

Queensland



**BANK OF NEW ZEALAND
(TRANSFER OF
UNDERTAKING) BILL 1997**

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1997

A BILL

FOR

An Act to provide for the transfer of the undertaking of Bank of New Zealand to National Australia Bank Limited, and for related purposes

Preamble—

Parliament's reasons for enacting this Act are—

1. Bank of New Zealand ARBN 000 000 288 (“**BNZ**”) is a company incorporated in New Zealand.

2. National Australia Bank Limited ACN 004 044 937 (“**NAB**”) is a company incorporated in Victoria, a company within the meaning of the Corporations Law and a company limited by shares.

3. NAB carries on the business of banking throughout Australia and elsewhere in the world.

4. BNZ carries on the business of banking in Australia under the name BNZ Australia.

5. BNZ became a wholly owned subsidiary of NAB in February 1993.

6. Under the conditions imposed by the Reserve Bank of Australia for the acquisition of BNZ's banking business in Australia, BNZ is required to surrender its authority to carry on banking business in Australia.

7. It is necessary and expedient to transfer the banking business of BNZ in Queensland to NAB.

The Parliament of Queensland enacts—

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PART 1—PRELIMINARY

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Short title

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1. This Act may be cited as the *Bank of New Zealand (Transfer of Undertaking) Act 1997*.

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Commencement

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2.(1) This Act, other than sections 3 and 18, commences on a day to be fixed by proclamation.

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(2) However if on the day mentioned in subsection (1) the gazette notice mentioned in section 18(4) has not been published, this Act, other than sections 3 and 18, commences on the day the gazette notice is published.

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(3) Sections 3 and 18 commence on assent.

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(4) The *Acts Interpretation Act 1954*, section 15DA,¹ does not apply to this Act.

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Definitions

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3. In this Act—

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“**asset**” includes property held in a fiduciary capacity.

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“**BNZ**” means Bank of New Zealand ARBN 000 000 288.

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“**BNZ contracts**” means all contracts and other instruments or undertakings entered into by, or made with, or addressed to, BNZ (whether alone or with another person) and in force immediately before the commencement of section 6.²

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¹ *Acts Interpretation Act 1954*, section 15DA (Automatic commencement of proposed law)

² Section 6 (Vesting of undertaking)

Bank of New Zealand (Transfer of Undertaking)

“BNZ employee” means a person employed by BNZ in Queensland.	1
“chief executive officer” means the chief executive officer of NAB, or a delegate of the chief executive officer.	2 3
“excluded asset” means—	4
(a) a document required to be kept by BNZ under a law; and	5
(b) a trademark or business name registered in favour of BNZ.	6
“liabilities” includes duties, obligations and incidents of every description, whether actual, contingent or prospective, but does not include a duty, obligation or incident relating to an excluded asset.	7 8 9
“NAB” means National Australia Bank Limited ACN 004 044 937.	10
“property” means property and assets of every description, and includes securities, rights and powers of every description.	11 12
“register” includes a book of registry and an index relating to registration.	13
“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.	14 15 16 17 18
“transferred asset” means an asset transferred to NAB under this Act.	19
“transferred liability” means a liability transferred to NAB under this Act.	20
“undertaking” , of BNZ, means—	21
(a) all assets of BNZ (except excluded assets) vested in, belonging to or held by BNZ immediately before the commencement of section 6; and	22 23 24
(b) all liabilities of BNZ immediately before the commencement of section 6.	25 26
Act binds the State	27
4. This Act binds the State and, as far as the legislative authority of the Parliament permits, the Commonwealth and the other States.	28 29

Territorial application of Act

5.(1) This Act applies outside Queensland to the full extent of the extraterritorial legislative power of Queensland.

(2) Nothing in this Act applies to any part of the undertaking, banking business, assets or liabilities of BNZ carried on or situated wholly outside Australia.

PART 2—VESTING OF BNZ’S UNDERTAKING IN NAB

Division 1—Vesting

Vesting of undertaking

6. BNZ’s undertaking is transferred to and vested in NAB.

Effect of vesting on BNZ contracts

7.(1) To the extent BNZ contracts were binding on and enforceable by or against BNZ, the contracts are, on and after the commencement, binding on and enforceable by or against NAB, as fully and effectually as if NAB had been a party to them or bound by them or entitled to the whole or a portion of the benefit of them instead of BNZ.

(2) Subsection (1) does not apply to an instrument or undertaking relating to—

- (a) an excluded asset; or
- (b) the employment of a BNZ employee; or
- (c) a provident, benefit, superannuation or retirement fund for BNZ employees.

(3) A director, secretary or auditor of BNZ is not a director, secretary or auditor of NAB merely because of subsection (1).

<i>Division 2—Consequential effects of vesting</i>	1
Application of division	2
8.(1) This division does not limit division 1.	3
(2) This division applies only in so far as it relates to, or is referable to, a transferred asset or transferred liability.	4 5
Relationship between BNZ’s customers and NAB	6
9. The relationship between BNZ and each customer of BNZ is taken to be, on and after the commencement, between NAB and the customer, and gives rise to the same rights and the same duties (including rights of set off) as would have existed if the relationship, immediately before the commencement, had been between NAB and the customer.	7 8 9 10 11
Authorities etc. by BNZ’s customers	12
10. Each authority, instruction, mandate or order given to BNZ by a customer of BNZ and subsisting on, or given after, the commencement is, until cancelled, taken to have been given to NAB.	13 14 15
Securities held by BNZ	16
11.(1) Each security held by BNZ immediately before the commencement as security for the payment of debts or liabilities (whether present or future, certain or contingent) of a person is transferred to NAB.	17 18 19
(2) The security is to be held by, and be available to, NAB as security for the payment of the debts and liabilities to NAB.	20 21
(3) However, the security is not security for any debt or liability of the person to NAB existing immediately before the commencement.	22 23
(4) If the security extends to future advances to, or to future liabilities of, the person, the security is held by, and is available to, NAB as security for future advances to the person by, and future liabilities of the person to, NAB.	24 25 26 27
(5) If there is an agreement between NAB and the person in relation to a	28

matter mentioned in subsection (3) or (4), subsection (3) or (4) applies
subject to the agreement. 1
2

Transferred securities—rights, liabilities and priorities 3

12. NAB is, in relation to a 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 BNZ would have been entitled and subject
to, if the security had continued to be held by BNZ. 4
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Custody of documents, goods etc. held by BNZ 8

13. The custody of all documents, goods or things held by BNZ
immediately before the commencement as bailee for a customer at an office
or branch or agency of BNZ is transferred to NAB, together with the rights,
duties and liabilities of BNZ under a contract of bailment relating to the
documents, goods or things. 9
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Negotiable instruments or orders 14

14.(1) Each negotiable instrument or order for payment of money,
expressed to be drawn by or on, or given to, or accepted or endorsed by,
BNZ, or payable at a place of business of BNZ, has the same effect after
the commencement as it would have if it had been drawn by or on, or given
to, or accepted or endorsed by, NAB, or payable at the same place of
business of NAB. 15
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(2) Subsection (1) applies to a negotiable instrument or order mentioned
in subsection (1) regardless of when it was drawn, given, accepted or
endorsed. 21
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Information about customers 24

15. Information held immediately before the commencement by BNZ
relating to a customer is available to and may be used by NAB on and after
the commencement. 25
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Security over money on deposit

16.(1) In relation to a security held by NAB over money on deposit with BNZ immediately before the commencement, NAB is entitled to the same rights and priorities and subject to the same liabilities as it would have been entitled and subject to had the money on deposit continued to be held by BNZ.

(2) In relation to a security held by BNZ immediately before the commencement over money on deposit with NAB, NAB is entitled to the same rights and priorities and subject to the same liabilities as BNZ would have been entitled and subject to had the security continued to be held by BNZ.

Division 3—Employees**NAB and BNZ employees**

17.(1) A person who is employed by BNZ immediately before the commencement is to be engaged in providing services to NAB and is subject to the direction and control of the officers of NAB who are responsible for the control of the business of NAB in Queensland.

(2) Subsection (1) applies subject to any law or determination of an industrial authority under the *Workplace Relations Act 1997* about the employment of the person.

PART 3—GENERAL**Payment of amount instead of stamp duty**

18.(1) Stamp duty is not payable as a result of or in connection with the transfer of the assets and liabilities of BNZ to NAB under this Act.

(2) No person has an obligation under an Act imposing stamp duty—

- (a) to lodge a statement or return relating to a transfer of assets or liabilities under this Act; or

- (b) to include information about the transfer in a statement or return. 1
- (3) Subsections (1) and (2) apply only if the amount fixed by the 2
Governor in Council is paid to the consolidated fund by NAB. 3
- (4) As soon as practicable after the amount is paid, the Minister must 4
notify the fact by gazette notice. 5
- Registering authorities to note transfers** 6
- 19.(1)** The registrar of titles or other person required or authorised by law 7
to register or record transactions affecting assets or liabilities— 8
- (a) may (without formal application) register or record in the 9
appropriate way the transfer of an asset or liability under this Act; 10
and 11
- (b) must, on written application by NAB, register or record in the 12
appropriate way the transfer of an asset or liability under this Act. 13
- (2) A transaction related to a transferred asset or transferred liability 14
entered into by NAB in BNZ's name or the name of a predecessor in title to 15
BNZ, if effected by an instrument otherwise in registrable form, must be 16
registered even though NAB has not been registered as proprietor of the 17
asset or liability. 18
- (3) The registrar of titles or other person is not required to act under 19
subsection (1)(b) or (2) unless the appropriate fee or charge relating to the 20
act has been paid to the registrar or person. 21
- (4) If an asset or liability (other than an excluded asset) is registered in 22
the name of BNZ, the registrar of titles or other registering authority may 23
register a dealing for a transaction about the asset or liability without being 24
concerned to enquire whether it is, or is not, a transferred asset or 25
transferred liability. 26
- (5) If land, of which BNZ is taken to be the registered proprietor, is 27
under this Act vested in NAB, despite anything to the contrary in an Act, 28
NAB is to be taken to be the registered proprietor of the land for the 29
purposes of the *Land Title Act 1994*, subject to the same defects in title as 30
any to which BNZ was subject. 31

Charges under the Corporations Law

20.(1) The Corporations Law, section 268(1),³ is taken to have been complied with in respect of all charges of which NAB becomes the holder under this Act if there is lodged with the Australian Securities Commission a certificate signed by the chief executive officer stating that the undertaking of BNZ has vested in NAB under this Act.

(2) A certificate under subsection (1) is of no effect unless it is accompanied by the fees that would be payable if the certificate were a notice under the Corporations Law, section 268(1)(a).

Other property

21.(1) This section applies if—

- (a) any property becomes, under this Act, the property of NAB; and
- (b) any person or authority has, under another Act, responsibility for keeping a register in respect of property of that kind.

(2) A requirement of the other Act relating to the transfer of the property from one person to another is taken to have been complied with if there is lodged with the person or authority a certificate signed by the chief executive officer stating that the undertaking of BNZ became vested in NAB under this Act.

Construction of references

22.(1) On and after the commencement, if an Act (other than this Act) or a document, whenever made or signed or a register established or kept under an Act contains a reference, express or implied, to BNZ, the reference is, if the context permits, to be taken as a reference to NAB.

³ Corporations Law, section 268(1)—

Notice of change of chargee

(1) Where, after a registrable charge on property of a company has been created, a person other than the original chargee becomes the holder of the charge, the person who becomes the holder of the charge shall, within 45 days after he, she or it becomes the holder of the charge:

- (a) lodge a notice stating that he, she or it has become the holder of the charge; and
- (b) give the company a copy of the notice.

(2) Subsection (1) applies only in so far as the Act, document or register applies to a transferred asset or transferred liability. 1
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Certificates evidencing operation of Act may be issued 3

23. The chief executive officer may, by signed certificate, certify a matter in relation to the operation or effect of section 20 or 21. 4
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Certificates as evidence 6

24.(1) For all purposes and in all courts, tribunals and proceedings, a certificate under this Act is evidence of the matters certified. 7
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(2) A document purporting to be a certificate under this Act is, unless the contrary is established, taken to be a certificate and to have been properly given. 9
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Excluded assets transactions 12

25.(1) A person dealing with NAB or BNZ is not obliged to enquire whether property, the subject of a transaction, is an excluded asset. 13
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(2) If a transaction is entered into by NAB with a person, in relation to an excluded asset, it is to be taken, in favour of the person, that NAB has full power and authority to enter into the transaction as if the excluded asset had vested in NAB under this Act. 15
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(3) This section does not— 19

(a) affect the liability of NAB to BNZ for anything done, or purporting to have been done, by NAB in relation to an excluded asset; or 20
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(b) validate a transaction if the party dealing with NAB or BNZ has actual, implied or constructive notice that the property is an excluded asset. 23
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Service of documents on NAB and BNZ 26

26.(1) Service of a document on NAB or BNZ is taken to be service on both. 27
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(2) Subsection (1) ceases to apply if BNZ ceases to be a related body corporate of NAB within the meaning of the Corporations Law, section 9.⁴

Proceedings

27.(1) This section applies to—

- (a) a proceeding which is at the commencement pending or existing by, against, or in favour of, BNZ; and
- (b) a proceeding by, against, or in favour of, BNZ arising—
 - (i) after the commencement in respect of a contract made by BNZ before the commencement; or
 - (ii) in respect of anything done or omitted to be done by BNZ before the commencement.

(2) Despite subsection (1), this section does not apply to a proceeding relating to—

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

(3) A proceeding mentioned in subsection (1)—

- (a) is not abated or discontinued or in any way prejudicially affected by this Act; and
- (b) may, without any further act, deed or instrument other than any appropriate amendment of the records of the relevant court or

⁴ Corporations Law, section 9—

“related body corporate”, in relation to a body corporate, means a body corporate that is related to the first-mentioned body by virtue of section 50.

Corporations Law, section 50—

Related bodies corporate

50 Where a body corporate is:

- (a) a holding company of another body corporate;
- (b) a subsidiary of another body corporate; or
- (c) a subsidiary of a holding company of another body corporate;

the first-mentioned body and the other body are related to each other.

tribunal, be prosecuted and continued and enforced by or against NAB, in its own name as and when it might have been prosecuted, continued and enforced by or against BNZ if this Act had not been enacted.

(4) However, the court, tribunal or other person making or entering any judgment, order or award for the payment of an amount of money, whether ascertained or to be ascertained, against NAB 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 BNZ and NAB.

(5) A judgment, order or award made or entered against both BNZ and NAB may be enforced against both.

Amendment of court documents if NAB erroneously made a party

28.(1) A party to a proceeding relating to an excluded asset or a BNZ employee is entitled at any stage to seek leave to amend any writ, pleading or other document filed by the party in the proceeding by substituting for the name of NAB the name of BNZ as party.

(2) No order is to be made against a party so amending to pay to NAB or to BNZ any costs incurred as a result of the amendment.

(3) The proceeding is to be continued as if BNZ had originally been made a party to it.

Effect of things done or allowed under this Act

29.(1) Nothing done or allowed under this Act—

- (a) constitutes a breach of, or default under, an Act or other law; or
- (b) constitutes a breach of, or default under, a contract, understanding or undertaking; or
- (c) constitutes a breach of a duty of confidence (whether arising by contract, in equity, by custom, or in another way); or
- (d) constitutes a civil or criminal wrong; or
- (e) terminates an agreement or obligation, or fulfils a condition that allows a person to terminate an agreement or obligation, or gives

rise to another right or remedy; or	1
(f) releases a surety or other obligee wholly or in part from an obligation.	2 3
(2) Without limiting subsection (1), if, apart from this subsection, the advice or consent of a person would be necessary to carry out an action authorised by this Act, the advice or consent is taken to have been given.	4 5 6
Evidence—books and documents	7
30.(1) A book or document which if this Act had not been enacted would have been evidence about a matter for or against BNZ is, on and after the commencement, admissible in evidence about the same matter for or against NAB.	8 9 10 11
(2) Without limiting subsection (1), a book of account used in the ordinary business of BNZ is for the purposes of the <i>Evidence Act 1977</i> , part 5, division 6, ⁵ taken to be, and to have been, a book of account used in the ordinary business of NAB.	12 13 14 15
(3) This section applies only in so far as the book or document relates to a transferred asset or transferred liability.	16 17
(4) In this section—	18
“book of account” has the same meaning as in the <i>Evidence Act 1977</i> , section 83. ⁶	19 20
Application of banking laws	21
31. Except to the extent that an exemption is directly contemplated by, or is a necessary consequence of this Act, nothing in this Act exempts NAB	22 23

⁵ *Evidence Act 1997*, part 5 (Proof of documents and other matters), division 6 (Books of account)

⁶ *Evidence Act 1977*, section 83—
“book of account” includes any document used in the ordinary course of any undertaking to record the financial transactions of the undertaking or to record anything acquired or otherwise dealt with by, produced in, held for or on behalf of, or taken or lost from the undertaking and any particulars relating to any such thing.

from the provisions of any Act relating to companies carrying on the business of banking. 1
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Application of Acts Interpretation Act 1954, s 20A 3

32. This Act is an Act to which the *Acts Interpretation Act 1954*, section 20A,⁷ applies. 4
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Expiry of Act 6

33. This Act expires 20 years from when it commences. 7

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⁷ *Acts Interpretation Act 1954*, section 20A (Repeal does not end saving, transitional or validating effect etc.)