

# **BANK OF WESTERN AUSTRALIA ACT 1995**

**(No. 14 of 1995)**

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WESTERN AUSTRALIA

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# **BANK OF WESTERN AUSTRALIA ACT 1995**

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**No. 14 of 1995**

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**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 amend the *Bank of Western Australia Act 1990* and certain other Acts, and for related purposes.**

*[Assented to 4 July 1995.]*

The Parliament of Western Australia enacts as follows:

## **PART 1 — PRELIMINARY**

### **Short title**

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

### **Commencement**

2. (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 Assent.

(2) Section 11 comes into operation on such day as is fixed by proclamation.

(3) The other provisions of this Act come into operation on the day of privatisation.

### **Interpretation**

3. 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.

**Full and partial privatisation defined**

4. (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**

### **Definitions**

5. 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*;

**“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.

## **Privatisation of Bank**

6. (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.

## **Method of privatisation**

7. (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*.

## **Extent of State's shareholding**

8. 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.

**Day of privatisation**

9. (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.

**Powers exercisable for purposes of privatisation**

10. (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.

(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).

## **Chapter 7 of the Corporations Law**

11. Chapter 7 of the Corporations Law applies to the Bank, its directors and its shares, despite section 22 (2) (a) of the existing Act, and the Bank is not an exempt public authority for the purposes of the application of that Chapter.

## **Consultation**

12. 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.

## **Proceeds**

13. (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 Fund.

### **Disclosure of information**

**14.** (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.

### **Auditor General may disclose information**

**15.** Despite section 91 of the *Financial Administration and Audit Act 1985*, the Auditor General may, for the purpose of facilitating the 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.

### **Offence of disclosing information**

**16.** 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.

### **Functions and powers conferred**

**17.** 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.

**Exemption from stamp duty**

**18.** 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***

**Definitions**

**19.** In this Part, unless the contrary intention appears —

**“Bank”** means —

- (a) the public company incorporated under the Corporations Law by the name “Bank of Western Australia Ltd”; or
- (b) if one or more other corporations own the banking business that was conducted by Bank of Western Australia Ltd immediately before the day of privatisation, that other corporation or those other corporations;

**“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 Law;

**“the 1990 Act”** means the *Bank of Western Australia Act 1990*.

***Division 2 — Guarantee***

**Guarantee**

**20.** (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*;
- (b) by a subsidiary of the Bank; or
- (c) by the Bank in respect of any excluded debt,

is not guaranteed under subsection (1).

(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* and the *Rural and Industries Bank Act 1944*.

(8) Any liability of the Treasurer arising from the guarantee in subsection (1) is to be met out of the Consolidated Fund which is appropriated to the necessary extent.

### **Charges for guarantee**

**21.** (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 Fund 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.

**Treasurer may require information to be given**

**22.** (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 —

- (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***

**Bank's articles of association to include certain provisions**

**23.** (1) The articles of association of the Bank must at all times —

- (a) require the Bank to be incorporated 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.

(4) The Corporations Law applies in relation to the Bank's memorandum and articles of association, as amended by subsection (3), as if they had been registered as such under the Corporations Law.

### **Incapacity of Bank to alter or avoid mandatory articles**

**24.** (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.

### **Sections 23 and 24 override the Corporations Law**

**25.** Sections 23 and 24 have effect despite any provision of the Corporations Law.

***Division 4 — Use of names***

**Use of names**

**26.** (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).

**Use of former name and derivatives of it**

**27.** (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) This section has effect despite any provision of the Corporations Law.

## **Saving**

**28.** (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 1996.

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

### **Enforcement only by injunction**

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

### **Injunctions**

**30.** (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***

#### **Definitions**

**31.** 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*.

#### **Intent of this Division**

**32.** This Division re-enacts certain provisions of Schedule 2 to the 1990 Act, 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.

### **Evidence**

**33.** (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*.

### **Administration etc. of capital stock, debentures and inscribed stock**

**34.** (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*; 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).

### **Reference to officers**

**35.** 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.

### **Immunity etc. to continue**

**36.** 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.

### **Former Bank to complete necessary transactions**

**37.** (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***

#### **References to former name**

**38.** 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.

### **Saving**

**39.** 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 1 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**

### **Definition**

**40.** 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.

### **Treasurer's shareholding**

**41.** (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 5 — GENERAL**

### **Regulations**

**42.** 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.

### ***Bank of Western Australia Act 1990 amended***

**43.** (1) Section 32 of the *Bank of Western Australia Act 1990\** (“the 1990 Act”) is amended by inserting after subsection (4) the following subsection —

“

(5) Nothing in this section is to be taken to prevent, or ever to have prevented, the Bank from paying to the Treasurer in a financial year an interim dividend in accordance with the articles of association of the Bank.

”.

(2) Section 33 of the 1990 Act is amended —

(a) in subsection (2) by deleting paragraphs (a) and (b) and substituting the following paragraphs —

“

(a) by the Bank under clause 8 (1) (a) of Schedule 2;

(b) by a subsidiary of the Bank; or

(c) by the Bank in respect of any excluded debt,

”;

- (b) by inserting after subsection (2) the following subsection —

“

(2aa) In subsection (2) (c) “**excluded debt**” means any financial obligation incurred by the Bank after the commencement of section 43 (1) of the *Bank of Western Australia Act 1995* on terms which provide that a Treasurer’s guarantee does not apply to the financial obligation.

”.

and

- (c) by inserting after subsection (4) the following subsection —

“

(4a) The Treasurer may agree with the Bank that a charge fixed under subsection (4) 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) The 1990 Act is further amended as set out in Division 1 of Schedule 1.

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

[\* *Act No. 73 of 1990.*

*Amended by Acts Nos. 6 of 1993 and 6 and 32 of 1994.]*

**Consequential amendments to other Acts**

**44.** (1) The Acts referred to in Part A of Schedule 2 are amended as set out in that Part.

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

**SCHEDULE 1**

[Section 43 (3) and (4)]

***Division 1 — Amendments to the Bank of  
Western Australia Act 1990*****Long title amended**

1. The long title is repealed and the following long title is substituted —

“

**AN ACT to make provision for a body called R & I Holdings and to provide for its dissolution when it has completed its functions.**

”.

**Section 1 amended**

2. Section 1 is amended by deleting “*Bank of Western Australia*” and substituting the following —

“ *R & I Holdings* ”.

**Section 4 amended**

3. Section 4 is amended —

- (a) by deleting the definitions of “appointed day”, “articles”, “Code”, “document” and “memorandum”; and
- (b) by deleting the definition of “Bank” and substituting the following definition —

“

**“Bank”** means the public company incorporated under the Corporations Law by the name “Bank of Western Australia Ltd”;

”.

**Section 5 repealed**

4. Section 5 is repealed.

**Section 10 amended**

5. Section 10 is amended by deleting paragraphs (a), (b), (c) and (d) and substituting the following paragraphs —

“

- (a) to do the things it is required or permitted to do, and to receive moneys, in connection with the privatisation of the Bank under the *Bank of Western Australia Act 1995*;
- (b) to wind up its affairs after the privatisation of the Bank is completed; and
- (c) subject to section 13 of the *Bank of Western Australia Act 1995*, to pay any funds in its hands to the Consolidated Fund when those funds are no longer needed for the performance of its functions.

”.

**Section 12 repealed**

6. Section 12 is repealed.

**Section 13 amended**

7. Section 13 (3) is repealed.

**Section 14 amended**

8. Section 14 (2) (b) (ii) is deleted and the following subparagraph is substituted —

“ (ii) under the *Bank of Western Australia Act 1995*; ”.

**Section 22 inserted**

9. After section 21 the following section is inserted —

“

**Repeal of Act**

22. (1) When the Under Treasurer is satisfied that R & I Holdings has completed its functions under section 10, he or she is to —

- (a) give a certificate to that effect to the Treasurer; and

- (b) report as required by section 66 of the *Financial Administration and Audit Act 1985* in respect of the period from the preceding 1 October to the date of that certificate as if that period were a full financial year.

(2) After section 69 of the *Financial Administration and Audit Act 1985* has been complied with in respect of the report of R & I Holdings, this Act is to be repealed on such day as is fixed by proclamation.

(3) Upon the repeal of this Act under subsection (2) —

- (a) each of the following provisions is amended by deleting the item relating to R & I Holdings —

- (i) the Schedule to the *Parliamentary Commissioner Act 1971*;
- (ii) Schedule 1 to the *Financial Administration and Audit Act 1985*; and
- (iii) Schedule 1 to the *Public Sector Management Act 1994*;

- (b) any agreement or instrument to which R & I Holdings is a party or which contains a reference to R & I Holdings has effect as if —

- (i) the State were substituted for R & I Holdings as a party to the agreement or instrument; and
- (ii) any reference in the agreement or instrument to R & I Holdings were (unless the context otherwise requires) a reference to the State;

and

- (c) any legal or other proceedings or any remedies that might have been commenced, continued, discontinued or available by or against or to R & I Holdings may be commenced, continued, discontinued, and are to be available, by or against or to the State, as the case requires.

”.

### **Parts 3 and 4 and Schedules 1, 2, 3 and 4 repealed**

10. Parts 3 and 4 and Schedules 1, 2, 3 and 4 are repealed.

***Division 2 — Transitional provisions***

**Definitions**

11. In this Division —

“**Bank**” has the meaning given by section 19;

“**the 1990 Act**” means the *Bank of Western Australia Act 1990*.

**Auditor General may disclose information**

12. (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).

**Payments under repealed section 31 up to day of privatisation**

13. (1) The repeal of section 31 of the 1990 Act 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.

**Agreements under section 33 (4a)**

14. The repeal of section 33 of the 1990 Act 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.

**Securities taken as agent of Crown**

15. (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 authorized 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

[Section 44]

## PART A — CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

<i>Short Title of Act</i>	<i>Amendment</i>
1. <i>Constitution Acts Amendment Act 1899</i>	In Part 3 of Schedule V delete “The board of directors of the Bank of Western Australia Ltd referred to in section 22 of the <i>Bank of Western Australia Act 1990</i> .”.
2. <i>Country Areas Water Supply Act 1947</i>	<p>(1) In section 81 —</p> <p>(a) delete “, subject to the proviso to this section,”;</p> <p>(b) delete the colon and substitute a full stop; and</p> <p>(c) delete the passage beginning “Provided that in respect of any charge,” and ending with “the Authority.”.</p> <p>(2) In section 95 delete “, and to any mortgage in favour of the Bank of Western Australia Ltd referred to in section 22 of the <i>Bank of Western Australia Act 1990</i>”.</p> <p>(3) In section 99 delete “including the agency department of the Bank of Western Australia Ltd referred to in section 22 of the <i>Bank of Western Australia Act 1990</i>”.</p>
3. <i>Country Towns Sewerage Act 1948</i>	<p>(1) In section 89 delete “, and to any mortgage in favour of the Bank of Western Australia Ltd referred to in section 22 of the <i>Bank of Western Australia Act 1990</i>”.</p> <p>(2) In section 93 delete “including the Government Agency Department of the Bank of Western Australia Ltd referred to in section 22 of the <i>Bank of Western Australia Act 1990</i>”.</p>
4. <i>Financial Administration and Audit Act 1985</i>	In section 3 (1) in the definition of “bank” delete paragraph (a) (ii).

5. *Freedom of  
Information  
Act 1992*

- (1) In Schedule 1, after clause 4 insert the following new clause —

“ 4A. **Information  
provided to  
Treasurer  
under section  
22 of *Bank  
of Western  
Australia Act  
1995***

Matter is exempt  
matter if it consists of  
information provided to  
the Treasurer under  
section 22 of the *Bank  
of Western Australia  
Act 1995*. ”.

- (2) In Schedule 2 delete “The Bank of Western Australia Ltd”.

6. *Industry  
(Advances)  
Act 1947*

- (1) In the long title delete “or by or through the Bank of Western Australia,”.

- (2) In section 2 in the definition of “Bank” delete “the Bank of Western Australia Ltd referred to in section 22 of the *Bank of Western Australia Act 1990*” and substitute the following —

“ a bank as defined in  
section 5 of the  
*Banking Act 1959* of  
the Commonwealth ”.

- (3) In section 3 (1) delete “causing the Bank” and substitute the following —

“ arranging for a Bank ”.

- (4) Delete section 3 (2) (e).

- (5) Delete section 3 (3).

- (6) In section 3 (4) —

- (a) Delete “The Bank” and substitute the following —

“ A Bank ”;

- (b) delete "direction given to" and substitute the following —

" arrangement  
made with "; and

- (c) in paragraph (b), delete "give such a direction" and substitute the following —

" make such  
arrangements ".

(7) In section 3A (1) —

- (a) in paragraph (a) delete "give directions to the Bank" and substitute the following —

" make  
arrangements  
with a Bank ";

- (b) in paragraph (b) —

(i) delete "the Bank pursuant to a direction, or to"; and

(ii) insert after "instrument," the following —

" including  
any  
indemnity, ".

(8) In section 3C —

- (a) delete "or of the Bank" in both places where it appears; and

- (b) delete "or the Bank".

(9) In section 5 —

- (a) delete "the Bank" where it first appears and substitute the following —

" any delegate of  
the Treasurer ";

- (b) insert after "guarantee" the following —

" or indemnity ";

- (c) delete "or the Bank" in the second place where it appears; and

- (d) insert after "Consolidated Fund" the following —

" which is to the necessary extent appropriated accordingly ".

- (10) In section 5A —

- (a) in subsection (1) delete "either directly or through the Government Agency Department of the Bank,";

- (b) in subsection (2) —

- (i) delete "or the Bank"; and

- (ii) insert after "Consolidated Fund" the following —

" which is to the necessary extent appropriated accordingly ".

- (11) Repeal sections 6 and 7.

- (12) In section 8, delete " , or of the Bank thereunder".

## 7. *Land Act 1933*

- (1) In section 61 delete " , but the holder of such land shall not be required to carry out any improvements that exceed in cost the amount that the Bank of Western Australia Ltd referred to in section 22 of the *Bank of Western Australia Act 1990* is prepared to lend to such holder."

- (2) In section 89B delete “the Bank of Western Australia Ltd referred to in section 22 of the *Bank of Western Australia Act 1990*” and substitute the following —

“ a bank as defined in section 5 of the *Banking Act 1959* of the Commonwealth ”.

8. *Local Government Act 1960*

- (1) In section 6 in the definition of “owner” —

(a) delete “; but” after paragraph (g) and substitute a full stop; and

(b) delete paragraph (h).

- (2) In section 560 (1) delete —

“ ; and

after mortgages, if any, to the Bank of Western Australia Ltd referred to in section 22 of the *Bank of Western Australia Act 1990*; ”.

- (3) In section 569 (7) delete paragraph (d).

- (4) In section 578 (5) —

(a) insert “or” after paragraph (b);

(b) delete “; or” at the end of paragraph (c) and substitute a full stop; and

(c) delete paragraph (d).

- (5) In section 578 (7) delete “the rights of the Bank of Western Australia Ltd referred to in section 22 of the *Bank of Western Australia Act 1990* under a mortgage of the land, or”.

- (6) In section 581 delete —

“ and

mortgages, if any, on  
the land in favour of  
the Bank of Western  
Australia Ltd referred  
to in section 22 of the  
*Bank of Western  
Australia Act 1990*; ”.

- (7) In section 586 delete “and a mortgage, if any, in favour of the Bank of Western Australia Ltd referred to in section 22 of the *Bank of Western Australia Act 1990*,”.

- (8) In section 589 —

- (a) in paragraph (b) of the passage beginning with “secondly” and ending with “or both;” delete “other than the Bank of Western Australia Ltd referred to in section 22 of the *Bank of Western Australia Act 1990*”;

- (b) delete the passage beginning “thirdly” and ending with “1990;”;

- (c) delete “fourthly” and substitute the following —

“ thirdly ”;

- (d) delete “fifthly” and substitute the following —

“ fourthly ”;

- (e) in the passage beginning with “sixthly” and ending with “council; and” —

- (i) delete “sixthly” and substitute the following —

“ fifthly ”; and

(ii) delete "other";

and

(f) delete "seventhly" and substitute the following —

" sixthly ".

(9) In section 593 —

(a) in subsection (1) (b) delete  
"nor unless the Minister is  
satisfied that the rights of the  
Bank of Western Australia  
Ltd referred to in section 22  
of the *Bank of Western  
Australia Act 1990* under  
mortgage, if any, of the land  
will not be prejudicially  
affected if he does so"; and

(b) in subsection (3) (b) delete  
"including mortgages to the  
Bank of Western Australia  
Ltd referred to in section 22  
of the *Bank of Western  
Australia Act 1990*,".

(10) In section 594 (6) —

(a) insert "or" after paragraph  
(a);

(b) delete "; or" after paragraph  
(b) and substitute a full stop;  
and

(c) delete paragraph (c).

(11) In section 596 (2) delete "but shall  
not grant the application if, in his  
opinion, to do so would prejudicially  
affect the rights of the Bank of  
Western Australia Ltd referred to  
in section 22 of the *Bank of Western  
Australia Act 1990* under a  
mortgage of the land".

9. *Real Estate and  
Business Agents  
Act 1978*

In section 131O (1) delete paragraph (c).

10. *Rural Adjustment and Finance Corporation Act 1993* Repeal section 15.
11. *Soil and Land Conservation Act 1945* In section 36 (1) (d) delete "or the Bank of Western Australia Ltd referred to in section 22 of the *Bank of Western Australia Act 1990*".
12. *Stamp Act 1921* (1) In section 112I (1) in the definition of "bank" delete paragraph (a).  
(2) In the Third Schedule, in item 1 (4) (b) delete "or with the savings bank of the Bank of Western Australia Ltd".
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. *Unclaimed Money Act 1990* In section 16 (3) delete "the Bank of Western Australia Ltd referred to in section 22 of the *Bank of Western Australia Act 1990*" and substitute the following —  
" the Commonwealth Bank of Australia ".
15. *War Service Land Settlement Scheme Act 1954* In section 6 (4a) —  
(a) delete paragraph (a) and substitute the following —  
" (a) a bank as defined in section 5 of the *Banking Act 1959* of the Commonwealth; ";  
and  
(b) in paragraph (b), delete "those Commissioners, to one of their number or" and substitute the following —  
" the bank to ".

16. *Water Boards  
Act 1904*

- (1) In section 108 (6) delete “, other than a mortgage to the Bank of Western Australia Ltd referred to in section 22 of the *Bank of Western Australia Act 1990*”.
- (2) In section 108 (7) —
  - (a) delete “Fourthly — In payment of any moneys due under any mortgage to the Bank of Western Australia Ltd referred to in section 22 of the *Bank of Western Australia Act 1990*.”;
  - (b) delete “Fifthly” and substitute the following —

“ Fourthly ”;
  - (c) in the passage beginning with “Sixthly” and ending with “encumbrances.” —
    - (i) delete “Sixthly” and substitute the following —

“ Fifthly ”; and
    - (ii) by deleting “other”;
- and
- (d) delete “Seventhly” and substitute the following —

“ Sixthly ”.

**PART B — TRANSITIONAL PROVISIONS****Provision relating to *Industry (Advances) Act 1947***

1. (1) Any security for the repayment of advances taken under the *Industry (Advances) Act 1947* 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 authorized 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.

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

2. (1) Despite the amendment made by item 13 of Part A of this Schedule, 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 BankWest State Superannuation Scheme;

“**employee**” has the same meaning as it has in the Act.