

Serial 183
Bank Of South
Australia
(Merger With
Advance Bank)
Mr Reed

NORTHERN TERRITORY OF AUSTRALIA

BANK OF SOUTH AUSTRALIA
(MERGER WITH ADVANCE BANK) BILL 1996

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to apply a South Australian Act dealing with the merger of the Bank of South Australia Limited and Advance Bank Australia Limited as a law of the Territory and for related purposes

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Bank of South Australia (Merger with Advance Bank) Act 1996*.

2. COMMENCEMENT

This Act comes into operation on the date on which the South Australian Act comes into operation.

3. DEFINITION

In this Act, "South Australian Act" means the *Bank Merger (BankSA and Advance Bank) Act 1996* of South Australia, the text of which is set out in the Schedule.

4. EXTENSION OF OPERATION OF SOUTH AUSTRALIAN ACT

(1) The South Australian Act applies as a law of the Territory.

GENERAL

5. Any instrument or document, the Registrar-
General being requested to do so and on delivery of
any recording in the Register that
is the cause of the operation of this Act.
Any instrument or document, the Registrar-
General being requested to do so and on production
of any grant and on any memorial relating to any land
that are necessary because of the operation of
this Act.

SCHEDULE

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BANK MERGER (BANKSA AND ADVANCE BANK) ACT 1996

No. 41 of 1996

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Bank of South Australia
(Merger with Advance Bank)

No. 41 of 1996

An Act to provide for the merger of the Bank of South Australia with Advance Bank; and for other purposes.

[Assented to 20 June 1996]

The Parliament of South Australia enacts as follows:

PART 1
PRELIMINARY

Short title

1. This Act may be cited as the *Bank Merger (BankSA and Advance Bank) Act 1996*.

Commencement

2. (1) This Act will come into operation on a day to be fixed by proclamation.

(2) The provision for automatic commencement of statutory provisions 2 years after assent does not apply to this Act.

Interpretation

3. In this Act, unless the contrary intention appears -

"ABAL" means Advance Bank Australia Limited;

"ABAL subsidiary" means a body corporate that is a subsidiary of ABAL for the purposes of section 46 of the *Corporations Law*;

"appointed day" means a day fixed by proclamation as the appointed day for the purposes of this Act;

"asset" includes -

(a) a present, contingent or future legal or equitable estate or interest in real or personal property;

(b) a present, contingent or future right, power or privilege or immunity (including a present or future cause of action in favour of BSAL);

(c) an asset (as defined above) held in a fiduciary capacity;

"BSAL" means the Bank of South Australia Limited;

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- (b) a guarantee; or
- (c) another instrument acknowledging, evidencing, recording, imposing or securing a liability for the payment of money or the discharge of a liability;

"transferred asset" means an asset transferred to ABAL under this Act;

"transferred employee" means an employee of BSAL who becomes an employee of the ABAL or an ABAL subsidiary under this Act;

"transferred liability" means a liability transferred to ABAL under this Act;

"undertaking" of BSAL means—

- (a) all assets of BSAL except excluded assets; and
- (b) all liabilities of BSAL except excluded liabilities.

Act to bind 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.

Extra-territorial application

5. (1) This Act applies both within and outside the State.

(2) This Act applies outside the State to the full extent of the extra-territorial legislative power of the State.

**PART 2
VESTING OF BSAL'S UNDERTAKING IN ABAL**

Vesting of undertaking

6. (1) On the appointed day, BSAL's undertaking is transferred to, and vested in, ABAL.

(2) The transfer of assets and liabilities under this section has effect despite the provisions of any other law or instrument.

(3) The transfer of a liability under this section discharges BSAL from the liability.

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- (i) ABAL becomes entitled or subject to rights, priorities and liabilities in relation to the security that BSAL would have had if there had been no transfer; and
 - (ii) the security is available to ABAL as security for the discharge of transferred liabilities including, where the security extends to future liabilities, liabilities incurred after the transfer; and
- (e) ABAL is entitled to possession of all documents to which BSAL was entitled immediately before the transfer took effect that are entirely referable to a transferred asset or transferred liability and is entitled to access to, and copies of, all documents that are referable to both a transferred asset or transferred liability and another asset or liability that is not transferred; and
- (f) a negotiable instrument or order for payment drawn by or on, or accepted or endorsed by BSAL, is (if BSAL's liability under the instrument or order is a transferred liability) payable by ABAL in the same way as if it had been drawn by or on, or accepted or endorsed by, ABAL; and
- (g) a cheque drawn on an account transferred to ABAL is, although expressed to be drawn on the account formerly at BSAL, taken to have been drawn on the account at ABAL; and
- (h) if an account in respect of which a credit or debit card was issued by BSAL is transferred, the card is taken to have been issued by ABAL and to be the property of ABAL; and
- (i) if a transferred asset consists of rights to the possession or use of property under a lease or other agreement, ABAL may exercise those rights without exposing BSAL to liability for parting with possession of the property, or permitting the possession or use of the property by another person, contrary to the terms of the lease or agreement; and
- (j) ABAL has the same right to ratify a contract or agreement relating to an asset or liability transferred to it from BSAL as BSAL would have had if there had been no transfer; and

Exclusion of obligation to enquire

11. (1) A person dealing with ABAL is not obliged to enquire whether an asset to which the transaction relates is or is not a transferred asset.

(2) A person dealing with BSAL is not obliged to enquire whether an asset to which the transaction relates is or is not a transferred asset.

(3) If BSAL was entitled to an asset before the appointed day, and after that day, BSAL or ABAL purports to deal with the asset as if entitled to it, the transaction is valid even though the body corporate purporting to deal with the asset is not entitled to do so because the asset is, or is not, a transferred asset.

(4) However, this section does not validate a transaction if the party dealing with BSAL has actual notice of the deficiency of title, or acts fraudulently.

**PART 3
GOVERNMENT GUARANTEE**

Government guarantee

12. (1) The Treasurer guarantees that ABAL will satisfy transferred liabilities that were formerly guaranteed under section 20 of the *State Bank (Corporatisation) Act 1994*.

(2) Any money required under the guarantee is to be paid out of the Consolidated Account (which is appropriated to the necessary extent).

(3) Subject to the following qualifications, the guarantee expires on 1 July 1999—

(a) if a written demand is made not later than 30 June 1999 for payment of a guaranteed liability falling due on or before that date, the guarantee continues in relation to the liability; and

(b) if a written demand is made for payment of a guaranteed liability not later than six months after the liability falls due, the guarantee continues in relation to the liability even though—

(i) the demand is made on or after 1 July 1999;
or

(ii) the liability falls due on or after 1 July 1999.

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- (4) A transfer under this section does not—
 - (a) affect the employee's remuneration; or
 - (b) interrupt continuity of service; or
 - (c) constitute a retrenchment or redundancy; or
 - (d) affect terms or conditions of employment; or
 - (e) affect rights accrued at the date of the transfer in respect of employment; or
 - (f) give rise to a superannuation entitlement or any other entitlement or remedy for cessation or change of employment.

- (5) A transfer under this section must not involve—
 - (a) a reduction in the employee's status; or
 - (b) a change in the employee's duties that would be unreasonable having regard to the employee's skills, ability and experience; or
 - (c) a change in the employee's place of employment unless—
 - (i) the change is in accordance with existing terms of employment; or
 - (ii) the new place of employment is within reasonable commuting distance from the employee's former place of employment.

- (6) However—
 - (a) an employee's status is not reduced by—
 - (i) a reduction in the scope of business operations for which the employee is responsible; or
 - (ii) a reduction in the number of employees under the employee's supervision or management,

if the general nature of the employee's responsibility after the transfer remains the same as, or similar to, the employee's responsibility before the transfer; and
 - (b) the transfer of an employee under this section does not affect a power to vary terms and conditions of employment.

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- (b) an application or entry made, receipt given, or anything else done for the purpose of acknowledging, evidencing, recording, registering, or giving effect to a transfer of assets or liabilities under this Act.

(2) No obligation arises under an Act for the assessment or imposition of stamp duty, financial institutions duty or debits tax—

- (a) to lodge a statement or return relating to a transfer of assets or liabilities under this Act; or
- (b) to include information about such a transfer in a statement or return.

Evidence

18. (1) The CEO may issue a certificate certifying that specified assets or liabilities are, or are not, transferred assets or transferred liabilities.

(2) An apparently genuine document purporting to be a certificate under subsection (1) must be accepted in legal proceedings or by an administrative official as proof of the matter certified in the absence of proof to the contrary.

(3) The transfer of BSAL's undertaking to ABAL does not affect the character that records made by BSAL or a bank from which BSAL acquired the records may have as banking records for the purposes of the law of evidence.

Act overrides other laws

19. This Act has effect despite the *Real Property Act 1886* or any other law.

Effect of things done or allowed under Act

20. Nothing done or allowed under this Act—

- (a) constitutes a breach or, or default under, an Act or other law; or
- (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
- (c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom) or in any other way; or
- (d) constitutes a civil or criminal wrong; or