



Banking Legislation Amendment Act 1989

No. 129 of 1989

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Banking Legislation Amendment Act 1989

No. 129 of 1989

An Act to amend the law relating to banking

[Assented to 7 November 1989]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Banking Legislation Amendment Act 1989*.

Commencement

2. (1) The following provisions of this Act commence on the day on which this Act receives the Royal Assent:

Part I, sections 3, 26, 29 to 33 (inclusive), 35, 38 and 40.

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(2) Subsection 23 (1) shall be taken to have commenced on 4 May 1989.

(3) Section 39 shall be taken to have commenced on 23 January 1988.

(4) Subject to subsection (5), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

(5) If a provision referred to in subsection (4) does not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences at the end of that period.

PART II—AMENDMENT OF THE BANKING ACT 1959

Principal Act

3. In this Part, “Principal Act” means the *Banking Act 1959*¹.

Interpretation

4. Section 5 of the Principal Act is amended:

(a) by omitting from subsection (1) the definitions of “savings bank” and “trading bank”;

(b) by inserting in subsection (1) the following definition:

“‘prudential matters’, in relation to a bank, means matters relating to the conduct by the bank of its affairs (whether or not relating to the banking business of the bank):

(a) in such a way as:

(i) to keep itself in a sound financial position;
and

(ii) not to cause or promote instability in the Australian financial system; and

(b) with integrity, prudence and professional skill;”;

(c) by adding at the end of paragraph (2) (a) “and”;

(d) by omitting paragraph (2) (b).

Authority to carry on banking business

5. (1) Section 9 of the Principal Act is amended:

(a) by omitting subsections (4) and (5) and substituting the following subsections:

“(4) The Governor-General may, at any time, by notice in writing served on the body corporate concerned:

(a) impose conditions, or additional conditions, on an authority;
or

(b) vary or revoke conditions imposed on an authority.

“(5) A condition relating to a prudential matter may be expressed to have effect notwithstanding anything in the regulations.”;

(b) by omitting subsection (7) and substituting the following subsection:

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“(7) Where an authority under this section is granted to a body corporate, the First Schedule is amended by the addition of the name of the body corporate.”;

(c) by inserting after subsection (8) the following subsection:

“(8A) Where:

(a) a body corporate in possession of an authority under this section, by notice in writing to the Treasurer, requests the revocation of the authority; and

(b) the Governor-General is satisfied that:

(i) the revocation would not prejudice the interests of the depositors of the bank; and

(ii) the revocation would not be likely to be contrary to the national interest;

the Governor-General shall revoke the authority.”;

(d) by inserting after subsection (9) the following subsection:

“(9A) Where the Treasurer is satisfied that a body corporate in possession of an authority under this section:

(a) has ceased to exist; or

(b) has changed its name;

the Treasurer shall cause to be published in the *Gazette* a notice to the effect that the Treasurer is so satisfied and, upon the publication of the notice, the First Schedule is amended, with effect from the date on which the body corporate ceased to exist or changed its name, by the omission of the name or by a change of the name, as the case may be.”;

(e) by omitting from subsection (10) “(5)” and substituting “(4)”.

(2) Conditions that were in force under section 9 of the Principal Act immediately before the commencement of this section have effect as if they had been imposed under subsection 9 (4) of the Principal Act as amended by this Act.

6. After section 11 of the Principal Act the following Division is inserted:

“Division 1A—Prudential Supervision and Monitoring of Banks

Prudential requirements may be prescribed by the regulations

“11A. The regulations may make provision for and in relation to requiring banks to observe such requirements in relation to prudential matters as are specified in, or ascertained in accordance with, the regulations.

Reserve Bank to monitor prudential matters

“11B. The functions of the Reserve Bank include:

(a) the collection and analysis of information in respect of prudential matters relating to banks;

- (b) the encouragement and promotion of the carrying out by banks of sound practices in relation to prudential matters; and
- (c) the evaluation of the effectiveness and carrying out of those practices.

Division not to limit operation of other provisions

“11C. Nothing in this Division is intended to limit the operation of any other provision of this Act or of the *Reserve Bank Act 1959*.”.

Supply of information

7. Section 13 of the Principal Act is amended by omitting from subsection (3) “an officer of the Reserve Bank Service” and substituting “a person”.

Banks unable to meet obligations

8. Section 14 of the Principal Act is amended:

- (a) by omitting paragraph (2) (c) and substituting the following paragraph:
 - “(c) the Reserve Bank is of the opinion that a bank is likely to become unable to meet its obligations or is about to suspend payment;”;
- (b) by omitting from subparagraph (2) (d) “an officer of the Reserve Bank Service” and substituting “a person”;
- (c) by omitting from subsection (3) “an officer” and substituting “a person”;
- (d) by omitting from subsection (3) “the officer” (wherever occurring) and substituting “the person”;
- (e) by omitting from subsection (3) “he” and substituting “the person”.

Indemnity

9. Section 15 of the Principal Act is amended by omitting “officer of the Reserve Bank Service” and substituting “other person”.

Assets of banks

10. Section 16 of the Principal Act is amended by omitting subsection (3).

11. Division 3 of Part II of the Principal Act is repealed and the following Division is substituted:

“Division 3—Non-callable Deposits

Interpretation

“17. In this Division:

‘determination’ means a determination under section 20;

‘eligible assets’ means assets specified in a notice under subsection 18 (1);

‘eligible liabilities’ means liabilities specified in a notice under subsection 18 (2);

'month' means any of the 12 months of the year;

'non-callable deposit ratio' means the percentage specified in a determination.

Base for calculating deposits—eligible assets or eligible liabilities

“18. (1) The Reserve Bank may, by notice in the *Gazette*, direct that specified assets are eligible assets for the purposes of this Division.

“(2) The Reserve Bank may, by notice in the *Gazette*, direct that specified liabilities are eligible liabilities for the purposes of this Division.

“(3) The Reserve Bank may, by notice in the *Gazette*, direct that deposits in Non-callable Deposit Accounts on or after a specified day shall be calculated by reference to whichever of the following is specified:

- (a) eligible assets;
- (b) eligible liabilities.

“(4) The Reserve Bank shall not give a notice under this section except with the approval of the Treasurer.

Daily eligible assets or eligible liabilities of banks—averaging provision

“19. (1) For the purposes of this Division, a bank's eligible assets applicable to each day during each period commencing at the beginning of the third Wednesday in a month and ending at the end of the day before the third Wednesday in the following month shall be taken to be an amount equal to the average of the bank's eligible assets as at the close of business on each Wednesday (other than a Wednesday declared by the Reserve Bank, by notice published in the *Gazette*, to be a day to which this section does not apply) in the month before the month in which the first-mentioned Wednesday falls.

“(2) For the purposes of this Division, a bank's eligible liabilities applicable to each day during each period commencing at the beginning of the third Wednesday in a month and ending at the end of the day before the third Wednesday in the following month shall be taken to be an amount equal to the average of the bank's eligible liabilities as at the close of business on each Wednesday (other than a Wednesday declared by the Reserve Bank, by notice published in the *Gazette*, to be a day to which this section does not apply) in the month before the month in which the first-mentioned Wednesday falls.

“(3) Section 22 does not apply to a bank in relation to a particular day during a period commencing at the beginning of the third Wednesday in a month and ending at the end of the day before the third Wednesday in the following month unless the bank was in existence at all times during the month before the month in which the first-mentioned Wednesday falls.

“(4) The regulations may provide that a reference in this section to Wednesday shall be read as a reference to such other day as is prescribed.

Determination of non-callable deposit ratios

“20. (1) The Reserve Bank may, by notice in the *Gazette*, determine that the non-callable deposit ratio applicable to banks is such percentage, not exceeding 1%, as is specified in the determination.

“(2) The Reserve Bank shall specify in the determination the date from which it is to have effect.

“(3) The determination shall apply to all banks.

“(4) The Reserve Bank shall not give a notice under this section except with the approval of the Treasurer.

Non-callable Deposit Account

“21. Each bank shall, for the purposes of this Division, maintain with the Reserve Bank an account to be known as a Non-callable Deposit Account.

Banks to maintain non-callable deposits

“22. (1) A bank shall, on each day on which a determination that applies to the bank is in force, have on deposit in the bank's Non-callable Deposit Account an amount not less than the amount which, when expressed as a percentage of:

- (a) if deposits for the day concerned are required because of a notice under subsection 18 (3) to be calculated by reference to eligible assets—the bank's eligible assets applicable to that day; or
- (b) if deposits for the day concerned are required because of a notice under subsection 18 (3) to be calculated by reference to eligible liabilities—the bank's eligible liabilities applicable to that day;

is the same as the non-callable deposit ratio specified in the determination.

“(2) Where the minimum amount that, apart from this subsection, a bank would be required under this Division to have on deposit in its Non-callable Deposit Account is not a multiple of \$1,000, the amount which the bank is so required to have on deposit is the greatest amount below the first-mentioned amount that is a multiple of \$1,000.

Penalty for failure to maintain non-callable deposits

“23. (1) Subject to subsection (2), if a bank fails to comply with section 22 on any day, the bank is guilty of an offence in respect of that day and is, on conviction, liable to a fixed penalty equal to 20% of one-three hundred and sixty-fifth of the shortfall.

“(2) A bank is not guilty of an offence under this section in respect of a day on which it fails to comply with section 22 if:

- (a) that day is a Sunday or, in the State or Territory in which the head office in Australia of the bank is situated, a public holiday or bank holiday; and

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- (b) on the last day before that day which was not a Sunday or, in that State or Territory, a public holiday or bank holiday, the bank had not failed to comply with that section.

Interest to be paid on Non-callable Deposit Accounts

“24. (1) The Reserve Bank shall pay interest, at half-yearly intervals, to a bank on the daily balance of that bank’s Non-callable Deposit Account at a rate determined in writing by the Reserve Bank with the approval of the Treasurer.

“(2) The rate of interest determined under subsection (1) shall be the same for each bank.

Repayments from Non-callable Deposit Accounts

“25. If, on any day, the amount to the credit of the Non-callable Deposit Account of a bank exceeds the minimum amount which, under this Division, the bank is required to have on deposit in that Account on that day, the Reserve Bank shall, as soon as is practicable, repay to the bank, from that Account, the amount of the excess.”.

Advance policy

12. Section 36 of the Principal Act is amended:

- (a) by omitting from subsection (1) all the words after “advances” to and including “applicable to it” and substituting “to be followed by banks, and a bank shall follow the policy so determined that is applicable to it”;
- (b) by omitting from subsection (2) all the words after “advances” to and including “applicable to it” and substituting “may or may not be made by banks, and a bank shall comply with any directions so given that are applicable to it”;
- (c) by omitting subsection (4).

Repeal of Division 6 of Part II

13. Division 6 of Part II of the Principal Act is repealed.

Control of interest rates

14. Section 50 of the Principal Act is amended by omitting paragraph (1) (c) and substituting the following paragraph:

- “(c) providing that interest shall not be payable in respect of an amount deposited with a bank, or with another person in the course of banking business carried on by the person, and repayable on demand or after the end of a period specified in the regulations.”.

15. Part VI of the Principal Act is repealed and the following Part is substituted:

**“PART VI—COLLECTION AND PUBLICATION OF
INFORMATION ABOUT BANKS**

Collection and publication of information about banks

- “51. (1) The regulations may make provision for and in relation to:
- (a) requiring a bank to prepare, and to give to the Reserve Bank, accounts and financial statements;
 - (b) requiring a bank to give information relating to its banking business to the Reserve Bank;
 - (c) specifying, or enabling the Reserve Bank to specify, the manner and form in which the accounts and financial statements are to be prepared and given or in which the information is to be given;
 - (d) requiring accounts, financial statements or information given to be verified by a statutory declaration made by a senior officer of the bank;
 - (e) enabling the Treasurer to exempt a bank (either unconditionally or conditionally) from compliance with an obligation of the kind mentioned in paragraph (b); and
 - (f) requiring the Reserve Bank to prepare and publish, in respect of a bank, all or any of the following:
 - (i) a balance-sheet;
 - (ii) a profit and loss statement;
 - (iii) a statement of assets and liabilities;
 - (iv) with the consent of the bank concerned—other information.

“(2) Regulations made for the purposes of this section shall not require information to be given with respect to the affairs of an individual customer unless the information is in respect of prudential matters relating to the bank concerned.

“(3) Regulations made for the purposes of paragraph (1) (f) shall not require the preparation and publication of information with respect to the affairs of an individual customer.

Secretary to the Department of the Treasury may request copies of information given to the Reserve Bank

“52. (1) The Secretary to the Department of the Treasury may request the Reserve Bank to give to the Secretary a copy of particular information that:

- (a) was given to the Reserve Bank under regulations made for the purposes of section 51; or
- (b) was derived from such information.

“(2) Subject to subsection (3), the Reserve Bank shall comply with the request.

“(3) If:

- (a) the Reserve Bank receives a request for a copy of particular information; and

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(b) the Reserve Bank certifies that the information is of a kind that the Reserve Bank uses only in connection with prudential matters relating to one or more banks;
the Reserve Bank is not required to comply with the request.”.

16. Section 61 of the Principal Act is repealed and the following section is substituted:

Reserve Bank to conduct investigations where Governor considers necessary

“61. (1) Where the Governor of the Reserve Bank is satisfied that a report on specified prudential matters in relation to a bank is necessary, the Reserve Bank may, in writing, appoint a person to investigate and report on those specified prudential matters in relation to that bank.

“(2) The bank:

- (a) shall afford the person access to its books, accounts and documents; and
- (b) shall give to the person such information and facilities as the person requires to conduct the investigation.

“(3) Nothing in this section is intended to limit the operation of any other provision of this Act.”.

Supply of information

17. Section 62 of the Principal Act is amended:

- (a) by adding at the end of subsection (2) “, unless the information is in respect of prudential matters relating to a bank”;
- (b) by adding at the end the following subsections:

“(3) Nothing in Part VI restricts the powers conferred by this section.

“(4) The Secretary to the Department of the Treasury may request the Reserve Bank to give to the Secretary a copy of particular information that:

- (a) was given to the Reserve Bank under subsection (1); or
- (b) was derived from such information.

“(5) Subject to subsection (6), the Reserve Bank shall comply with the request.

“(6) If:

- (a) the Reserve Bank receives a request under subsection (4) for a copy of particular information; and
- (b) the Reserve Bank certifies that the information is of a kind that the Reserve Bank uses only in connection with prudential matters relating to one or more banks;

the Reserve Bank is not required to comply with the request.”.

Settlement of balances between banks

18. Section 64 of the Principal Act is amended by omitting “trading” (wherever occurring).

19. Sections 66 and 67 of the Principal Act are repealed and the following sections are substituted:

Restriction on use of word “bank” etc.

“66. (1) Except with the consent in writing of the Treasurer, a person (not being a bank) shall not, in Australia, assume or use a bank-related word in relation to a financial business carried on by the person (whether or not in Australia).

“(2) The Treasurer may, at any time, by notice in writing served on the person concerned:

- (a) impose conditions, or additional conditions, on a consent;
- (b) vary or revoke conditions imposed on a consent; or
- (c) revoke a consent.

“(3) Where a consent is subject to conditions, the person to whom the consent is given shall comply with those conditions.

“(4) In this section:

- (a) a reference to a bank-related word is a reference to:
 - (i) the word ‘bank’, ‘banker’ or ‘banking’; or
 - (ii) any word of a like import (whether or not in English);
- (b) a reference to a word being assumed or used includes a reference to the word being assumed or used:
 - (i) as part of another word; or
 - (ii) in combination with other words, letters or other symbols; and
- (c) a reference to a financial business is a reference to a business that:
 - (i) consists of, or includes, the provision of financial services; or
 - (ii) relates, in whole or in part, to the provision of financial services.

Restriction on establishment or maintenance of representative offices of overseas banks

“67. (1) Except with the consent in writing of the Treasurer, a person (not being a bank) who carries on banking business in a foreign country but does not carry on banking business in Australia shall not establish or maintain an office in Australia wholly or partly in connection with the carrying on of that banking business in that foreign country.

“(2) The Treasurer may, at any time, by notice in writing served on the person concerned:

- (a) impose conditions, or additional conditions, on a consent;

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- (b) vary or revoke conditions imposed on a consent; or
- (c) revoke a consent.

“(3) Where a consent is subject to conditions, the person to whom the consent is given shall comply with those conditions.”.

Unclaimed moneys

20. (1) Section 69 of the Principal Act is amended:

- (a) by omitting from subsections (1), (3), (6), (10) and (11) “trading” (wherever occurring);
- (b) by omitting from subsection (3) “unclaimed moneys” and substituting “sums of unclaimed moneys of not less than \$100 or such higher amount as is prescribed”;
- (c) by omitting subsections (4) and (5) and substituting the following subsections:

“(3A) The regulations may require the statement to be delivered in a specified form in a specified kind of disk, tape, film or other medium.

“(4) The statement shall set out:

- (a) the name, and the last-known address, of each shareholder, depositor or creditor;
- (b) the amount due;
- (c) in the case of moneys to the credit of an account—the office or branch of the bank at which the account was kept; and
- (d) if the shareholder, depositor or creditor is known to the bank to be dead—the name and address, so far as they are known to the bank, of his or her legal representative.

“(5) The total amount shown in the statement shall be paid by the bank to the Commonwealth at the time of the delivery of the statement.”;

- (d) by omitting subsection (9) and substituting the following subsection:

“(9) The Treasurer shall cause particulars of every sum shown in a statement delivered under this section to be:

- (a) published in the *Gazette*; or
- (b) made available to the public (whether or not on the payment of a fee) in such other manner as is prescribed.”;

- (e) by inserting after subsection (11) the following subsection:

“(11A) It is the intention of the Parliament that a law of a State or Territory has no effect insofar as it requires a bank to:

- (a) pay unclaimed moneys to, or to an authority of, a State or Territory; or
- (b) lodge a return relating to unclaimed moneys with, or with an authority of, a State or Territory.”;

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(f) by omitting from subsection (12) the definition of “trading bank”.

(2) The amendments made by paragraphs (1) (a), (b), (c), (d) and (f) apply in relation to:

(a) statements of unclaimed moneys as at 31 December next following the date of commencement of this subsection; and

(b) statements of unclaimed moneys as at a date after that 31 December.

(3) Subsection 69 (11A) of the Principal Act as amended by this Act applies in relation to:

(a) unclaimed moneys as at 31 December next following the date of commencement of this subsection; and

(b) unclaimed moneys as at a date after that 31 December.

(4) In the application of section 69 of the Principal Act as amended by this Act in relation to unclaimed moneys in relation to a bank that, immediately before the commencement of this subsection, was a savings bank as defined by subsection 5 (1) of the Principal Act, a reference to unclaimed moneys does not include a reference to moneys to the credit of an account that, as at 31 December next following the date of commencement of this subsection, has not been operated on (either by deposit or withdrawal) for a period of not less than 8 years.

21. After section 70 of the Principal Act the following section is inserted:

Delegation by Treasurer

“70A. (1) The Treasurer may, by writing, delegate all or any of the Treasurer’s powers under sections 66 and 67 to a person occupying or performing the duties of:

(a) the office of Governor or Deputy Governor of the Reserve Bank;

(b) a specified office in the Reserve Bank Service; or

(c) a specified office in the Department of the Treasury.

“(2) The delegate is, in the exercise of the power delegated under subsection (1), subject to the directions of the Treasurer.”.

Regulations

22. Section 71 of the Principal Act is amended by adding at the end the following subsections:

“(2) Without limiting the generality of subsection (1), the regulations may confer on the Reserve Bank functions relating to the supervision of banks in relation to prudential matters.

“(3) The Governor-General shall not make regulations for or in relation to requiring banks to observe requirements in relation to prudential matters except in accordance with the recommendation of the Treasurer.

“(4) Before making a recommendation for the purposes of subsection (3), the Treasurer shall consult the Reserve Bank.”.

First Schedule

23. (1) The First Schedule to the Principal Act is repealed and the Schedule set out in Schedule 1 to this Act is substituted.

(2) The First Schedule to the Principal Act is amended:

(a) by omitting the headings to Parts I and II;

(b) by re-ordering the names in alphabetical order (on a letter-by-letter basis).

Repeal of Second Schedule

24. The Second Schedule to the Principal Act is repealed.

Amendments relating to offences

25. The Principal Act is amended as set out in Schedule 2.

Formal amendments

26. The Principal Act is amended as set out in Schedule 3.

Transitional—non-callable deposit ratios

27. (1) In this section:

“amended Act” means the Principal Act as amended by this Act.

(2) The Reserve Bank may, by notice in the *Gazette*, determine that the non-callable deposit ratio applicable to a specified bank in respect of a period ending before 1 October 1991 shall, notwithstanding section 20 of the amended Act, be such percentage as is specified in the determination.

(3) A determination under subsection (2) of this section has effect as if it were a determination under section 20 of the amended Act.

(4) Where:

(a) a determination under subsection (2) applicable to a particular bank is in force on a particular day (in this subsection called the “deposit day”);

(b) the determination specifies a percentage exceeding 1%; and

(c) apart from this subsection, the bank would be required to have on deposit in the bank’s Non-callable Deposit Account on the deposit day an amount that exceeds the amount (in this subsection called the “26 September 1988 SRD amount”) that the bank was required to have on deposit in the bank’s Statutory Reserve Deposit Account on 26 September 1988;

section 22 of the amended Act applies as if the amount that the bank is required to have on deposit in the bank’s Non-callable Deposit Account on the deposit day is an amount not less than the 26 September 1988 SRD amount.

(5) The Reserve Bank shall not give a notice under this section except with the approval of the Treasurer.

Transitional—abolition of distinction between savings banks and trading banks

28. (1) In this section:

“amended Act” means the Principal Act as amended by this Act.

(2) A reference in a law of the Commonwealth or of a Territory, or in an instrument or a document, to a trading bank as defined by subsection 5(1) of the Principal Act shall, in relation to things done on or after the date of commencement of this section, be read as a reference to a bank as defined by subsection 5 (1) of the amended Act.

(3) A reference in a law of the Commonwealth or of a Territory, or in an instrument or a document, to a savings bank as defined by subsection 5 (1) of the Principal Act shall, in relation to things done on or after the date of commencement of this section, be read as a reference to a bank as defined by subsection 5 (1) of the amended Act.

PART III—AMENDMENT OF THE COMMONWEALTH BANKS ACT 1959

Principal Act

29. In this Part, “Principal Act” means the *Commonwealth Banks Act 1959*².

Capital

30. Section 30 of the Principal Act is amended by inserting after paragraph (c) the following paragraph:

“(ca) such other sums as are transferred from the reserves of the Commonwealth Bank under section 30A;”.

31. After section 30 of the Principal Act the following section is inserted:

Transfers from reserves to capital

“30A. There may be transferred from the reserves of the Commonwealth Bank to the capital of the Commonwealth Bank such sums as the Board determines.”.

Commonwealth Bank Reserve Fund

32. Section 31 of the Principal Act is amended by omitting from paragraph (1) (b) “subsection 32 (3) or (4)” and substituting “section 33”.

33. After section 32 of the Principal Act the following section is inserted:

Crediting of amounts to Commonwealth Bank Reserve Fund

“33. The Board may place to the credit of the Commonwealth Bank Reserve Fund an amount that does not exceed so much of the net profits of the Commonwealth Bank as has not previously been dealt with under section 32 or this section.”.

General functions of Savings Bank

34. Section 41 of the Principal Act is amended:

- (a) by omitting from subsection (1) “the general business of a savings bank” and substituting “general banking business”;
- (b) by omitting from subsection (1A) “savings banks” and substituting “banks”;
- (c) by omitting subsection (2).

Share capital

35. Section 42A of the Principal Act is amended:

(a) by inserting after subsection (8) the following subsection:

“(8A) The Board may direct the Savings Bank to apply the whole or a specified part of the amount standing to the credit of a specified reserve of the Savings Bank in paying up in full unissued shares in the capital of the Savings Bank, and where the Board so directs, the Savings Bank shall comply with the direction.”;

(b) by inserting in subsection (9) “or (8A)” after “(8)”.

Amalgamation of other banks with Commonwealth Savings Bank

36. Section 50 of the Principal Act is amended by omitting “other savings bank” (wherever occurring) and substituting “other bank”.

Repeal of section 53

37. Section 53 of the Principal Act is repealed.

Commonwealth Development Bank Reserve Fund

38. Section 76 of the Principal Act is amended by omitting from paragraph (1) (c) “77” and substituting “78”.

Repeal of section 77

39. Section 77 of the Principal Act is repealed.

40. After section 77A of the Principal Act the following section is inserted:

Crediting of amounts to Commonwealth Development Bank Reserve Fund

“78. The Board may place to the credit of the Commonwealth Development Bank Reserve Fund a specified amount, being an amount that does not exceed so much of the net profits of the Commonwealth Development Bank as has not previously been dealt with under section 77A or this section.”.

Agents etc.

41. Section 83 of the Principal Act is amended by omitting from paragraph (b) “Part I of”.

Annual reports and financial statements

42. (1) Section 121 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (b) “prescribed forms” and substituting “regulations”;
- (b) by inserting after subsection (1) the following subsection:

“(1A) Section 121A does not, by implication, limit the power to prescribe requirements for financial statements by reference to requirements for accounts prescribed under the *Companies Act 1981*.”.

(2) The amendments made by subsection (1) apply in relation to a financial year ending on or after the date of commencement of this section.

Transitional—Depositors’ Unclaimed Fund

43. (1) In spite of the repeal of section 53 of the Principal Act effected by this Part, that section continues in force, after the commencement of this section, in relation to:

- (a) money standing to the credit of the Depositors’ Unclaimed Fund immediately before the commencement of this section; and
- (b) money that became the absolute property of the Savings Bank before the commencement of this section;

as if that repeal had not been effected.

(2) A reference in section 69 of the *Banking Act 1959* to unclaimed moneys does not include a reference to money standing to the credit of the Depositors’ Unclaimed Fund immediately before the commencement of this section.

PART IV—AMENDMENT OF THE RESERVE BANK ACT 1959

Principal Act

44. In this Part, “Principal Act” means the *Reserve Bank Act 1959*³.

Profits

45. Section 30 of the Principal Act is amended by omitting “arising from business carried on under this Part”.

Repeal of section 33

46. Section 33 of the Principal Act is repealed.

Issue, re-issue and cancellation of notes

47. Section 34 of the Principal Act is amended by omitting from subsection (1) “, through the Note Issue Department”.

Repeal of sections 38 to 42 (inclusive)

48. Sections 38 to 42 (inclusive) of the Principal Act are repealed.

Determination of net profits

49. Section 78 of the Principal Act is amended by omitting “, or of the Note Issue Department of the Bank”.

Annual reports and financial statements

50. Section 81 of the Principal Act is amended:

(a) by inserting after paragraph (1) (a) the following paragraph:

“(aa) a report on any investigations on prudential matters pursuant to section 61 of the *Banking Act 1959*, including details of persons appointed to investigate and report on such matters; and”;

(b) by inserting after subsection (1) the following subsection:

“(1A) Nothing in this section authorises the Board to furnish a report under paragraph (1) (aa) with respect to the affairs of an individual bank or the affairs of an individual customer of a bank.”.

Transitional—net profits of Note Issue Department

51. Notwithstanding anything in the Principal Act, the net profits of the Note Issue Department in the year in which this section commences shall be dealt with in accordance with section 30 of the Principal Act as amended by this Act.

**PART V—AMENDMENT OF OTHER ACTS IN CONNECTION
WITH THE ABOLITION OF THE DISTINCTION BETWEEN
SAVINGS BANKS AND TRADING BANKS**

Amendment of Acts

52. The Acts specified in Schedule 4 are amended as set out in that Schedule.

SCHEDULE 1

Subsection 23 (1)

**SCHEDULE TO BE SUBSTITUTED FOR THE FIRST SCHEDULE
TO THE BANKING ACT 1959**

“FIRST SCHEDULE

Sections 5 and 9

PART I—TRADING BANKS

Australia and New Zealand Banking Group Limited
Australasian Bank Limited
Bankers Trust Australia Limited
Bank of America Australia Limited
Bank of China
Bank of New Zealand
Bank of Queensland Limited
Bank of Singapore (Australia) Limited
Bank of Tokyo Australia Limited
Banque Nationale de Paris
Barclays Bank Australia Limited
Chase AMP Bank Limited
Citibank Limited
Deutsche Bank Australia Limited
Hongkong Bank of Australia Limited
IBJ Australia Bank Limited
Lloyds Bank NZA Limited
Macquarie Bank Limited
Mitsubishi Bank of Australia Limited
National Australia Bank Limited
National Mutual Royal Bank Limited
NatWest Australia Bank Limited
Primary Industry Bank of Australia Limited
Standard Chartered Bank Australia Limited
Westpac Banking Corporation

PART II—SAVINGS BANKS

Advance Bank Australia Limited
Australia and New Zealand Savings Bank Limited
Bank of New Zealand Savings Bank Limited
Bank of Queensland Savings Bank Limited
Challenge Bank Limited
Citibank Savings Limited

SCHEDULE 1—continued

Civic Advance Bank Limited
Metway Bank Limited
National Australia Savings Bank Limited
National Mutual Royal Savings Bank Limited
The Hobart Savings Bank
Westpac Savings Bank Limited”.

SCHEDULE 2

Section 25

**AMENDMENTS OF THE BANKING ACT 1959 RELATING TO
OFFENCES**

PART I

Sections 7, 8, 9, 10, 11, 14, 16, 33, 36, 62, 63, 64 and 69 are amended by omitting the penalties.

PART II

Section 49:

Repeal the section.

Paragraph 50 (1) (b):

Omit “and”.

Subsection 50 (1):

Add at the end the following word and paragraph:

“; and (d) prescribing penalties, for offences against the regulations, not exceeding:

- (i) if the offender is a natural person—a fine of \$5,000;
or
- (ii) if the offender is a body corporate—a fine of \$25,000.”.

Subsection 50 (2):

Omit the subsection.

Paragraph 63A (2) (a):

Omit “Two thousand dollars”, substitute “\$100,000”.

Subsection 69 (10):

Omit “provision of this section which”, substitute “of the requirements of subsections (3), (4), (5) and (7) that”.

SCHEDULE 2—continued

After section 69:

Insert the following sections:

Offences

“69A. (1) A person who contravenes a provision of this Act specified in column 1 of the table at the end of this section:

- (a) if the contravention continues beyond the end of the day on which it commenced—is guilty of an offence in respect of each day during the whole or a part of which the contravention continues (including the day of conviction for any such offence or any later day); or
- (b) in any other case—is guilty of an offence.

“(2) A person who contravenes a provision of this Act specified in column 2 of the table is guilty of an offence.

“(3) An offence against this section in relation to a provision of this Act specified in column 1 or 2 of the table is punishable, on conviction, as follows:

- (a) if the letter A is specified in column 3 opposite to the reference to the provision in column 1 or 2:
 - (i) if the offender is a natural person—by a fine not exceeding \$20,000; or
 - (ii) if the offender is a body corporate—by a fine not exceeding \$100,000;
- (b) if the letter B is specified in column 3 of the table opposite to the reference to the provision in column 1 or 2;
 - (i) if the offender is a natural person—by a fine not exceeding \$5,000; or
 - (ii) if the offender is a body corporate—by a fine not exceeding \$25,000.

“(4) An offence to which paragraph (3) (a) applies in an indictable offence.

“(5) Nothing in this section is intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

TABLE OF OFFENCES

<i>Item</i>	<i>Column 1</i> (continuing offences)	<i>Column 2</i> (ordinary offences)	<i>Column 3</i> (penalty level)
1	section 7		A
2	section 8		A
3	subsection 9 (6)		A

SCHEDULE 2—continued

<i>Item</i>	<i>Column 1</i> (continuing offences)	<i>Column 2</i> (ordinary offences)	<i>Column 3</i> (penalty level)
4		subsection 10 (3)	B
5	subsection 11 (3)		A
6		subsection 14 (1)	A
7	subsection 14 (3) or (4)		B
8	subsection 16 (2)		A
9	subsection 33 (4)		A
10		subsection 36 (1) or (2)	A
11		section 41	A
12		subsection 42 (1) or (2)	B
13		subsection 45 (1) or (3)	A
14		section 46	A
15	subsection 61 (2)		B
16	subsection 62 (1)		A
17		section 63	A
18		section 64	B
19	section 66		B
20	section 67		B
21		subsection 69 (10)	B

Certain indictable offences may be dealt with summarily

“69B. (1) An indictable offence referred to in subsection 69A (4) may be heard and determined, with the consent of the prosecutor and the defendant, by a court of summary jurisdiction.

“(2) Where an offence is dealt with by a court of summary jurisdiction under subsection (1), the penalty that the court may impose is:

- (a) if the offender is a natural person—a fine not exceeding \$5,000; or
- (b) if the offender is a body corporate—a fine not exceeding \$25,000.

Conduct of directors, servants and agents

“69C. (1) Where it is necessary to establish, for the purposes of this Act or the regulations, the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

“(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority shall be deemed, for the purposes of this Act and the regulations, to have been engaged in also by the body corporate

SCHEDULE 2—continued

unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

“(3) Where it is necessary to establish, for the purposes of this Act or the regulations, the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the state of mind.

“(4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her actual or apparent authority shall be deemed, for the purposes of this Act and the regulations, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

“(5) Where:

- (a) a person other than a body corporate is convicted of an offence; and
- (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

“(6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

“(7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

“(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.”.

Section 70:

Add at the end the following subsection:

“(5) For the purposes of this section:

- (a) an offence against section 6, 7 or 7A of the *Crimes Act 1914*; or
- (b) an offence against subsection 86 (1) of that Act by virtue of paragraph (a) of that subsection;

in relation to a provision of this Act or of the regulations shall be treated as if it were an offence against that provision of this Act or of the regulations.”.

SCHEDULE 2—continued

Section 71:

Omit “prescribing penalties which, except as otherwise provided by this Act, shall not exceed Two hundred dollars for any offence against the regulations”, substitute “prescribing penalties for offences against the regulations which, except as otherwise provided by this Act, shall not exceed:

- (a) if the offender is a natural person—a fine of \$5,000; or
- (b) if the offender is a body corporate—a fine of \$25,000.”.

SCHEDULE 3

Section 26

FORMAL AMENDMENTS OF THE BANKING ACT 1959

Subsection 6A (1):

Omit “of this section”.

Subsection 6A (2):

Omit “—1973”.

Section 8:

Omit “the next succeeding section”, substitute “section 9”.

Subsection 10 (2):

Omit “the last preceding subsection”, substitute “subsection (1)”.

Subsection 10 (3):

Omit “three”, substitute “3”.

Subsection 13 (2):

Omit “the last preceding subsection”, substitute “subsection (1)”.

Subsection 14 (3):

Omit “in pursuance of the last preceding section, or in pursuance of the last preceding subsection”, substitute “under section 13 or subsection (2) of this section”.

Subsection 14 (5):

Omit “the next succeeding subsection”, substitute “subsection (6)”.

Subsection 33 (1):

Omit “twenty-one”, substitute “21”.

Subsection 33 (2):

Omit “the last preceding subsection”, substitute “subsection (1)”.

SCHEDULE 3—continued

Subsection 33 (4):

Omit “seven”, substitute “7”.

Section 34:

Omit “the last preceding section”, substitute “section 33”.

Subsection 36 (2):

Omit “the last preceding subsection”, substitute “subsection (1)”.

Subsection 39 (1):

Omit “he”, substitute “the Governor-General”.

Subsection 39 (6):

Omit “his”.

Subsection 39A (2):

Omit “—1973”.

Subsection 39A (2):

Omit “Australia”, substitute “the Commonwealth”.

Paragraph 39B (1) (a):

Omit “—1974”.

Subsection 40 (2):

Omit “he”, substitute “the Governor-General”.

Subsection 42 (1):

Omit “his” (wherever occurring), substitute “the person’s”.

Subsection 42 (1):

Omit “one”, substitute “1”.

Subsection 42 (2):

Omit “his” (wherever occurring), substitute “the person’s”.

Subsection 42 (2):

Omit “him”, substitute “the person”.

Subsection 42 (2):

Omit “he” (wherever occurring), substitute “the person”.

Subsection 42 (2):

Omit “one”, substitute “1”.

Section 43:

Omit “the last preceding section”, substitute “section 42”.

SCHEDULE 3—continued

Section 43:

Omit “the next succeeding section”, substitute “section 44”.

Subsection 45 (2):

Omit “his”, substitute “the person’s”.

Subsection 45 (3):

Omit “him”, substitute “the person”.

Section 46:

Omit “his” (wherever occurring), substitute “the person’s”.

Section 46:

Omit “him”, substitute “the person”.

Subsection 62 (1):

Omit “his”, substitute “the person’s”.

Subsection 65 (2):

Omit “the last preceding subsection”, substitute “subsection (1)”.

Subsection 65 (3):

Omit “the last preceding subsection”, substitute “subsection (2) of this section”.

Subsection 69 (1):

Omit “seven”, substitute “7”.

Subsection 69 (2):

Omit “the last preceding subsection”, substitute “subsection (1)”.

Subsection 69 (3):

Omit “three”, substitute “3”.

Subsection 69 (6):

Omit “the next succeeding subsection”, substitute “subsection (7)”.

Subsection 69 (7):

Omit “the last preceding subsection”, substitute “subsection (6)”.

Subsection 69 (8):

Omit “the last preceding subsection”, substitute “subsection (7)”.

Subsection 69 (12) (definition of “authorized officer”):

Omit “him”, substitute “the Secretary”.

Subsection 70 (1):

Omit “the next succeeding subsection”, substitute “subsection (2)”.

SCHEDULE 3—continued

Subsection 70 (3):

Omit “the last preceding subsection”, substitute “subsection (2)”.

Subsection 70 (3):

Omit “his”, substitute “the person’s”.

Subsection 70 (3):

Omit “he”, substitute “the person”.

SCHEDULE 4

Section 52

**AMENDMENT OF OTHER ACTS IN CONNECTION WITH THE
ABOLITION OF THE DISTINCTION BETWEEN SAVINGS BANKS
AND TRADING BANKS**

Advisory Council for Inter-government Relations Act 1976

Subsection 2 (1) (paragraph (b) of the definition of “approved bank”):

Omit “trading”.

Audit Act 1901

Paragraph 62B (1) (ba):

Omit “savings bank or a trading”.

Subsection 62B (4) (definition of “authorized dealer”):

Omit the definition, substitute the following definition:

“‘authorized dealer’ means a corporation that:

- (a) is a registered corporation within the meaning of the *Financial Corporations Act 1974*; and
- (b) is declared by regulations made under this Act to be an authorized dealer for the purposes of this definition;”.

Section 62B:

Add at the end the following subsections:

“(5) Regulations made for the purposes of the definition of ‘authorized dealer’ in subsection (4) may declare all the corporations included from time to time in a specified category that is determined under section 10 of the *Financial Corporations Act 1974* to be authorized dealers for the purposes of that definition.

“(6) Subsection (5) does not, by implication, limit the power to declare corporations by reference to classes.”.

SCHEDULE 4—continued

Subsection 63D (3):

Omit “trading”.

Subsection 63E (2):

Omit “trading”.

Australian Bicentennial Authority Act 1980

Section 3 (definition of “approved bank”):

Omit “trading”.

Australian Dried Fruits Corporation Act 1978

Section 4 (definition of “approved bank”):

Omit “trading”.

Australian Trade Commission Act 1985

Subsection 3 (1) (definition of “approved bank”):

Omit “trading”.

Bankruptcy Act 1966

Subsection 5 (1) (definition of “approved bank”):

Omit “trading”.

Paragraph 172 (1) (b):

Omit “savings”.

Dairy Produce Act 1986

Subsection 3 (1) (definition of “approved bank”):

Omit “trading”.

Defence (Re-establishment) Act 1965

Subsection 57 (1):

Omit “savings bank” (wherever occurring), substitute “bank”.

Income Tax Assessment Act 1936

Subsection 27A (1) (paragraph (a) of the definition of “eligible bank”):

Omit “savings bank or trading”.

SCHEDULE 4—continued

Paragraph 128AE (2) (a):

Omit “savings bank or trading”.

Subsection 160ACA (1) (paragraph (a) of the definition of “short-term investments”):

Omit “, being a trading bank”.

National Occupational Health and Safety Commission Act 1985

Subsection 58 (8) (definition of “approved bank”):

Omit “trading”.

Navigation Act 1912

Subsection 77 (6) (definition of “bank”):

Omit the definition.

Pipeline Authority Act 1973

Subsection 3 (1) (definition of “approved bank”):

Omit “trading”.

Stevedoring Industry Finance Committee Act 1977

Section 3 (definition of “approved bank”):

Omit “trading”.

NOTES

1. No. 6, 1959, as amended. For previous amendments, see No. 127, 1965; No. 93, 1966; No. 84, 1967; Nos. 116, 193 and 216, 1973; No. 132, 1974; No. 156, 1977; No. 78, 1978; No. 19, 1979; No. 80, 1982; No. 76, 1984; No. 166, 1986; and No. 105, 1987.
2. No. 5, 1959, as amended. For previous amendments, see No. 75, 1961; No. 3, 1962; No. 57, 1963; No. 132, 1965; Nos. 58 and 93, 1966; No. 144, 1968; Nos. 18, 117 and 216, 1973; No. 81, 1974; No. 37, 1976; Nos. 36 and 77, 1978; No. 177, 1980; No. 29, 1981; No. 92, 1983; Nos. 63 and 76, 1984; No. 194, 1985; No. 182, 1987; and No. 123, 1988.
3. No. 4, 1959, as amended. For previous amendments, see No. 96, 1965; No. 93, 1966; Nos. 118 and 216, 1973; No. 36, 1978; No. 155, 1979; No. 70, 1980; No. 122, 1981; Nos. 63 and 76, 1984; No. 65, 1985; and No. 166, 1986.

Banking Legislation Amendment No. 129, 1989

***[Minister's second reading speech made in—
House of Representatives on 4 May 1989
Senate on 29 August 1989]***