or with any other person) in force immediately before the commencement time are on and after that time to the extent that they were immediately before that time binding upon and enforceable by, or against, Challenge, binding and of full force and effect in every respect in favour of, or against, Westpac, as fully and effectually as if, instead of Challenge, Westpac had been a party to them or bound by them or entitled to the whole or any portion of the benefit of them.
- (2) Subsection (1) does not apply to any contract, agreement, conveyance, deed, lease, licence, instrument or undertaking relating to —
 - (a) an excluded asset;
 - (b) the employment of a Challenge employee; or
 - (c) a provident, benefit, superannuation or retirement fund relating to Challenge employees.
- (3) A director, secretary or auditor of Challenge is not by reason only of this Act a director, secretary or auditor (as the case may be) of Westpac.

9. Transitional provisions

- (1) Without limiting sections 7 and 8, the following provisions have effect in relation to the banking business of Challenge —
- (a) the relationship between Challenge and a customer or depositor of that bank is, on and after the commencement time, between Westpac and that customer or depositor, and gives rise to the same rights and the same duties (including rights of set-off) as would have existed before that time if that relationship had been between Westpac and the customer or depositor, and so that any instruction, order, direction, mandate or authority given by that customer or depositor to Challenge and subsisting on or given after the commencement time is, unless and until revoked or cancelled, deemed to have been given to Westpac;
 - (b) any security held by Challenge as security for the payment of the debts or liabilities (whether present or future, certain or contingent) of any person is by virtue of this Act transferred to Westpac at the commencement time, and is to be held by and be available to Westpac as security for the payment of those debts and liabilities to Westpac (but not, by reason only of this Act, as security for any debt or liability of that person to Westpac existing immediately before that time) and, where the security extends to future advances to, or to future liabilities of, that person, the security shall, after that time, subject to any agreement between Westpac and that person, be held by and be available to Westpac as security for future advances to that person by, and future liabilities of that person to, Westpac, to the same extent to which future advances by, or liabilities to, Challenge were secured immediately before that time;
 - (c) Westpac is, in relation to any security transferred under this Act and the money secured by the security, entitled to the same rights and priorities and subject to the same liabilities as Challenge would have been entitled and

subject to, if the security had continued to be held by Challenge;

- (d) the custody of any document, goods or thing held by Challenge as bailee for any other person at any office or branch or agency of Challenge is by virtue of this Act transferred to Westpac at the commencement time, and the rights, duties and liabilities of Challenge under any contract of bailment relating to the document, goods or thing are transferred at that time to Westpac;
 - (e) any negotiable instrument or order for the payment of money, whether drawn, given, accepted or endorsed before, on or after the commencement time, which is expressed to be drawn by, drawn on, or given to, or accepted or endorsed by Challenge, or payable at any place of business of Challenge, has the same effect after the commencement time as if it had been drawn by, drawn on, or given to, or accepted or endorsed by, Westpac, or payable at the same place of business of Westpac;
 - (f) any information held immediately before the commencement time by Challenge relating to a customer or depositor of that bank is available to and may be used by Westpac on and after the commencement time.
- (2) Despite subsection (1) and sections 7 and 8 —
- (a) Westpac is, in relation to any security held by it over any money on deposit with Challenge immediately before the commencement time, entitled to the same rights and priorities and subject to the same liabilities as it would have been had the money on deposit continued to be held by Challenge; and
 - (b) Westpac is, in relation to any security held by Challenge immediately before the commencement time over money on deposit with Westpac, entitled to the same rights and priorities and subject to the same liabilities as

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Challenge would have been had the security continued to be held by Challenge.

10. Westpac employees to be employed by Challenge

- (1) Subject to this section, at the commencement time by virtue of this Act every person employed by Westpac in Western Australia immediately before that time ceases to be employed by Westpac and is employed by Challenge, other than those persons whose names are specified in the certificate given under subsection (2).
- (2) Before the commencement time the Chief Executive Officer of Westpac may, in writing, give a certificate to the Chief Executive Officer of Challenge specifying the names of any persons employed by Westpac who are not to be employed by Challenge by virtue of this Act.
- (3) Subject to subsection (4), a person employed by Challenge as a result of subsection (1) —
 - (a) is taken to be so employed on the same terms and conditions, including as to remuneration, as those which applied to the person immediately before the commencement time and those terms and conditions are capable of being varied in the same manner as before the commencement time;
 - (b) retains all of his or her existing and accruing rights in relation to his or her service with Westpac before the commencement time and in particular in relation to —
 - (i) sick leave, long service leave and retirement; and
 - (ii) any provident, benefit, superannuation or retirement fund;
 - (c) is, for all purposes, to have his or her service with Westpac regarded as having been continuous with his or her service after the commencement time with Challenge.

- (4) A person is not entitled to receive any payment or other benefit by reason only of having ceased to be a Westpac employee as a result of subsection (1).
- (5) Every reference to Westpac (or a business name of Westpac) in any document in force immediately before the commencement time relating to the employment of a Westpac employee by Westpac is to be read on and after the commencement time as a reference to Challenge, unless the contrary intention appears, and to the extent that any such document was binding on and enforceable by, or against, Westpac before the commencement time the document is binding and of full force and effect in every respect against Challenge as if Challenge instead of Westpac were a party to it or bound by it.
- (6) Subsection (5) does not apply in respect of any document relating to a provident, benefit, superannuation or retirement fund relating to a Westpac employee.
- (7) Sections 13 and 15 apply in relation to a Westpac employee, or a former employee of Westpac or person who served with Westpac, as if in those sections —
 - (a) a reference to “Challenge” were a reference to “Westpac” (except in the phrase “Challenge employee”); and
 - (b) a reference to “Westpac” were a reference to “Challenge”.
- (8) A person who is employed by Challenge is to be engaged exclusively in the provision of services to Westpac and is subject to the direction and control of the officers of Westpac who are responsible for the control of the business of Westpac in Western Australia.
- (9) Subsection (8) —
 - (a) applies subject to any law or award or determination relating to the employment of the person; and

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- (b) ceases to apply upon Challenge ceasing to be a related body corporate of Westpac within the meaning of section 9 of the Corporations Law.

11. Business Names

- (1) Subject to subsection (2), at the commencement time the Commissioner (within the meaning of the *Business Names Act 1962*) is to register each business name listed in Schedule 1 as a business name of Westpac and for as long as each name is registered in relation to Westpac, Westpac is entitled to carry on business under that name, in accordance with the *Business Names Act 1962*, and may also carry on the same or a similar business under a different business name or names or its own name in the State.
- (2) Before the registration of each business name listed in Schedule 1 Westpac is to make application under the *Business Names Act 1962* for registration of that name and is to comply with all relevant provisions of that Act relating to that application.
- (3) In addition to any other names under which it is entitled to carry on business in the State, during the transition period Westpac may carry on business in the State under the business name “Challenge Bank Limited” as if that name was registered under the *Business Names Act 1962* as a business name of Westpac.

12. Application of the Consumer Credit (Western Australia) Act 1996

- (1) In this section —
 - “**undertaking of Challenge**” in respect of the transition period, means that part of the undertaking of Westpac —
 - (a) divested from Challenge and vested in Westpac under section 7 (1); or
 - (b) acquired using the same products as were offered by Challenge before the commencement time.

- (2) If, after the commencement of section 13 of the *Consumer Credit (Western Australia) Act 1996*, Westpac or Challenge find that in relation to the undertaking of Challenge or the business of Challenge it is not practicable to comply with that Act in relation to any particular matter, situation or product, then that Act does not apply in respect of that matter, situation or product and the *Credit Act 1984* (as in force before the commencement of Part 5 of the *Consumer Credit (Western Australia) Act 1996*) continues to apply in respect of that matter, situation or product.
- (3) Subsection (2) has effect despite the *Consumer Credit (Western Australia) Act 1996*.
- (4) The exemption granted under subsection (2) applies until the day on which the transition period ends unless —
 - (a) any condition set out in a letter dated 6 May 1996 from the Minister for Fair Trading to the Chief Executive Officer of Challenge has not been complied with; and
 - (b) the Minister responsible for the administration of the *Credit Act 1984* gives written notice to the Chief Executive Officer of Westpac that such a condition has not been complied with and that this section will cease to apply on such day as is specified in the notice,in which case it ceases to apply on the day specified in the notice.
- (5) Sections 19A (1) and 19B of the *Credit Act 1984* apply in respect of the undertaking of Challenge and the business of Challenge as if a reference in those provisions to “the commencement day” were a reference to the day after the day on which the exemption granted under subsection (2) ceases to apply in accordance with subsection (4).

[Section 12 amended by No. 10 of 1998 s.74.]

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13. Legal proceedings

(1) This section applies to —

- (a) any action, arbitration or proceeding or cause of action, arbitration or proceeding which is at the commencement time pending or existing by, against, or in favour of, Challenge; and
- (b) any cause of action, arbitration or proceeding by, against, or in favour of, Challenge, which arises after the commencement time in respect of a contract made by Challenge before the commencement time or which arises in respect of anything done or omitted to be done by Challenge before the commencement time,

but does not apply to any action, arbitration or proceeding or to any cause of action relating to —

- (c) an excluded asset;
- (d) the employment of a Challenge employee; or
- (e) a provident, benefit, superannuation or retirement fund relating to Challenge employees.

(2) Any action, arbitration or proceeding and any cause of action, arbitration or proceeding to which this section applies, is not abated or discontinued or in any way prejudicially affected by reason of this Act, and may, without any further act, deed or instrument other than any appropriate amendment of the records of the relevant court or tribunal, be prosecuted and continued and enforced by or against Westpac, in its own name as and when it might have been prosecuted, continued and enforced by or against Challenge if this Act had not been enacted.

(3) Despite subsection (2), the court, tribunal or other person making or entering any judgment, order or award for the payment of any sum of money, whether ascertained or to be ascertained, against Westpac in any legal or arbitral proceeding to which this section applies may, at the request of any party in whose favour the judgment, order or award is being made or

entered, make or enter the judgment, order or award against both Challenge and Westpac, and the judgement, order or award may, when so made or entered, be enforced against both Challenge and Westpac.

14. Amendment of Court documents where Westpac erroneously made a party

- (1) Any party to any action, arbitration or proceeding relating to an excluded asset or a Challenge or Westpac employee is entitled at any stage to seek leave to amend any writ, pleading or other document filed by the party in the action, arbitration or proceeding by substituting for the name of Westpac the name of Challenge as party.
- (2) No order is to be made against any party so amending to pay to Westpac or to Challenge any costs occasioned by that amendment.
- (3) The action, arbitration or proceeding is to be continued as if Challenge had originally been made a party to it.

15. Evidence

- (1) Any book or document which if this Act had not been enacted would have been evidence in respect of any matter for or against Challenge is, subject to this Act, on and after the commencement time, to be admissible in evidence in respect of the same matter for or against Westpac.
- (2) Without limiting subsection (1), the bankers' books of Challenge are for the purposes of sections 89 to 96 of the *Evidence Act 1906* deemed to be, and to have been, bankers' books used in the ordinary business of Westpac.
- (3) For the purposes of this section —
 “bankers' books” has the same meaning as in the *Evidence Act 1906*.

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16. Construction of references

Subject to this Act, if any written law (other than this Act) or any document, whenever made or executed or any register established or kept under any Act contains any reference express or implied to Challenge, the reference is, on and after the commencement time to be read and construed as a reference to Westpac, unless the context otherwise requires.

Part 3 — General

17. Payment of amount in lieu of State taxes and charges

- (1) Westpac is to pay to the Treasurer in lieu of all taxes, duties and charges for which it would otherwise be liable under the law of the State as a result of, or in connection with, the transfer of the undertaking of Challenge to Westpac a sum which is, in the opinion of the Treasurer, equal to the amount of those taxes, duties and charges.
- (2) The amount payable under subsection (1) is to be determined by the Treasurer in accordance with such principles as the Treasurer thinks appropriate.
- (3) The Treasurer is to give a certificate to Westpac when satisfied that the sum due under subsection (1) has been paid stating that the sum due under that subsection has been paid.

18. Effect of things done under this Act

- (1) Nothing effected by this Act or done or suffered by Challenge or Westpac under this Act or done to give effect to this Act —
 - (a) is to be regarded as placing either of them in breach of contract or confidence or as otherwise making either of them guilty of a civil wrong;
 - (b) is to be regarded as placing either of them in breach of or as constituting a default under any written law or other law or any provision in any agreement, arrangement or understanding including, without limiting the generality of the foregoing, any provision prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information;
 - (c) is to be regarded as fulfilling any condition which allows a person to terminate any agreement or liability; or
 - (d) releases any surety or other obligee wholly or in part from any liability.

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- (2) Without limiting subsection (1) where, but for this subsection, the advice or consent of any person would be necessary to carry out any action authorized by this Act, that advice or consent is taken to have been given.

19. Service of documents

- (1) Service of a document on and after the commencement time —
 - (a) on Westpac is deemed to be service on Challenge in addition to service on Westpac; and
 - (b) on Challenge is deemed to be service on Westpac in addition to service on Challenge.
- (2) Subsection (1) ceases to apply upon Challenge ceasing to be a related body corporate of Westpac within the meaning of section 9 of the Corporations Law.

20. Excluded assets

- (1) No person dealing with Westpac or Challenge (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, in respect of any dealing or transaction entered into or purporting to be entered into by Westpac or Challenge, is to be concerned to see, or enquire into, whether any property the subject of the dealing or transaction (whether or not that property is land) is an excluded asset, nor is such person to be affected by any notice, express, implied or constructive, that any such property is an excluded asset.
- (2) If any dealing or transaction is entered into by Westpac with any person, in relation to or in connection with an excluded asset, it is to be deemed in favour of that person that Westpac has full power and authority to enter into that dealing or transaction as if the excluded asset had vested in Westpac under this Act.
- (3) Nothing in this section affects the liability of Westpac to Challenge in respect of anything done, or purporting to be done,

by Westpac in relation to or in connection with an excluded asset.

21. Certificates may be issued

The Chief Executive Officer of Westpac may, by signed certificate, certify any matter in relation to the operation of this Act.

22. Interests in land in the Register Book

Where any land registered under the *Transfer of Land Act 1893* of which Challenge is, or is deemed or taken to be, the registered proprietor is by virtue of this Act vested in Westpac, notwithstanding anything to the contrary in any written law or other law, Westpac is to be deemed to be the registered proprietor of the land for the purposes of that Act and the land may be dealt with accordingly.

23. Amendment of Register Book

The Registrar of Titles, on being requested to do so and on production of any relevant Crown Grant or duplicate certificate of title or other relevant instrument and payment of any relevant fees due under any written law, is to make any amendments to the Register Book under the *Transfer of Land Act 1893* and to any Crown Grant, duplicate certificate of title, duplicate registered instrument or other document that are necessary because of the operation of this Act.

24. Certificates in relation to charges

Section 268 (1) of the Corporations Law is to be taken to have been complied with in respect of all charges of which Westpac becomes the holder by virtue of this Act if there is lodged with the Australian Securities Commission a certificate signed by the Chief Executive Officer of Westpac stating that by virtue of this Act the undertaking of Challenge has become vested in Westpac.

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25. Other property

Where —

- (a) any property (other than property to which section 22, 23 or 24 applies) becomes, under this Act, the property of Westpac; and
- (b) any person or authority has, under any written law, responsibility for keeping a register in respect of property of that kind,

then —

- (c) any requirement of that written law relating to the transfer of such property from one person to another is to be taken to have been complied with if there is lodged with that person or authority a certificate signed by the Chief Executive Officer of Westpac stating that by virtue of this Act the undertaking of Challenge has become vested in Westpac; and
- (d) that person or authority, on being requested to do so and on delivery of any relevant instrument, is to make any amendments to that register which are necessary to make it accurately reflect the effect of this Act.

26. Certificates conclusive

- (1) For all purposes and in all courts, tribunals and proceedings, a certificate under this Act is conclusive evidence of the matters certified, except so far as the contrary is established.
- (2) A document purporting to be a certificate under this Act is, unless the contrary is established, taken to be such a certificate and to have been properly given.

27. Application of banking laws

Except to the extent that an exemption is directly contemplated by, or is a necessary consequence of, this Act, nothing in this

Act exempts Westpac from the provisions of any written law relating to companies carrying on the business of banking.

Schedule 1

[Section 11]

WESTPAC BUSINESS NAMES

Challenge Bank
Challenge Bank Conveyancing
Challenge Conveyancing
Challenge Bank Financial Consultants
Challenge Financial Consultants
Challenge Bank Financial Planning
Challenge Financial Planning
Challenge Bank Financial Services
Challenge Financial Services
Challenge Bank Funds Management
Challenge Funds Management
Challenge Bank Insurance Services
Challenge Insurance Services
Challenge Bank Trustee Services
Challenge Trustee Services
Challenge Bank a division of Westpac Banking Corporation

Notes

- ¹ This is a compilation of the *Westpac Banking Corporation (Challenge Bank) Act 1996* 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>Westpac Banking Corporation (Challenge Bank) Act 1996</i>	33 of 1996	19 Sep 1996	s. 3 and 17 operative 19 Sep 1996 (see s. 2(2)); s. 12 operative 1 Nov 1996 (see s. 2(4) and No. 30 of 1996 s. 2); balance operative 1 Oct 1996 (see s. 2 (1) and <i>Gazette</i> 27 Sep 1996 p. 4787)
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 74</i>	10 of 1998	30 Apr 1998	30 Apr 1998 (see s.2(1))