

Passed by both Houses



New South Wales

# Westpac Banking Corporation (Transfer of Incorporation) Bill 2000

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2000*



New South Wales

## **Westpac Banking Corporation (Transfer of Incorporation) Bill 2000**

Act No , 2000

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An Act to provide for Westpac Banking Corporation to be registered as a public company limited by shares under the *Corporations Law of New South Wales*; to provide for the repeal of certain legislation applying specifically to the Westpac Banking Corporation; and for other purposes.

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*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

*Chairman of Committees of the Legislative Assembly.*

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Clause 1            Westpac Banking Corporation (Transfer of Incorporation) Bill 2000

Part 1             Preliminary

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**The Legislature of New South Wales enacts:**

## **Part 1 Preliminary**

### **1 Name of Act**

This Act is the *Westpac Banking Corporation (Transfer of Incorporation) Act 2000*.

### **2 Commencement**

This Act commences on the date of assent to this Act.

### **3 Definitions**

(1) In this Act:

*ASIC* means the Australian Securities and Investments Commission.

*deed of settlement* means the deed of settlement that is referred to in the preamble to the *Bank of New South Wales Act of 1850*, as subsequently amended from time to time.

*registration date* means the registration date specified in a registration certificate issued by the Attorney General under section 8.

*transfer application* means an application made in accordance with section 5.

*transfer resolution* means a transfer resolution referred to in section 6.

*Westpac* means the body politic and corporate constituted by the *Bank of New South Wales Act of 1850*, whose corporate name is Westpac Banking Corporation.

**Note.** Section 4 of the *Bank of New South Wales (Change of Name) Act 1982* provided for the corporate name of the Bank of New South Wales constituted by the 1850 Act to be Westpac Banking Corporation.

*Westpac company* means Westpac after it is taken, by operation of section 9, to be registered under the *Corporations Law* as a public company limited by shares.

*Westpac shareholder* means a shareholder within the meaning of the deed of settlement.

- (2) Words and expressions used in this Act have the same meanings as in section 9 of the *Corporations Law*, except in so far as they are defined differently in this Act or the context or subject-matter otherwise indicates or requires.
- (3) A reference in this Act to the *Corporations Law* is a reference to the *Corporations Law of New South Wales*.

#### **4 Notes**

Notes included in this Act do not form part of this Act.

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Part 2                         Registration of Westpac as a public company

Division 1                    Authorisation to transfer incorporation

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## Part 2 Registration of Westpac as a public company

### Division 1                    Authorisation to transfer incorporation

#### 5 Westpac may apply to be registered as a public company under Corporations Law

- (1) Westpac may apply to be registered under Part 5B.1 of the *Corporations Law* as a public company limited by shares, but only if a transfer resolution is passed.
- (2) Any such application must be made:
  - (a) in accordance with the provisions of section 601BC of the *Corporations Law*, and
  - (b) within the prescribed period in relation to the transfer resolution.
- (3) For the purposes of section 601BC (8) (d) of the *Corporations Law*, Westpac is authorised by this Act to transfer its incorporation in accordance with this Act.
- (4) Nothing in this section prevents a further proposal for a transfer resolution being put to Westpac shareholders if:
  - (a) a previously proposed transfer resolution was not passed or was declared to be invalid by order of the Supreme Court under section 7 (1), or
  - (b) an application for registration under Part 5B.1 of the *Corporations Law* was not made by Westpac within the prescribed period in relation to a previous transfer resolution.
- (5) In this section:

***prescribed period***, in relation to a transfer resolution, means:

  - (a) except as provided by paragraph (b)—the period of 6 months (or such other period as may be prescribed by the regulations whether before or after the resolution is passed) after the date on which the resolution is passed, or

- (b) if an application for an order under section 7 (1) is duly made but is refused or withdrawn after the end of the period referred to in paragraph (a)—the period of one month after the date on which the application is finally determined or withdrawn (as the case may be).

## Division 2      Transfer resolutions

### 6    What is a transfer resolution?

For the purposes of this 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*.

**Note.** Clause 117 (r) of the deed of settlement defines “special resolution” 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.

### 7    Irregularities concerning transfer resolutions

- (1) A transfer resolution is not invalidated because of any procedural irregularity unless, on an application made under this section, the Supreme Court by order declares the resolution to be invalid (an *invalidity order*).
- (2) No fewer than 200 persons who were Westpac shareholders eligible to vote at the meeting at which the transfer resolution was passed may make an application to the Supreme Court in accordance with this section for an invalidity order.
- (3) Such an application can only be made to the Supreme Court within the period of one month after the date of the passing of the transfer resolution.
- (4) The Supreme Court must not make an invalidity order unless it is of the opinion:
  - (a) that the irregularity was not, or was not the result of, an accidental omission or non-receipt of a notice required under the deed of settlement, and
  - (b) that the irregularity has caused or may cause substantial injustice.

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Part 2                     Registration of Westpac as a public company

Division 2                Transfer resolutions

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- (5) If the Supreme Court makes an invalidity order in relation to a transfer resolution, any registration certificate issued by the Attorney General under section 8 in relation to that resolution is taken to have no effect for the purposes of this Act.
- (6) Rules of court (not inconsistent with this Act or the regulations) may be made under the *Supreme Court Act 1970* for the purposes of this section. This subsection does not limit the rule-making powers conferred by the *Supreme Court Act 1970*.
- (7) In this section:
  - (a) a reference to a procedural irregularity includes a reference to:
    - (i) any defect, irregularity or deficiency of notice or time, and
    - (ii) any miscalculation of voting entitlements, and
  - (b) a reference to a transfer resolution includes a reference to a purported transfer resolution.

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

#### **8    Certification by Attorney General that Westpac is registered**

- (1) The Attorney General may 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 section 7 (1), and
  - (d) Westpac has lodged a transfer application with ASIC.
- (2) The Attorney General is to provide ASIC with a copy of the registration certificate issued under this section as soon as practicable after it is issued to Westpac. However, a failure to provide such a copy does not affect the validity of the certificate.



- (3) A registration certificate issued under this section cannot be challenged, reviewed or called into question in proceedings before any court or tribunal.
- (4) A registration certificate issued under this section is conclusive evidence in any proceedings before a court or tribunal that:
  - (a) all the requirements of this Act have been complied with concerning the registration of Westpac under the *Corporations Law* as a public company limited by shares, and
  - (b) Westpac was registered as provided by section 9 on the registration date specified in the certificate.
- (5) Nothing in subsection (3) or (4) affects the operation of section 7 in relation to an application made to the Supreme Court under that section for an order declaring a transfer resolution to be invalid.

**9 Westpac taken to be registered as public company limited by shares on registration date**

- (1) Westpac is not to be registered as a public company limited by shares under Part 5B.1 of the *Corporations Law*, except as provided by this section.
- (2) If the Attorney General issues a registration certificate to Westpac under section 8, on the registration date specified in that certificate:
  - (a) Westpac is taken to have been registered under section 601BD (1) of the *Corporations Law* on the basis of the information, documents, evidence and other material provided in or with the transfer application to which the certificate relates and to have been registered:
    - (i) by the name “Westpac Banking Corporation”, and
    - (ii) with “007 457 141” as its ACN, and
    - (iii) as a public company limited by shares, and
  - (b) except as provided by this Act—the provisions of the *Corporations Law* apply to Westpac company as if Westpac had been registered by ASIC under Part 5B.1 as a public company limited by shares.

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- (3) A certificate may be issued under section 601BD (1) (c) of the *Corporations Law* as if ASIC had registered Westpac as a public company limited by shares under that Law on the registration date with the name and ACN referred to in subsection (2).

**Note.** Section 601BD (1) (c) of the *Corporations Law* enables ASIC to issue a certificate stating details about the name, ACN, company type, jurisdiction of registration and registration date of a company registered under Part 5B.1 of that Law.

**10 Westpac company not required to have or use “Limited” in its name**

- (1) For the purposes of the *Corporations Law* (and despite anything in Part 2B.6 or Part 5B.1 of that Law), Westpac company is not required to have or use the word “Limited” in its name, but only for so long as it retains the name of “Westpac Banking Corporation”.
- (2) Nothing in this section prevents Westpac company from changing its name in accordance with the provisions of the *Corporations Law* so as to include the word “Limited” in its name.

**11 Westpac company may use “Australian Registered Body Number” before its ACN for transitional period of 2 years**

For the period of 2 years after the registration date, Westpac company is taken to comply with the requirements under the *Corporations Law* in relation to the use of its ACN even where it uses the word “Australian Registered Body Number” or the abbreviation “ARBN” before its ACN.

## Part 3 Miscellaneous

### 12 Repeal of Westpac legislation

On or after the registration date, the Governor may, by one or more proclamations, repeal any or all of the following Acts and regulations (or specified provisions of the Acts and regulations):

- (a) *Bank of New South Wales Act of 1850,*
- (b) *Bank of New South Wales Act of 1852,*
- (c) *Bank of New South Wales Act of 1854,*
- (d) *Bank of New South Wales Act of 1864,*
- (e) *Bank of New South Wales Act of 1870,*
- (f) *Bank of New South Wales Act of 1886,*
- (g) *Bank of New South Wales Act 1905,*
- (h) *Bank of New South Wales Act 1910,*
- (i) *Bank of New South Wales Act 1923,*
- (j) *Bank of New South Wales (Amendment) Act 1962,*
- (k) *Bank of New South Wales (Change of Name) Act 1982,*
- (l) *Westpac Banking Corporation Act 1995,*
- (m) any regulation made under an Act referred to in paragraphs (a)–(l).

**Note.** Section 30 of the *Interpretation Act 1987* provides that the repeal of an Act or statutory rule does not, among other things, affect the previous operation of the Act or statutory rule or anything duly suffered, done or commenced under the Act or statutory rule or affect any right, privilege, obligation or liability acquired, accrued or incurred under the Act or statutory rule.

### 13 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### 14 Savings, transitional and other provisions

Schedule 1 has effect.

## Schedule 1 Savings, transitional and other provisions

(Section 14)

### Part 1 General

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:  
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 2 Provisions consequent on enactment of this Act

#### 2 Interpretation

- (1) In this Part:

*capital redemption reserve* means the Capital Redemption Reserve referred to in Clause 99 (3) of the deed of settlement.

*share* means a share in the capital of Westpac within the meaning of the deed of settlement.

*share premium reserve* means the Share Premium Reserve referred to in Clause 98 (1) of the deed of settlement.

- (2) A reference in this Part to the registration of Westpac is a reference to the registration of Westpac as a public company limited by shares under the *Corporations Law* that is taken to have occurred by operation of section 9 of this Act.
- (3) The provisions of this Part apply to Westpac and Westpac company instead of the provisions of section 601BQ of the *Corporations Law*.

### **3 Westpac shares to have no par value**

On and after the registration date, section 254C of the *Corporations Law* applies to shares issued before that date as well as to shares issued on or after that date.

**Note.** Section 254C of the *Corporations Law* provides that the shares of a company have no par value.

### **4 Share capital—references to amount paid on shares issued before registration date**

For the purposes of the operation of the *Corporations Law* on and after the registration date in relation to a share issued by Westpac before that date:

- (a) the amount paid on the share is the sum of all amounts paid to Westpac or Westpac company at any time for the share (but not including any premium), and
- (b) the amount unpaid on the share is the difference between the issue price of the share (but not including any premium) and the amount paid on the share (see paragraph (a)).

### **5 Share capital—calls on partly-paid shares**

The liability of a Westpac shareholder or Westpac company shareholder for calls in respect of money unpaid on shares issued before the registration date (whether on account of the par value of the shares or by way of premium) is not affected by the share ceasing to have a par value.

### **6 Share capital—transfer of money in share premium reserve and capital redemption reserve into the share capital account**

Immediately after the registration of Westpac, any amount standing to the credit of Westpac's share premium reserve and capital redemption reserve becomes part of Westpac company's share capital.

**7 Share capital—use of amount standing to credit of share premium reserve**

Westpac company may use the amount standing to the credit of Westpac's share premium reserve immediately before the registration of Westpac:

- (a) to provide for the premium payable on redemption of debentures or redeemable preference shares issued before the registration date, or
- (b) to write off:
  - (i) the preliminary expenses of Westpac incurred before the registration date, or
  - (ii) expenses incurred, payments made, or discounts allowed, on or before the registration date, in respect of any issue of shares in, or debentures of, Westpac.

**8 Share capital—references in pre-commencement contracts and other documents to par value**

- (1) This clause applies for the purpose of interpreting and applying on or after the registration date:
  - (a) a contract entered into before that date (including the deed of settlement), or
  - (b) a trust deed or other document executed before that date.
- (2) A reference to the par value of a share is taken to be a reference to:
  - (a) if the share is issued before the registration date—the par value of the share immediately before that date, or
  - (b) if the share is issued on or after the registration date but shares of the same class were on issue immediately before that date—the par value that the share would have had if it had been issued then, or
  - (c) if the share is issued on or after the registration date and shares of the same class were not on issue immediately before that date—the par value determined by the directors.

A reference to share premium is taken to be a reference to any residual share capital in relation to the share.

- (3) A reference to a right to a return of capital on a share is taken to be a reference to a right to a return of capital of a value equal to the amount paid in respect of the share's par value.

- (4) A reference to the aggregate par value of Westpac or Westpac company's issued share capital is taken to be a reference to that aggregate as it existed immediately before the registration date and:
- (a) increased to take account of the par value of any shares issued on or after that date, and
  - (b) reduced to take account of the par value of any shares cancelled on or after that date.

**9 Retirement benefits for directors**

- (1) A benefit given to a director of Westpac company on or after the registration date in accordance with an agreement with the director on the terms referred to in Clause 56 (4B) of the deed of settlement (whether entered into before, on or after that date) is taken to be a benefit that has been approved under section 200E of the *Corporations Law* for the purposes of Division 2 of Part 2D.2 of that Law.
- (2) A reference in this clause to the giving of a benefit is a reference to the giving of a benefit for the purposes of Division 2 of Part 2D.2 of the *Corporations Law*.

**10 Application of Westpac Banking Corporation Act 1995 and Westpac Banking Corporation Regulation 1996**

The *Westpac Banking Corporation Act 1995* and *Westpac Banking Corporation Regulation 1996* are taken not to apply to Westpac company on and after the registration date.