NORTHERN TERRITORY OF AUSTRALIA

THE COMMERCIAL BANK OF AUSTRALIA LIMITED (MERGER) ACT

As in force at 1 January 2013

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NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 1 January 2013. Any amendments that commence after that date are not included.

THE COMMERCIAL BANK OF AUSTRALIA LIMITED (MERGER) ACT

An Act to supplement *The Commercial Bank of Australia Limited (Merger) Act*, *1982*, of the State of New South Wales which provides for the transfer to Bank of New South Wales of the undertaking of The Commercial Bank of Australia Limited and for the transfer to Bank of New South Wales Savings Bank Limited of the undertaking of the Savings Bank of Australia Limited, and for other purposes

1 Short title

This Act may be cited as *The Commercial Bank of Australia Limited (Merger) Act*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Definitions

In this Act, unless the contrary intention appears:

appointed day means the date of commencement of this Act.

CBA means The Commercial Bank of Australia Limited.

CBA Savings Bank means The Commercial Savings Bank of Australia Limited.

continuing bank means Bank of New South Wales.

continuing savings bank means Bank of New South Wales Savings Bank Limited.

corporation includes a body corporate and a body politic.

excluded assets means:

(a) documents required by law to be kept by CBA or CBA Savings Bank;

(b) shares in corporations held, immediately before the appointed day, by or on behalf of CBA or CBA Savings Bank otherwise than by way of security; or

(c) land held, immediately before the appointed day, by or on behalf of CBA or CBA Savings Bank otherwise than by way of security.

instrument means an instrument (other than this Act) that creates, evidences, modifies or extinguishes rights or liabilities or would do so if it or a copy thereof were lodged, filed or registered under a law of the Territory, and includes a judgment, order or process of a court.

land includes an estate or interest in land, and an interest in respect of land.

law of the Territory includes an Act, an instrument of a legislative or administrative character and the common law in force in the Territory.

legal proceedings includes an arbitration.

liabilities means all liabilities, duties and obligations, whether actual, contingent or prospective.

property means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal and, without limiting the generality of the foregoing, includes choses in action, goodwill, rights, interests and claims of every kind in or to property whether arising from, accruing under, created or evidenced by, or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective.

rights means all rights, powers and privileges and immunities whether actual, contingent or prospective.

security means a mortgage or charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, indemnity, lien, pledge or other security for the payment of money or for the discharge of any other liability, and includes an agreement or undertaking to give or execute any of the foregoing whether upon demand or otherwise.

transferred employee means an employee of CBA who becomes an employee of the continuing bank in pursuance of this Act.

undertaking in relation to CBA or CBA Savings Bank means:

(a) all property of the relevant bank, other than excluded assets; or

(b) all rights and liabilities of the relevant bank, other than rights and liabilities relating to excluded assets.

4 Act binds Crown

This Act binds the Crown.

5 Vesting of undertakings of merging bank and savings bank

(1) On the appointed day:

(a) the undertaking of CBA is vested in the continuing bank; and

(b) the undertaking of CBA Savings Bank is vested in the continuing savings bank.

(2) On and after the appointed day:

(a) a reference to CBA in an instrument made, passed or executed before that day shall, except to the extent that the instrument relates to an excluded asset and unless the context otherwise requires, be read and construed as a reference to the continuing bank;

(b) a reference to CBA Savings Bank in an instrument made, passed or executed before that day shall, except to the extent that the instrument relates to an excluded asset and unless the context otherwise requires, be read and construed as a reference to the continuing savings bank; and

(c) a reference to the holder for the time being of a particular office (other than the office of a director, secretary or auditor) within CBA or CBA Savings Bank in an instrument made or executed before that day shall be read and construed as a reference to the person for the time being holding office as Chief General Manager of the continuing bank or such other officer of the continuing bank or the continuing savings bank as is designated from time to time by the Chief General Manager of the continuing bank or by another officer acting under delegation from him.

(3) On and after the appointed day:

(a) a place of business of CBA, wherever located, shall be deemed to be a place of business of the continuing bank; and

(b) a place of business of CBA Savings Bank, wherever located, shall be deemed to be a place of business of the continuing savings bank.

(4) Without limiting the generality of subsection (3), but notwithstanding anything to the contrary in any other law of the Territory, where a registered estate or interest in land under the *Land Title Act* is, by virtue of this Act, vested in the continuing bank or the continuing savings bank:

(a) the continuing bank shall be deemed to be the registered proprietor of such estate or interest of which CBA was, immediately before the appointed day, the registered proprietor; and

(b) the continuing savings bank shall be deemed to be the registered proprietor of such estate or interest of which CBA Savings Bank was the registered proprietor,

and such land may be dealt with accordingly.

(5) Where for any reason:

(a) a liability to CBA immediately before the appointed day remains a liability to CBA on or after that day; or

(b) a liability to CBA Savings Bank immediately before the appointed day remains a liability to CBA Savings Bank on or after that day,

CBA or CBA Savings Bank, as the case may be, shall have and may enforce the same rights in respect of that liability, including rights under a security relating thereto, as if this Act had not been passed.

6 Transitional

(1) Without limiting the generality of this Act, on and after the appointed day:

(a) an instruction, order, direction, mandate or authority given to CBA and subsisting immediately before the appointed day shall be deemed to have been given to the continuing bank;

(b) an instrument given or addressed to CBA on or after the appointed day, not being an instrument relating to an excluded asset, shall be deemed to have been given or addressed to the continuing bank;

(c) a security held by CBA as security for a debt or other liability to CBA incurred before the appointed day shall be available to the continuing bank as security for the discharge of that debt or liability and, where the security extends to future or prospective debts or liabilities, shall be available as security for the discharge of debts or liabilities to the continuing bank incurred on or after the appointed day and, in relation to a security, the continuing bank shall be entitled to all the rights and priorities howsoever arising, and shall be subject to all liabilities, to which CBA would have been entitled or subject if this Act had not been passed;

(d) all the rights and liabilities of CBA as bailee of documents or chattels shall be transferred to and assumed by the continuing bank;

(e) a negotiable instrument or order for payment of money which before, on or after the appointed day is drawn on or given to, or accepted or endorsed by, CBA or payable at a place of business of CBA shall have the same effect on and after the appointed day as if it had been drawn on or given to, or accepted or endorsed by, the continuing bank instead of CBA or was payable at the place of business of the continuing bank which the first-mentioned place of business is, by this Act, deemed to be;

(f) the relationship between CBA and a customer or depositor shall become the same relationship between the continuing bank and that customer or depositor and the same rights and liabilities, including rights of set-off, shall exist between the continuing bank and the customer or depositor as existed immediately before the appointed day between CBA and the customer or depositor;

(g) all contracts, agreements, conveyances, deeds, leases, licences, instruments, undertakings and notices, whether or not in writing, entered into by, made with, given to or by or addressed to CBA (whether alone or with any other person) before the appointed day and in effect immediately before the appointed day shall (except to the extent that they relate to an excluded asset), to the extent that they were previously binding on and enforceable by, against or in favour of CBA, be binding on and enforceable by, against or in favour of the continuing bank as fully and effectually in every respect as if, instead of CBA, the continuing bank had been the person by whom they were entered into, with whom they were made or to or by whom they were given or addressed, as the case may be;

(h) no legal proceedings commenced before the appointed day by, against or in favour of CBA shall abate or be otherwise prejudiced by reason of this Act;

(j) nothing done or suffered by CBA or the continuing bank pursuant to this Act:

(i) shall be regarded as a breach of contract or confidence or otherwise as a civil wrong; or

(ii) shall release any surety wholly or in part from all or any of his obligations; and

(k) without limiting the generality of paragraph (j), for the purposes of any contractual provision or rule of law or equity prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information, neither CBA nor the continuing bank is, by reason only of anything effected by or done under this Act, in breach of that provision or rule.

(2) Without limiting the generality of this Act, on and after the appointed day:

(a) an instruction, order, direction, mandate or authority given to CBA Savings Bank and subsisting immediately before the appointed day shall be deemed to have been given to the continuing savings bank;

(b) an instrument given or addressed to CBA Savings Bank on or after the appointed day, not being an instrument relating to an excluded asset, shall be deemed to have been given or addressed to the continuing savings bank;

(c) a security held by CBA Savings Bank as security for a debt or other liability to CBA Savings Bank incurred before the appointed day shall be available to the continuing savings bank as security for the discharge of that debt or liability and, where the security extends to future or prospective debts or liabilities, shall be available as security for the discharge of debts or liabilities to the continuing savings bank incurred on or after the appointed day and, in relation to a security, the continuing savings bank shall be entitled to all the rights and priorities howsoever arising, and shall be subject to all liabilities, to which CBA Savings Bank would have been entitled or subject if this Act had not been passed;

(d) all the rights and liabilities of CBA Savings Bank as bailee of documents or chattels shall be transferred to and assumed by the continuing savings bank;

(e) a negotiable instrument or order for payment of money which before, on or after the appointed day is drawn on or given to, or accepted or endorsed by, CBA Savings Bank or payable at a place of business of CBA Savings Bank shall have the same effect on and after the appointed day as if it had been drawn on or given to, or accepted or endorsed by, the continuing savings bank instead of CBA Savings Bank or was payable at the place of business of the continuing savings bank which the first-mentioned place of business is, by this Act, deemed to be;

(f) the relationship between CBA Savings Bank and a customer or depositor shall become the same relationship between the continuing savings bank and that customer or depositor and the same rights and liabilities, including rights of set-off, shall exist between the continuing savings bank and the customer or depositor as existed immediately before the appointed day between CBA Savings Bank and the customer or depositor;

(g) all contracts, agreements, conveyances, deeds, leases, licences, instruments, undertakings and notices (whether or not in writing) entered into by, made with, given to or by or addressed to CBA Savings Bank (whether alone or with any other person) before the appointed day shall (except to the extent that they relate to an excluded asset), to the extent that they were previously binding on and enforceable by, against or in favour of CBA Savings Bank, be binding on and enforceable by, against or in favour of the continuing savings bank as fully and effectually in every respect as if, instead of CBA Savings Bank, the continuing savings bank had been the person by whom they were entered into, with whom they were made or to or by whom they were given or addressed, as the case may be;

(h) no legal proceedings commenced before the appointed day by, against or in favour of CBA Savings Bank shall abate or be otherwise prejudiced by reason of this Act;

(j) nothing done or suffered by CBA Savings Bank or the continuing savings bank pursuant to this Act:

(i) shall be regarded as a breach of contract or confidence or otherwise as a civil wrong; or

(ii) shall release any surety wholly or in part from all or any of his obligations; and

(k) without limiting the generality of paragraph (j), for the purposes of any contractual provision or rule of law or equity prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information, neither CBA Savings Bank nor the continuing savings bank is, by reason of anything effected by or done under this Act, in breach of that provision or rule.

7 Assignment and subletting of lease

(1) Where, under the provisions of a lease, licence or other contract or agreement, CBA or CBA Savings Bank has rights in respect of the occupation or use of land, being an excluded asset, those rights may, notwithstanding that there has been no assignment, transfer, underletting or other disposition by CBA or CBA Savings Bank, be exercised by the continuing bank or continuing savings bank, as the case may be.

(2) For the purposes of a lease, licence or other contract or agreement relating to the occupation or use of land, CBA or CBA Savings Bank does not part with possession of land by permitting the continuing bank or the continuing savings bank, as the case may be, to exercise rights under subsection (1) in respect of the land.

8 Continuity of legal proceedings

(1) Legal proceedings to which CBA or CBA Savings Bank was a party immediately before the appointed day may be continued by or against the continuing bank or the continuing savings bank, as the case may be.

(2) A judgment, order or award obtained by or against CBA or CBA Savings Bank in legal proceedings commenced before the appointed day may be enforced by or against the continuing bank or the continuing savings bank, as the case may be.

9 Evidence

Documentary or other evidence which would have been admissible for or against the interests of CBA or CBA Savings Bank if this Act had not been passed shall be admissible for or against the interests of the continuing bank or the continuing savings bank, as the case may be.

10 Officers and employees

Notwithstanding any other provision of this Act:

(a) on the appointed day each employee of CBA shall cease to be an employee of CBA and shall become an employee of the continuing bank but, for the purposes of every law, award, determination, contract and agreement relating to the employment of each such employee, his contract of employment shall be deemed to be unbroken and the period of his service with CBA shall be deemed to have been a period of service with the continuing bank;

(b) the terms and conditions of the employment of each transferred employee with the continuing bank shall:

(i) on the appointed day, and thereafter until varied, be identical with the terms and conditions of his employment with CBA immediately before the appointed day and be capable of variation in the same manner; and

(ii) subject to any law, award or determination relating to those terms and conditions, also be capable of variation in the same manner as the general terms and conditions of employment of other persons employed by the continuing bank are capable of variation;

(c) a transferred employee shall not be entitled to receive any payment or other benefit by reason only of his ceasing, by virtue of this Act, to be an employee of CBA;

(d) nothing in this Act, other than paragraph (c), affects rights or liabilities under any provident, benefit, superannuation or retirement fund or scheme relating to employees of CBA; and

(e) a director, secretary or auditor of CBA or CBA Savings Bank does not, by virtue of this Act, become a director, secretary or auditor of the continuing bank or the continuing savings bank.

11 Appointment of new trustees

(1) The Minister may, by notice in the *Gazette*, as soon as practicable after notification under section 13(2) of *The Commercial Bank of Australia Limited (Merger) Act, 1982*, of the State of New South Wales of the execution of the instrument referred to in section 13(1) of that Act:

(a) declare the corporations declared in that instrument to be the new trustee and the retiring trustee to be the new trustee and retiring trustee respectively for the purposes of this section; and

(b) specify the trusts subsisting immediately before the appointed day as the trusts in respect of which those corporations hold that respective status.

(2) Upon the notice of the Minister, under subsection (1), being published in the *Gazette*:

(a) the corporation named as the retiring trustee shall be wholly discharged from the trusts specified;

(b) the corporation named as the new trustee shall be trustee of those trusts in the place of the corporation named as the retiring trustee and shall have the same powers, authorities and discretions in relation to each such trust as the retiring trustee had immediately before being discharged; and

(c) all property subject to the specified trusts and vested in the retiring trustee shall be vested in the corporation named as the new trustee.

(3) A discharge or appointment of a trustee, and a vesting of property by virtue of this section, shall have effect notwithstanding anything to the contrary in an instrument or in any other law of the Territory.

(4) In this section, a reference to "trustee" includes a reference to the corporation to which it relates acting as a trustee within the meaning of the *Trustee Act* and as a custodian trustee, a nominee and a person charged with the management or administration of property.

(5) Without limiting the generality of this section, and notwithstanding anything to the contrary in any other law of the Territory, where a registered estate or interest in land under the *Land Title Act* is, by virtue of this section, vested in the new trustee, the new trustee shall be deemed to be the registered proprietor of that estate or interest of which the retiring trustee is the registered proprietor, and the estate or interest may be dealt with accordingly.

12 Company to register holder of shares, &c.

A certificate signed by the Chief General Manager of the continuing bank, or by an officer acting under delegation from him, stating that shares in, debentures of, or interests made available by, a corporation are, by virtue of this Act, vested in the continuing bank, the continuing savings bank or the new trustee within the meaning of section 11 shall, notwithstanding any other law of the Territory or the provisions of any instrument, be registered by that corporation in the same manner in all respects as if it were a proper instrument of transfer (duly stamped) of those shares, debentures or interests.

13 Protection of persons in respect of dealings with excluded assets

(1) No person dealing:

(a) with the continuing bank or CBA; or

(b) with the continuing savings bank or CBA Savings Bank,

nor the Registrar-General, nor any other person registering or certifying title to land or having the power or duty to examine or receive evidence as to title to land, shall, in respect of a dealing or transaction entered into or purporting to be entered into by the continuing bank, the continuing savings bank, CBA or CBA Savings Bank, be concerned to see or inquire into whether any property the subject of the dealing or transaction (whether or not that property is land) is an excluded asset, or be affected by a notice, express, implied or constructive, that such property is or is not an excluded asset.

(2) If a dealing or transaction is entered into by the continuing bank or the continuing savings bank with a person, in relation to or in connection with an excluded asset, it shall be deemed in favour of that person and any other person claiming through or under him that the continuing bank or the continuing savings bank, as the case may be, has full power and authority to enter into that dealing or transaction as if the excluded asset had vested in the continuing bank or the continuing savings bank, as the case may be, under this Act.

(3) If a dealing or transaction is entered into by CBA or CBA Savings Bank with a person, in relation to or in connection with an asset which has vested in the continuing bank or the continuing savings bank, as the case may be, under this Act, it shall be deemed in favour of that person and any person claiming through or under him that CBA or CBA Savings Bank, as the case may be, has full power and authority to enter into that dealing or transaction as if the asset

were an excluded asset.

14 Duty not payable

Notwithstanding anything to the contrary in any other law of the Territory, no duty of any kind is chargeable or payable on an instrument, certificate or document or in respect of an act or transaction executed, done, suffered or entered into for the purposes of this Act or of a corresponding law of the Commonwealth or of a State or another Territory of the Commonwealth.

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = *Gazette*
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

The Commercial Bank Of Australia Limited (Merger) Act 1982 (Act No. 41, 1982)

Assent date	28 June 1982
Commenced	1 October 1982 (*Gaz* G38, 24 September 1982, p 5)

Land Title (Consequential Amendments) Act 2000 (Act No. 45, 2000)

Assent date	12 September 2000
Commenced	1 December 2000 (s 2, s 2 *Land Title Act 2000* (Act No. 2, 2000) and *Gaz* G38, 27 September 2000, p 2)

Statute Law Revision (Financial Provisions) Act 2002 (Act No. 38, 2002)

Assent date	13 September 2002
Commenced	30 October 2002 (*Gaz* G43, 3 October 2002, p 3)

Evidence (National Uniform Legislation) (Consequential Amendments) Act 2012 (Act No. 23, 2012)

Assent date	21 November 2012
Commenced	1 January 2013 (*Gaz* G51, 19 December 2012, p 4)

3 LIST OF AMENDMENTS

s 5	amd No. 45, 2000, s 11
s 9	amd No. 38, 2002, s 6; No. 23, 2012, s 32
s 11	amd No. 45, 2000, s 11