

**CANBERRA ADVANCE BANK LIMITED (MERGER)
BILL 1992**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to transfer certain banking business and other property and liabilities in New South Wales in connection with the merger of Canberra Advance Bank Limited ("CAB") with Advance Bank Australia Limited ("ABA").

The Preamble recites the present relationship between CAB and ABA, the proposals for the merger of CAB with ABA and the aims of the legislation, and is generally self-explanatory.

The Bill substantially duplicates the provisions of the proposed Canberra Advance Bank Limited (Merger) Act 1992 of the Australian Capital Territory.

PART 1—PRELIMINARY

Clause 1 states the short title of the Bill.

Clause 2 provides that the proposed Act will come into operation on the day on which it receives the Royal Assent.

Clause 3 contains definitions of term used in the Bill.

Clause 4 defines the "undertaking of CAB".

Clause 5 provides for the fixing of the appointed day on which vesting of the undertaking of CAB in ABA will take place.

Clause 6 declares that the Act binds the Crown

PART 2—VESTING OF UNDERTAKING OF CAB IN ABA

Division 1—General

Clause 7 provides for the vesting of the undertaking of CAB in ABA on an appointed day, that the Act provides evidence of such vesting and obliges CAB to take steps to secure the transfer of any portion of its undertaking not vested under the Act.

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Clause 8 provides that contracts and other legal arrangements with CAB (not relating to property not included as part of the undertaking or superannuation or similar funds) are to be binding on or are enforceable by or against ABA.

Clause 9 makes it clear that nothing in the Act prevents ABA from agreeing to pay any consideration to CAB for the property vested by the proposed Act.

Division 2—Transitional

Clause 10 gives effect to the transitional provisions contained in proposed sections 11–15.

Clause 11 provides for the continuation after the appointed day of the relationship of banker and customer between CAB and its customers as relationships between ABA and those customers.

Clause 12 provides for the transfer of certain securities from CAB to ABA.

Clause 13 sets out the rights of ABA in relation to the transferred securities.

Clause 14 provides for the transfer of bailment arrangements from CAB to ABA.

Clause 15 provides for negotiable and other instruments involving CAB to be effective as if relating to ABA.

Division 3—Legal and evidentiary matters

Clause 16 provides for the preservation of legal proceedings commenced by or against CAB before the appointed day or which relate to agreements, arrangements or understandings entered into or matters done or omitted to be done by or before the appointed day in relation to property that was part of the undertaking of CAB and provides for the continuation of such proceedings by or against the ABA.

Clause 17 enables the amendment, without cost, of references in documents in proceedings relating to property that was not part of the undertaking of CAB from ABA to CAB and for the continuation of such proceedings against CAB.

Clause 18 provides that evidence which could have been used for or against CAB can be used for or against ABA.

Clause 19 provides, from the appointed day, for references to CAB or building societies previously taken over by CAB in Acts (other than the proposed Act) or documents to be read as references to ABA except in relation to property that was not part of the undertaking of CAB or where the context otherwise requires.

PART 3—GENERAL

Clause 20 provides that nothing effected by the proposed Act or done or suffered by CAB or ABA under the proposed Act is to be regarded as placing them in breach, making them commit a wrong, or enabling termination or release, of any agreement with them.

Clause 21 provides that service of a document on one bank may be taken to be service on another and that the clause ceases to have any effect on CAB ceasing to be a subsidiary of ABA within the meaning of section 9 of the Corporations Law.

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Clause 22 provides protection for persons who deal with ABA in relation to property that was not part of the undertaking of CAB on the appointed day.

Clause 23 provides that the Chief Executive officer of ABA may certify whether specified property or liabilities formed or did not form part of the undertaking of CAB.

Clause 24 is designed to enable ABA to deal with land vested by this Act without being required to be referred to in any relevant title documents.

Clause 25 is designed to avoid the need for a form to be lodged under the Corporations Law of New South Wales in relation to each registered charge which, by virtue of the Act, is vested in ABA.

Clause 26 has a similar effect to clause 24 (except that it relates to property other than property to which clauses 24 and 25 apply) in that it avoids the need for certificates or forms to be lodged in relation to each asset transferred.

Clause 27 provides that certificates given or purported to be given under the Act are to be conclusive unless the contrary is established.

Clause 28 provides that nothing in the Act exempts ABA from the provisions of any Act relating to companies carrying on the business of banking.

Clause 29 provides that no tax, fee or other charge is payable in respect of any document, instrument or transaction related to the transfer effected by the Act or any corresponding law of any State or Territory, other than a fee or charge payable to the Registrar-General.

SCHEDULE 1—PREVIOUS BUILDING SOCIETIES AND OTHER BODIES

Schedule 1 contains a list of building societies and other bodies whose interests were taken over by CAB and references to which are deemed to be references to ABA.
