

# Westpac Banking Corporation (Transfer of Incorporation) Bill 2000

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are:

- (a) to provide for the registration of Westpac Banking Corporation (*Westpac*) as a public company limited by shares under the *Corporations Law* where a special resolution that it be registered has previously been passed by its shareholders, and
- (b) to enable the Governor to repeal, by proclamation, legislation that applies specifically to Westpac (such as the *Bank of New South Wales Act of 1850* that first constituted it as a body corporate) after its registration as a public company limited by shares under the *Corporations Law*.

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

**Clause 3** defines certain words and expressions used in the proposed Act.

In particular, the expression *deed of settlement* is defined to mean the deed of settlement of Westpac that is referred to in the preamble to the *Bank of New South Wales Act of 1850*, as subsequently amended from time to time. Also, the proposed section makes it clear that a reference to the *Corporations Law* in the proposed Act is a reference only to the *Corporations Law of New South Wales*.

**Clause 4** provides that notes in the proposed Act do not form part of the proposed Act.

### Part 2 Registration of Westpac as a public company

#### Division 1 Authorisation to transfer incorporation

Westpac Banking Corporation was originally constituted as a body politic and corporate by the *Bank of New South Wales Act of 1850*. In 1982, the *Bank of New South Wales (Change of Name) Act 1982* provided for the corporate name of the then Bank of New South Wales to be changed to Westpac Banking Corporation.

In 1995, the *Westpac Banking Corporation Act 1995* enabled regulations to be made under that Act to apply provisions of the *Corporations Law* and *Corporations Regulations* to Westpac that were not otherwise applicable to Westpac because it was not registered as a company under the *Corporations Law*.

At present, Westpac is not a registered company. Rather, it is a registrable body that is required to be registered under Part 5B.2 of the *Corporations Law*. However, Part 5B.1 of the *Corporations Law* enables a body corporate that is not a company, recognised company or corporation sole under that Law to be registered as such a company in certain circumstances. Section 601BC (8) of the *Corporations Law* provides that an application under Part 5B.1 for such a body corporate to be registered as a company must provide evidence that under the law of the body's place of origin:

- the transfer of the body's incorporation is authorised, and
- the body has complied with the requirements (if any) of that law for the transfer of its incorporation.

**Clause 5** authorises Westpac to apply for registration as a public company limited by shares under Part 5B.1 of the

*Corporations Law* within a specified period after a transfer resolution referred to in proposed Division 2 is passed at a general meeting of Westpac shareholders.

## **Division 2 Transfer resolutions**

**Clause 6** provides that, for the purposes of the proposed Act, a *transfer resolution* is a special resolution (within the meaning of the deed of settlement) passed by Westpac shareholders that resolves that Westpac be registered as a public company limited by shares under the *Corporations Law*.

Under Clause 117 (r) of the deed of settlement, a special resolution is defined to be a resolution that has been passed by a majority of not less than three-quarters of the votes of such of the shareholders of Westpac as are entitled so to vote in person, by proxy or by a representative at a general meeting of which not less than 21 days' notice specifying the intention to propose the resolution as a special resolution has been duly given.

**Clause 7** provides that certain procedural irregularities in respect of a transfer resolution will not invalidate the resolution unless the Supreme Court, on an application made to it by Westpac shareholders under the proposed section, declares the resolution to be invalid.

## **Division 3 Certification of registration and registration**

**Clause 8** enables the Attorney General to issue a registration certificate to Westpac that certifies that Westpac is registered as a public company limited by shares under the *Corporations Law* on the date specified in the certificate (the *registration date*) if the Attorney General is satisfied that:

- (a) a transfer resolution has been passed, and
- (b) the period of at least 1 month has elapsed since the date on which the resolution was passed, and
- (c) an order declaring the resolution to be invalid has not been made by the Supreme Court under proposed section 7 (1), and
- (d) Westpac has lodged a transfer application with the Australian Securities and Investments Commission (*ASIC*) of the kind referred to in proposed section 5.

Any such certificate cannot be challenged in proceedings before any court or tribunal. However, nothing in the proposed section will prevent a transfer resolution being challenged under the provisions of proposed section 7.

**Clause 9** provides that on the registration date specified by the Attorney General in a registration certificate, Westpac is taken to have been registered under Part 5B.1 of the *Corporations Law* as a public company limited by shares with the name "Westpac Banking Corporation" and an Australian Company Number (*ACN*) of 007 457 141 (which corresponds to Westpac's current Australian Registered Body Number under that Law).

**Clause 10** provides that once Westpac is taken to be registered as a company, it is not required to have or use the word "Limited" in its name even though, generally speaking, public companies limited by shares that are registered under the *Corporations Law* are required to have the word "Limited" in their names. However, this provision will have effect only for so long as Westpac retains the name of "Westpac Banking Corporation".

**Clause 11** enables Westpac to use the words "Australian Registered Body Number" or the abbreviation "ARBN" before its ACN for a transitional period of 2 years after it is taken to be registered as a company. This will permit Westpac to continue, for instance, to use existing letterheads with its current ARBN on them.

## **Part 3 Miscellaneous**

**Clause 12** enables the Governor, by proclamation, to repeal any or all of the following Acts and regulations (or specified provisions of the Acts and regulations) after Westpac is taken to be registered as a company under the *Corporations Law*:

- Bank of New South Wales Act of 1850,*
- Bank of New South Wales Act of 1852,*
- Bank of New South Wales Act of 1854,*
- Bank of New South Wales Act of 1864,*
- Bank of New South Wales Act of 1870,*
- Bank of New South Wales Act of 1886,*

- Bank of New South Wales Act 1905*,
- Bank of New South Wales Act 1910*,
- Bank of New South Wales Act 1923*,
- Bank of New South Wales (Amendment) Act 1962*,
- Bank of New South Wales (Change of Name) Act 1982*,
- Westpac Banking Corporation Act 1995*,
- any regulation made under any of the above Acts.

**Clause 13** enables the Governor to make regulations for the purposes of the proposed Act.

**Clause 14** gives effect to Schedule 1, which contains certain savings, transitional and other provisions.

**Schedule 1** contains savings, transitional and other provisions.

In particular, it makes transitional provision in relation to shares of Westpac that have a par value and its share premium and capital redemption reserves. These provisions are modelled on the transitional provisions contained in Division 10A of Part 11.2 of the *Corporations Law* that were inserted in that Law when the par value rule was abolished in relation to the shares of registered companies. It also makes special provision in relation to certain retirement benefits paid to directors of Westpac.