

Queensland



**CHALLENGE BANK
(TRANSFER OF
UNDERTAKING) ACT 1996**

Act No. 33 of 1996

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**Challenge Bank (Transfer of Undertaking)
Act 1996**

Act No. 33 of 1996

An Act to provide for the transfer of the undertaking of Challenge Bank Limited to Westpac Banking Corporation, and for related purposes

[Assented to 18 September 1996]

Preamble—

Parliament's reasons for enacting this Act are—

1. Challenge Bank Limited ACN 009 230 433 (“Challenge”) is a company incorporated in Western Australia, a company within the meaning of the Corporations Law and a company limited by shares.

2. Westpac Banking Corporation ARBN 007 457 141 (“Westpac”) is a body corporate established by an Act of New South Wales.

3. Westpac carries on the business of banking throughout Australia and elsewhere in the world, while Challenge carries on the business of banking principally in Western Australia and Victoria but also has assets and liabilities in other States and in Territories.

4. On 21 December 1995 Westpac became the beneficial owner of the whole of the issued share capital of Challenge and since then Challenge has been a wholly owned subsidiary of Westpac.

5. Under the conditions imposed on the authority of Challenge to carry on banking business in Australia Challenge is required to surrender the authority.

6. It is necessary and expedient to transfer the banking business of Challenge to Westpac in Western Australia and, at the same time, to transfer the assets and liabilities of Challenge in other States and in Territories to Westpac.

7. On 22 November 1995 the Commonwealth Treasurer consented under the *Banking Act 1959* (Cwlth), section 63, to the amalgamation of the banking business of Challenge with that of Westpac.

8. It is expedient to enact legislation to provide for the transfer of the assets and liabilities of Challenge in Queensland to Westpac.

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Challenge Bank (Transfer of Undertaking) Act 1996*.

Commencement

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

(2) However if at the time and 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.

(3) Sections 3 and 18 commence on assent.

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

Definitions

3. In this Act—

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

“**Challenge**” means Challenge Bank Limited ACN 009 230 433.

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

“**chief executive officer**”, in relation to Westpac, means the chief executive officer of Westpac or a person to whom the chief executive officer’s

powers have been delegated.

“commencement time” means the time and day this Act commences under section 2.

“customer”, of a bank, includes a depositor of the bank.

“excluded assets” means—

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

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- (e) the trade mark “Challenge” registered under the *Trade Marks Act 1995* (Cwlth) as a trademark in class 36 under number A533638; and
 - (f) the other assets listed in a certificate made for the purpose of this paragraph, signed by the chief executive officer of Westpac and received by the Minister after the passing of this Act but before the commencement time.

“**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.

“**property**” includes securities, rights and powers of every description.

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

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

“**State tax**” means a fee, duty or charge imposed under an Act.

“**transition period**” means the period commencing at the commencement time and ending on the transition period end day.

“**transition period end day**” means the day notified by gazette notice under section 16(2).

“**undertaking**”, of Challenge, means—

- (a) all assets of Challenge (except an excluded asset and a right or power of Challenge relating to an excluded asset) vested in, belonging to or held by Challenge immediately before the commencement time; and
- (b) all liabilities to which Challenge is subject immediately before the commencement time.

“**Victorian Act**” means the *Westpac and Bank of Melbourne (Challenge Bank) Act 1996* (Vic).

“**Westpac**” means Westpac Banking Corporation ARBN 007 457 141.

Act binds the Crown

4. This Act binds the Crown not only in right of the State but (so far as the State's legislative power extends) in all its other capacities.

PART 2—VESTING OF UNDERTAKING OF CHALLENGE IN WESTPAC

Division 1—Vesting and its general effect

Vesting of undertaking

5. At the commencement time Challenge's undertaking is transferred to and vested in Westpac.

Effect of vesting on Challenge contracts

6.(1) To the extent Challenge contracts were binding on and enforceable by or against Challenge, the contracts are, on and after the commencement time, binding on and enforceable by or against Westpac, as fully and effectually as if Westpac 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 Challenge.

(2) Despite subsection (1), this section does not apply to a Challenge contract relating to an excluded asset.

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

Division 2—Other consequential effect of vesting

Application of division

7. This division does not limit division 1.

Relationship between Challenge's customers and Westpac

8. The relationship between Challenge and each customer of Challenge is taken to be, on and after the commencement time, between Westpac 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 time, had been between Westpac and the customer.

Instruction etc by Challenge's customer

9. Each authority, instruction, mandate or order given to Challenge by a customer of Challenge and subsisting on, or given after, the commencement time is, until cancelled, taken to have been given to Westpac.

Security held by Challenge's customers

10.(1) Each security held by Challenge immediately before the commencement time as security for the payment of debts or liabilities (whether present or future, certain or contingent) of a person is transferred to Westpac.

(2) The security is to be held by, and be available to, Westpac as security for the payment of the debts and liabilities to Westpac.

(3) However, the security is not security for any debt or liability of the person to Westpac existing immediately before the commencement time.

(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, Westpac as security for future advances to the person by, and future liabilities of the person to, Westpac.

(5) If there is an agreement between Westpac and the person in relation to a matter mentioned in subsection (3), subsection (3) applies subject to the agreement.

Transferred security—rights, liabilities and priorities

11. Westpac 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 Challenge would have been entitled and subject to, if the security had continued to be held by Challenge.

Custody of documents, goods etc held by Challenge

12. The custody of all documents, goods or things held by Challenge as bailee for a customer at an office or branch or agency of Challenge is transferred to Westpac at the commencement time, together with the rights, duties and liabilities of Challenge under a contract of bailment relating to the documents, goods or things.

Negotiable instruments or orders

13.(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 Challenge, or payable at a place of business of Challenge, has the same effect after the commencement time as it would have if it had been drawn by or on, or given to, or accepted or endorsed by, Westpac, or payable at the same place of business of Westpac.

(2) Subsection (1) applies to a negotiable instrument or order mentioned in subsection (1) regardless of when it was drawn, given, accepted or endorsed.

Information about customers

14. Information held immediately before the commencement time by Challenge relating to a customer is available to and may be used by Westpac on or after the commencement time.

Security over money on deposit

15.(1) In relation to a security held by Westpac over money on deposit with Challenge immediately before the commencement time, Westpac is entitled to the same rights and priorities and subject to the same liabilities as

it would have been had the money on deposit continued to be held by Challenge.

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

Division 3—Transitional period

Transition period end day to be advised by Minister

16.(1) The Minister must decide, having regard to the advice of the chief executive officer of Westpac, the day on which the process of transferring the assets and liabilities of Challenge in Queensland to Westpac is complete.

(2) As soon as practicable after the Minister decides the day the Minister must, by gazette notice, advise the day.

(3) The Minister must give Westpac a copy of the notice.

Business name “Challenge Bank Limited”

17. During the transition period Westpac may carry on business under the business name “Challenge Bank Limited” as if that name were registered under the *Business Names Act 1962* as a business name of Westpac.

PART 3—GENERAL

Exemption from State taxes

18.(1) State tax is not payable as a result of or in connection with the transfer of the assets and liabilities of Challenge to Westpac under this Act.

(2) No person has an obligation under an Act imposing a State tax—

- (a) to lodge a statement or return relating to a matter mentioned in subsection (1); or
- (b) to include in a statement or return a record or information relating to the matter.

(3) This section applies only if the amount fixed by the Governor in Council, on the advice of the Minister, is paid to the consolidated fund by Westpac.

(4) As soon as practicable after the Minister is satisfied the amount fixed under subsection (3) has been paid, the Minister must, by gazette notice, advise that the amount has been paid.

Registering authorities to note transfers

19.(1) The registrar of titles or other person required or authorised by law to register or record transactions affecting assets or liabilities must, on application by Westpac, register or record in the appropriate way the transfer of an asset or liability under this Act to Westpac.

(2) A transaction, related to an asset or liability transferred to Westpac, entered into by Westpac in Challenge's name or the name of a predecessor in title to Challenge, if effected by an instrument otherwise in registrable form, must be registered even though Westpac has not been registered as proprietor of the asset or liability.

(3) If an asset or liability (other than an excluded asset) is registered in the name of Challenge, the registrar of titles or other registering authority may register a dealing for a transaction about the asset or liability without being concerned to enquire whether it is, or is not, an asset or liability transferred under this Act.

Excluded assets transactions

20.(1) A person dealing with Westpac or Challenge is not obliged to enquire whether property, the subject of a transaction, is an excluded asset.

(2) If a transaction is entered into by Westpac with a person, in relation to an excluded asset, it is to be taken, in favour of the person, that Westpac has full power and authority to enter into the transaction as if the excluded asset

had vested in Westpac under this Act.

(3) This section does not—

- (a) affect the liability of Westpac to Challenge for anything done, or purporting to be done, by Westpac in relation to an excluded asset; or
- (b) validate a transaction if the party dealing with Westpac or Challenge has actual, implied or constructive notice that the property is an excluded asset.

Service of documents on Westpac and Challenge

21.(1) Service of a document on Westpac or Challenge is taken to be service on both.

(2) Subsection (1) ceases to apply if Challenge ceases to be a related body corporate of Westpac within the meaning of the Corporations Law, section 9.¹

Legal proceedings

22.(1) This section applies to—

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

¹ Corporations Law, section 9—
~~“related body corporate” in the first-mentioned body by virtue of section 50.~~

Corporations Law, section 50—

Related bodies corporate

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.

by Challenge before the commencement time; or

- (ii) in respect of anything done or omitted to be done by Challenge before the commencement time.

(2) Despite subsection (1), this section does not apply to an action, arbitration or proceeding or to a cause of action relating to an excluded asset.

(3) An action, arbitration or proceeding and any cause of action, arbitration or proceeding mentioned in subsection (1)—

- (a) is not abated or discontinued or in any way prejudicially affected by this Act; and
- (b) may, without further act, deed or instrument other than any appropriate amendment of the records of the relevant court or tribunal, be prosecuted and continued and enforced by or against Westpac, in its own name, as and when it might have been prosecuted, continued and enforced by or against Challenge if this Act had not been enacted.

(4) However, the court, tribunal or other person making or entering a judgment, order or award for the payment of an amount of money, whether ascertained or to be ascertained, against Westpac may, at the request of any party in whose favour the judgment, order or award is being made or entered, make or enter the judgment, order or award against both Challenge and Westpac.

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

Amendment of document if Westpac erroneously made a party

23.(1) A party to an action, arbitration or proceeding relating to an excluded asset is entitled at any stage to seek leave to amend any writ, pleading or other document filed by the party in the action, arbitration or proceeding by substituting for the name of Westpac the name of Challenge as party.

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

(3) The action, arbitration or proceeding is to be continued as if Challenge

had originally been made a party to it.

Effect of things done or allowed under this Act

24.(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
- (f) releases a surety or other obligee wholly or in part from an obligation.

(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.

Certificates in relation to charges and the Corporations Law

25. The Corporations Law, section 268(1),² is to be taken to have been complied with in respect of all charges of which Westpac becomes the holder under this Act if there is lodged with the Australian Securities Commission a certificate signed by the chief executive officer of Westpac stating that under this Act the undertaking of Challenge has vested in Westpac.

Certificates evidencing operation of Act may be issued

26. The chief executive officer of Westpac may, by signed certificate,

² Corporations Law, section 268 (Assignment and Variation of Charges)

certify a matter in relation to the operation or effect of this Act, including certifying—

- (a) a specified matter or thing relevant to Westpac is an aspect of the operation or effect of this Act; or
- (b) a specified thing was done for a purpose connected with, or arising out of, the operation or effect of this Act in relation to Westpac; or
- (c) a specified asset of Challenge has or has not become an asset of Westpac; or
- (d) a specified liability of Challenge has or has not become a liability of Westpac.

Evidence—books and documents

27.(1) A book or document which if this Act had not been enacted would have been evidence about a matter for or against Challenge is, on and after the commencement time, admissible in evidence about the same matter for or against Westpac.

(2) Without limiting subsection (1), a book of account used in the ordinary business of Challenge is for the purposes of the *Evidence Act 1977*, sections 83 to 91, taken to be, and to have been, a book of account used in the ordinary business of Westpac.

(3) In this section—

“**book of account**” has the same meaning as in the *Evidence Act 1977*, section 83.³

Certificates as evidence

28.(1) For all purposes and in all courts, tribunals and proceedings, a

³ *Evidence Act 1977*, section 83—

“**book of account**” is the financial transaction of the undertaking or of any thing 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.

certificate under this Act is evidence of the matters certified.

(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.

Application of banking laws

29. Except as expressly provided in, or as a necessary consequence of, this Act, nothing in this Act exempts Westpac from the provisions of any Act relating to companies carrying on the business of banking.

Construction of references

30. On and after the commencement time, if an Act (other than this Act) or a document, whenever made or executed or a register established or kept under an Act contains a reference express or implied to Challenge, the reference is, if the context permits, to be taken to be a reference to Westpac.

Application of Acts Interpretation Act 1954, s 20A

31. This Act is an Act to which the *Acts Interpretation Act 1954*, section 20A, applies.

Expiry of Act

32. This Act expires 20 years from when it commences.