

1984

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

COMMONWEALTH BANKS AMENDMENT BILL 1984

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,
the Hon P.J. Keating MP)



GENERAL OUTLINE AND MAIN PURPOSES OF THE BILL

The purpose of the Commonwealth Banks Act Amendment Bill is to implement a number of measures designed to modernise the structure of the constituent Banks of the Commonwealth Banking Corporation and to place them in a position where they will be able to compete, on a fully comparable basis with the major private banks. The Bill also provides for measures to substantially improve the capital position of the Commonwealth Bank of Australia, formerly the Commonwealth Trading Bank of Australia. These changes were decided upon following a major review of the financial structure and organisation of the Commonwealth Banking Corporation.

The main provisions of the Bill will:

- . change the name of the Commonwealth Trading Bank of Australia to Commonwealth Bank of Australia (Commonwealth Bank);
- . establish the Commonwealth Savings Bank (Savings Bank) as a subsidiary of the Commonwealth Bank;
- . provide for the reserves of the Savings Bank as at 30 June, less \$20 million, to become the share capital of the Savings Bank, and for that share capital to be vested in the Commonwealth Bank;

- . provide for the injection of \$15 million by the Commonwealth Government to the capital of the Commonwealth Bank;
- . provide for the transfer of \$75 million from the reserves of the Commonwealth Development Bank (Development Bank) to the capital of the Commonwealth Bank;
- . provide for the proportion of net profits to be paid to the Commonwealth by the Commonwealth Bank to be determined by the Treasurer, with a maximum payment of 45% of the net profits of the Commonwealth Bank and its savings bank subsidiary, the Savings Bank;
- . remove the present exemption from company income tax of the Savings Bank, the Development Bank and the Corporation; and
- . allow for a more flexible management and Board structure, by removing the statutory general manager positions for the Trading Bank, the Savings Bank and the Development Bank and also the statutory executive committees of those Banks.

NOTES ON CLAUSES OF THE BILL

CLAUSE 1 - SHORT TITLE

Self explanatory

CLAUSE 2 - COMMENCEMENT

Self explanatory

PART II - AMENDMENTS OF COMMONWEALTH BANKS ACT 1959

CLAUSE 3 - PRINCIPAL ACT

Self explanatory

CLAUSE 4 - INTERPRETATION

This clause substitutes a new section 4. The changes from the old section 4 are as follows:

- . the definition, of 'Commonwealth Bank' has been amended, and the definition of 'the Trading Bank' has been repealed, to reflect the fact that the name of the Commonwealth Trading Bank of Australia ('the Trading Bank') has been changed to Commonwealth Bank of Australia ('Commonwealth Bank'). A new definition of 'former

Commonwealth Bank' has been introduced, referring to the Commonwealth Bank of Australia which existed from 1911 to 1959;

- . the definition of 'Executive Committee' has been repealed;
- . a definition of 'net profits' has been added; and
- . the definition of 'statutory office' has been amended, to exclude reference to General Manager of the Trading Bank, General Manager of the Savings Bank and General Manager of the Development Bank.

CLAUSE 5 - EXECUTIVE COMMITTEES

This clause repeals those sections of the Act which established executive committees of the Board for the Trading Bank, Savings Bank and Development Bank, and determined their membership and procedures of meetings.

CLAUSE 6 - DEPUTY SECRETARY MAY ATTEND MEETING

This clause substitutes a new section 23. The old section 23 only permitted the person holding the designated position 'the Deputy Secretary' to act as an alternate director to the Secretary. Section 23 now provides that any one of the Deputy Secretaries in the Department of the Treasury nominated by the Secretary to the Department of the Treasury may be an alternate director to the Secretary.

CLAUSE 7 - DISCLOSURE OF PECUNIARY INTEREST

This clause amends section 24 so as to provide for the change of name from "Trading Bank" to "Commonwealth Bank" and to remove any reference to the executive committees.

CLAUSE 8 - THE COMMONWEALTH BANK

Sub-clause (1) substitutes a new section 27 which provides for the business carried on by the Commonwealth Trading Bank of Australia to be now carried on under the name Commonwealth Bank of Australia.

Sub-clauses (2), (3) and (4) make it clear that the change of name does not affect any property, powers, rights, liabilities, etc entered into by the Commonwealth Trading Bank of Australia.

CLAUSE 9 - GENERAL FUNCTIONS OF COMMONWEALTH BANK

This clause amends section 28 so as to provide for the change in name from "Trading Bank" to "Commonwealth Bank".

CLAUSE 10 - POWERS OF COMMONWEALTH BANK

Sub-clauses (a) and (b) amend section 29 of the Act so as to provide for the change in name from "Trading Bank" to "Commonwealth Bank".

Sub-clause (c) amends section 29 of the Act so as to provide the Commonwealth Bank with the express power to promote, establish, participate in, or acquire subsidiary companies, including the express power to subscribe for, and hold shares in, the capital of the Commonwealth Savings Bank.

CLAUSE 11 - CAPITAL AND RESERVE FUND

Sub-clause (1) substitutes new sections 30 and 31. The new section 30 (Capital) provides for the addition to the Commonwealth Bank's Capital of the \$75 million transferred from the reserves of the Development Bank to the Commonwealth Bank, an amount equal to the total nominal value of shares in the Savings Bank held by the Commonwealth Bank and such sums as the Commonwealth Government may provide as additional capital from time to time. The new section 31 (Reserve Fund) provides for the change in name of the "Commonwealth Trading Bank Reserve Fund" to the "Commonwealth Bank Reserve Fund".

Sub-clause (2) provides for the Commonwealth Government to inject \$15 million into the capital of the Commonwealth Bank.

CLAUSE 12 - PROFITS OF COMMONWEALTH BANK

Sub-clause (1) substitutes a new section 32. The old section 32 required that half of the after tax profits of the Trading Bank be paid to the Commonwealth Government and the balance to the Trading Bank Reserve Fund. Section 32 will now provide for the amount to be paid by the Commonwealth Bank to

the Commonwealth in any financial year to be determined by the Treasurer but, that it should not be more than 45 per cent of, the net profit of the Commonwealth Bank (less the dividends it receives from the Savings Bank) and the net profit of the Savings Bank. The Commonwealth Bank will be required to pay to the Commonwealth the amount determined by the Treasurer whether or not the net profits of the Commonwealth Bank itself in that particular year exceed that amount.

The new section envisages the Commonwealth Bank conducting an undistributed profits account, out of which payments to the Commonwealth and transfers to the Commonwealth Bank Reserve Fund will be made. After providing for the payment to the Commonwealth, the Board may direct the Commonwealth Bank to place an amount of its undistributed profits (not necessarily the balance) to the credit of the Commonwealth Bank Reserve Fund.

The new section also provides the Board with the option to finance the required payment to the Commonwealth through permitting application of a dividend received from the Savings Bank before the dividend has "passed through" the Commonwealth Bank's profit and loss account.

Sub-clause 12(2) provides that the new section 32 is to apply to net profits earned after 30 June 1984.

Sub-clause 12(3) provides that the proportion of the net profits of the Commonwealth Trading Bank in the year ending 30 June 1984 to be paid to the Commonwealth shall be determined by the Treasurer but shall not exceed 45 per cent of the net profit of the Trading Bank.

CLAUSE 13 - MANAGEMENT OF COMMONWEALTH BANK

This clause repeals sections 33 and 34 of the Act which provided for the General Manager position of the Trading Bank, and substitutes a new section 35.

The old section 35 set out the roles of the General Manager of the Trading Bank and the Trading Bank Executive Committee in the management of the Trading Bank. Section 35 now provides for a person appointed by the Corporation Board to manage the Commonwealth Bank, and for that person and the Managing Director to be subject to the direction of the Corporation Board. The clause provides that if the Board does not appoint another person, the Managing Director of the Corporation shall be the General Manager of the Commonwealth Bank.

This clause also amends section 36 so as to provide for the change of name from "Trading Bank" to "Commonwealth Bank".

CLAUSE 14 - AMALGAMATION OF OTHER BANKS WITH COMMONWEALTH
BANK

Self explanatory

CLAUSE 15 - POWERS OF SAVINGS BANK

This clause amends section 42 so as to provide the Savings Bank with the power to invest in any assets which a savings bank is permitted to invest in under the Banking (Savings Bank) Regulations.

CLAUSE 16 - SHARE CAPITAL

This clause provides for a new section, section 42A, specifying the share capital of the Savings Bank. The share capital is to comprise one-dollar shares and the initial amount of the share capital of the Savings Bank will be an amount equal to (and be paid from) the aggregate of the amounts standing to the credit as at 30 June 1984 of the Savings Bank Reserve Fund less \$20,000,000, and the whole of the amounts standing to the credit of the Contingencies Reserve and Capital Reserve accounts of the Savings Bank as at 30 June 1984. Those shares are deemed to have been issued to the Commonwealth Bank and the Commonwealth Bank is legal and beneficial owner of those shares.

The new section also provides for the Board to increase the share capital of the Savings Bank. Those shares may be subscribed to by the Commonwealth Bank or the Board may use funds from the Savings Bank Reserve Fund to issue additional paid-up shares to the Commonwealth Bank. Shares in the Savings Bank may not be held by a body other than the Commonwealth Bank.

CLAUSE 17 - PROFITS OF SAVINGS BANK

Sub-clause (1) substitutes a new section 44 in the Act. The old section 44 required half of the net profits of the Savings Bank to be paid to the Commonwealth Government and the balance to the Savings Bank Reserve Fund. Under the new arrangements, the Savings Bank will make (dividend) payments to the Commonwealth Bank rather than to the Commonwealth Government. Section 44 now envisages the Savings Bank having an undistributed profits account. The section will allow the Board to determine the dividend to be paid to the Commonwealth Bank. After providing for the dividend payment to the Commonwealth Bank, the Board may direct the Savings Bank to place an amount of its undistributed profits (not necessarily the balance) to the credit of the Savings Bank Reserve Fund. The Commonwealth Bank will receive a rebate of tax under section 46 of the Income Tax Assessment Act 1936 on the dividends it receives under section 44 as a shareholder in the Savings Bank and will thus be effectively free of tax on that income.

Sub-clause (2) provides that the new section 44 is to apply to net profits earned after 30 June 1984.

Sub-clause (3) provides that for the year ending 30 June 1984 the dividend payable to the Commonwealth shall be determined by the Treasurer but shall not represent more than 45 per cent of the net profits of the Savings Bank.

CLAUSE 18 - MANAGEMENT OF SAVINGS BANK

This clause repeals sections 45 and 46 which provided for the General Manager position of the Savings Bank, and substitutes a new section 47.

The old section 47 set out the roles of the General Manager of the Savings Bank and the Savings Bank Executive Committee in the management of the Savings Bank. Section 47 now provides that a person appointed by the Board shall, under the Managing Director, manage the Savings Bank, and that that person and the Managing Director shall be subject to the direction of the Board.

CLAUSE 19 - POWER TO INSURE HOMES

Sub-clause (1) substitutes a new section 68. The old section 68 required the Savings Bank and the Trading Bank to conduct separate home insurance schemes. Section 68 now allows the

Commonwealth Bank and/or the Savings Bank to provide home insurance to customers with loans from either the Commonwealth Bank or Savings Bank.

Sub-clause (2) provides that the new section 68 applies to loans made by the Trading Bank or Savings Bank before the commencement of the new provision.

CLAUSE 20 - MANAGEMENT OF DEVELOPMENT BANK

This clause repeals sections 78 and 79 of the Act which provide for the General Manager position of the Development Bank, and substitutes a new section 80.

The old section 80 set out the roles of the General Manager of the Development Bank and the Development Bank Executive Committee in the management of the Development Bank. Section 80 now provides that a person appointed by the Board shall, under the Manager Director, manage the Development Bank, and that that person and the Managing Director shall be subject to the direction of the Board.

CLAUSE 21 - APPOINTMENT OF GRADUATES

This clause substitutes a new section 95. The old section 95 provided for the Corporation to appoint to the Service persons who had not passed a prescribed entrance examination but, who were graduates of a university in Australia and not more than 25 years of age. The number of such persons who

could be admitted was not to exceed one-ninth of the number of male persons appointed to the Service after having passed a prescribed entrance examination. Section 95 now applies to persons who are graduates of a university or who have obtained a qualification from a tertiary institution which is approved by the Corporation. The other changes are to remove the age limit and the limit on the number of persons who can be admitted under this section.

CLAUSE 22 - GUARANTEE BY COMMONWEALTH

This clause substitutes a new section 117. The new section 117 changes the wording of the Commonwealth guarantee.

CLAUSE 23 - TAXATION

Sub-clause (1) substitutes a new section 119. The old section 119 exempted the Savings Bank, Development Bank and the Corporation from Commonwealth income tax. The Trading Bank was not so exempted because, while paragraph 23(d) of the Income Tax Assessment Act 1936 - which exempts public authorities from income tax - would otherwise have operated to exempt the Trading Bank, section 24A of that Act provided that the Trading Bank was not a public authority for the purposes of paragraph 23(d). As indicated in the notes on clause 28, section 24A of the Income Tax Assessment Act is being repealed and section 119 will specify that the Savings Bank, Development Bank, Corporation and Commonwealth Bank are

not public authorities for the purposes of paragraph 23(d) of that Act. These bodies thus will be liable to Commonwealth income tax.

Sub-clause (2) is self explanatory

CLAUSE 24 - AUDIT

This clause substitutes a new sub-section 120(6), to remove reference to the general manager positions.

CLAUSE 25 - FURTHER AMENDMENTS

This clause provides for minor amendments. The minor amendments are set out in Schedule 1 and provide for the change of name from "Trading Bank" to "Commonwealth Bank", and some minor drafting changes.

CLAUSE 26 - PERSON HOLDING AN OFFICE OF GENERAL MANAGER

This clause provides for the persons presently holding the statutory general manager positions to be re-appointed to the Corporation Service.

PART III - AMENDMENTS OF INCOME TAX ASSESSMENT ACT 1936

CLAUSE 27 - PRINCIPAL ACT

Self explanatory

CLAUSE 28 - REPEAL OF SECTION 24A

This clause repeals section 24A of the Income Tax Assessment Act 1936. As indicated in the notes on clause 23, the intent of section 24A, which had provided that the Commonwealth Trading Bank of Australia was not a public authority for the purposes of paragraph 23(d) of the Act and was thus liable to pay income tax, is now covered by the new section 119 of the Commonwealth Banks Act 1959.

CLAUSE 29 - REBATE IN RESPECT OF CERTAIN PAYMENTS BY THE
COMMONWEALTH SAVINGS BANK OF AUSTRALIA

This clause adds a new section, section 160ABB, which provides that where the Savings Bank makes payments to the States (or their agencies) under the Savings Bank agreements in respect of a particular year of income, the Savings Bank is entitled to a rebate of tax equal to the amount paid in its assessment for that year of income. The new section also specifies that the Savings Bank is not allowed a deduction

for those amounts. The Savings Bank agreements referred to are defined as those made in accordance with the Amalgamation Agreements between the Savings Bank and the State of NSW and the Government Savings Bank of NSW and between the Savings Bank and the State of Queensland.

CLAUSE 30 - AMENDMENT OF ASSESSMENTS

This clause amends sub-section 170(10) of the Income Tax Assessment Act to insert a reference to the new section 160ABB and so ensure that the Commissioner of Taxation will have power to amend, at any time, an assessment of the Savings Bank to allow for the operation of that section.

PART IV - AMENDMENT OF RE-ESTABLISHMENT AND EMPLOYMENT ACT
1945

CLAUSE 31 - PRINCIPAL ACT

Self explanatory

CLAUSE 32 - ARRANGEMENT WITH BANKS, STATES AND STATE
AUTHORITIES

This clause amends section 98 so as to provide for the change
in name from 'Commonwealth Trading Bank of Australia' to
'Commonwealth Bank of Australia'.

PART V - AMENDMENT OF OTHER ACTS

CLAUSE 33 - AMENDMENT OF ACTS

This clause provides for minor amendments to the Acts set out
in Schedule 2 consequential to the amendments to the
Commonwealth Banks Act 1959.



D

1

D

D

1

D

1

●

(

●

●

(

●

(

D

D

D

i

D

3

●

●

●

●