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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BANK INTEGRATION BILL 1991

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer, the Honourable
John Kerin, MP)

BANK INTEGRATION BILL 1991

OUTLINE

The Bill will facilitate the integration of a savings bank subsidiary into its trading bank parent within banking groups affected by the Government's decision to remove the distinction between trading and savings banks for regulatory purposes.

The Banking Legislation Amendment Act, which received Royal Assent on 7 November 1989, included amendments to give effect to the Treasurer's announcement in the 1988 Budget of the removal of the distinction between savings banks and trading banks. The removal of this distinction was aimed at enabling banks to have better use and allocation of funds, simpler funding and accounting arrangements, and greater flexibility in servicing customers.

In the course of preparation of the draft legislation, it became apparent from discussions with the banking industry that, notwithstanding the fact that the legislation removed legislative barriers to the integration of trading banks and savings banks, there remained significant administrative costs and legal difficulties. Given the urgency associated with other provisions of the Banking Legislation Amendment Bill, it was considered inappropriate to defer passage of the legislation to incorporate further amendments. Accordingly, the Government indicated in 1989 in the second reading speech to the Amendment Bill that consideration would be given to further legislation to facilitate integration.

FINANCIAL IMPACT

There is no financial impact as the purpose of this legislation is to facilitate the integration of saving and trading banks without imposition of taxes and fees under State law and with neutrality under Income Tax law.

PART 1 - PRELIMINARY

Clause 1 - Short title

Provides for the Act to be cited as the Bank Integration Act 1991.

Clause 2 - Commencement

2. This clause is self-explanatory.

Clause 3 - Extension to external Territories

3. Provides for the Act to extend to all external Territories.

Clause 4 - Crown to be bound

4. This provision binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory, of the Australian Capital Territory and of Norfolk Island.

Clause 5 - Interpretation

5. The definitions in this Clause are self-explanatory.

Clause 6 - Extra-territorial operation of Act

6. Provides that this Act apply to all business assets, liabilities etc of a bank outside Australia (in the case of the Bank of New Zealand, the Act only operates in relation to the Australian assets, liabilities etc of the savings bank subsidiary).

PART 2 - STEPS LEADING TO BANK REORGANISATIONS

Clause 7 - Notice of proposed bank reorganisation

7. This clause refers to an informal agreement between the transferring and receiving banks to indicate that they are willing participants in the integration, in case the question of acquisition of property, otherwise than on just terms, comes into dispute. The receiving bank may give notice in writing of the agreement to the Reserve Bank of Australia and to the Treasurer.

Clause 8 - Reserve Bank certification

8. This clause provides that, on receipt of a notice of intention to integrate from a receiving bank, the Reserve Bank will advise the Treasurer in writing that, on the basis of its powers under Part II of the Banking Act 1959 exercised in its ordinary supervisory functions, it is satisfied that the interests of depositors in both the transferring and receiving banks are adequately protected.

Clause 9 - Treasurer may fix succession day for a particular receiving bank and transferring bank

9. The clause provides that, on receipt of a notice from a receiving bank of the intention to integrate the business of the relevant transferring bank, the Treasurer, in consultation with the Treasurer of the appropriate incorporating State and the relevant corporate representative, in accordance with the principle of universal succession, will determine a suitable date (the succession day) for the integration to be effected and that date will be published in the Gazette. This clause is subject to the provisions in clauses 10 and 11.

Clause 10 - Interests of depositors of transferring banks to be protected

10. This clause provides that the Treasurer will not fix a succession date until he is satisfied that the interests of depositors of the receiving and transferring banks are adequately protected.

Clause 11 - Complementary legislation to be enacted

11. This clause notes that, except in the case of the Commonwealth Bank and the Bank of New Zealand, the Treasurer must not fix a succession day unless he or she is satisfied that appropriate complementary legislation has been enacted in the State of the banks' incorporation. This legislation will provide, among other things, for the receiving bank to be the successor in law of the associated transferring bank and it will therefore effect the transfer of assets and liabilities everywhere and the dissolution of the transferring bank. Furthermore, the complementary legislation will provide (even though the matter is also covered in provisions to wider effect in clauses 21 and 22 of this legislation) an exemption from taxes and fees of the incorporating State.

12. No complementary legislation is required so far as the Commonwealth Bank and the Commonwealth Savings Bank are concerned since the Savings Bank is created by Commonwealth Act and the integration of the banks can be fully achieved by this legislation.

13. So far as the Bank of New Zealand and the Bank of New Zealand Savings Bank are concerned, the ambit of the legislation is much narrower than for other banks. The sole purpose of the legislation is to integrate, with appropriate tax and fee exemptions, the Branch activities of the banks in Australia. That integration does not necessarily involve the dissolution of the BNZ Savings Bank, a New Zealand incorporated company, and can therefore be achieved without recourse to complementary legislation. As it happens, New Zealand is presently preparing parallel legislation dealing generally with the integration of New Zealand trading and savings banks and it is anticipated that the operation of the New Zealand legislation, so far as the Bank of New Zealand is concerned, will be synchronised with the operation of this legislation.

14. Setting aside the special cases of the Commonwealth Bank and the Bank of New Zealand, it is anticipated that to a large degree the legislative provisions of this legislation and of the complementary legislation in incorporating states will run in parallel. Between them, they are intended to achieve a succession that is effective Australia-wide and is likely to be recognised overseas under principles of Private International law.

PART 3 - BANK REORGANISATIONS

Clause 12 - Consequence of succession day

15. This clause is self-explanatory.

Clause 13 - Assets and liabilities

16. This clause effects the transfer on the succession day of the assets and liabilities of the transferring bank to the relevant receiving bank.

Clause 14 - Translated instruments

17. The clause provides that, from succession day, instruments coming to the receiving bank continue to have effect in the manner as originally intended.

Clause 15 - Places of business

18. From succession day, this clause effects the transfer of the places of business of the transferring banks to the relevant receiving banks.

Clause 16 - Transferring banks to lose authority to carry on banking business

19. This clause effects the revocation of the banking licence of the transferring bank on succession day (except for the Commonwealth Savings Bank which is handled under its own legislation).

Clause 17 - Legal proceedings and evidence

20. This clause provides for continuity in legal proceedings with the receiving bank taking the place of the transferring bank in each case.

Clause 18 - Permitted trading names

21. This clause allows receiving banks to use for a period of six months from succession day, the trading names of the transferring banks.

Clause 19 - Employment unaffected

22. This clause provides that the terms and conditions of employment of individuals will be unaffected by the integration of the transferring and receiving banks.

Clause 20 - Receiving banks to do what is necessary to carry out reorganisation

23. This clause is self-explanatory.

PART 4 - TAXATION MATTERS

Clause 21 - Exemptions from certain taxes and charges

24. This clause provides that the transfer of assets and liabilities from a transferring bank to the relevant receiving bank will not be subject to Commonwealth or State/Territory taxes, but excludes those taxes under the Income Tax Assessment Act 1936 and fees or taxes prescribed by the Corporations Regulations in the States and Territories, including the Corporations (Taxing) Act 1990 of Western Australia.

Clause 22 - Application of Income Tax Assessment Act 1936

25. Subclauses (1) and (2) of this Bill generally ensure that anything done to give effect to either this Bill or any other complementary legislation will be revenue neutral under the Income Tax Assessment Act. For example, clauses 12 and 13 and subclause 22(2) will have a composite effect on the capital gains and losses provisions of the Income Tax

Assessment Act. They will operate to ensure that the receiving bank is taken to acquire the assets of the transferring bank at the same time and same cost as the transferring bank acquired the assets, rather than on the succession day on which the assets of the transferring bank vest in the receiving bank. The other subclauses contain more specific examples of the neutrality principle.

26. Subclause (3) will preserve the continuity of the partnerships of which the transferring bank was a member. Without this provision the acquisition by the receiving bank of the interest in any partnership previously held by the transferring bank would dissolve that partnership and a new partnership with the receiving bank would arise. That could mean that other members of the partnership would suffer detriment due to the loss of tax concessions that could not be carried forward into the reconstituted partnership.

27. Subclause (4) is intended to reinforce the effect of subclause (2). It makes it clear that, on and after the succession day, the receiving bank will be treated for income tax purposes as if it had derived all the assessable income and capital gains and incurred all the allowable deductions and capital losses that were incurred by the transferring bank. In the same way, all the entitlements of the transferring bank to carry forward losses, foreign tax credits and rebateable dividends will be transferred to the receiving bank.

28. This means, for example, that the transfer of the 'merger reserve', which represents the accumulated undistributed profits of the transferring bank to the receiving bank will not be a payment of a dividend. It also means that any election previously made by the transferring bank for the purposes of the Income Tax Assessment Act will be taken to have been made by the receiving bank.

29. Subclause (5) has been inserted to deal with the balances in the franking accounts of the transferring bank. Specific provision has been made because franking surpluses and deficits are not considered to be assets or liabilities of the transferred business to which this clause applies. Any surplus in the franking account of the transferring bank on the succession day will be transferred to the receiving bank at the beginning of the succession day. So too will any franking deficit of the transferring bank, provided that the day preceding the succession day is not the last day of that bank's franking year.

30. If the day before the succession day is the last day of the transferring bank's franking year, the franking deficit of the transferring bank will not be transferred to the receiving bank. In this case, the transferring bank will remain liable to pay the franking deficit tax required by the Income Tax Assessment Act. This conforms with the notion of neutrality referred to above.

31. Finally, subclause (8) ensures that no gain or loss arises on any cancellation or disposal of shares in a transferring bank. The cancellation or disposal is to be treated as an act of the legislation which complements this Bill and is therefore subject to the revenue neutrality principle.

PART 5 - MISCELLANEOUS

Clause 23 - Certificates evidencing operation of Act etc

32. This clause provides that an authorised person may certify any matter in relation to this legislation.

Clause 24 - Certificates in relation to land and interests in land

33. This clause provides that State/Territory officials may adjust the records in their Register of Titles to take into account the land transfers effected by this legislation.

Clause 25 - Certificates in relation to other assets

34. This clause provides that State/Territory officials may adjust the relevant official registers to take into account the transfer of assets, other than land, effected by this legislation, which are not dealt with under the Corporations Law.

Clause 26 - Documents purporting to be certificates

35. This clause is self-explanatory.

Clause 27 - Compensation for acquisition of property

36. This clause provides that transfer of property will be effected on just terms.

Clause 28 - Act to have effect despite other laws

37. This clause is self-explanatory.

Clause 29 - Regulations

38. This clause provides that the Governor-General may make regulations to give effect to matters dealt with by this legislation.

PART 6 - CONSEQUENTIAL AMENDMENTS OF THE COMMONWEALTH BANKS ACT 1959 AND OTHER ACTSClause 30 - Principal Act

39. This clause states that the Commonwealth Banks Act 1959 is the 'Principal Act'.

Clause 31 - Repeal of Part V

40. This clause is self-explanatory.

Clause 32 - Consequential amendments

41. This clause is self-explanatory.

SCHEDULE 1

This schedule lists the names of the relevant receiving and transferring banks.

SCHEDULE 2

This schedule lists the names which each receiving bank is permitted to reserve for a period of six months.

SCHEDULE 3

This schedule lists the consequential amendments to the Banking Act 1959, the Banks (Shareholding) Act 1972 and the Commonwealth Banks Act 1959.

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