

BANK MERGERS BILL 1997

EXPLANATORY MEMORANDUM



PARLIAMENT OF WESTERN AUSTRALIA

Parliamentary Library

Parliament House

Perth 6000

Western Australia

REASONS FOR ENACTMENT

To establish a general framework which will allow bank mergers to be dealt with by regulation or adopting a law of another state or territory rather than requiring Parliament to enact separate legislation for each individual merger.

PART 1 - PRELIMINARY

Clause 1 - Short title

Self explanatory.

Clause 2 - Commencement

Self explanatory.

Clause 3 - Interpretation

Defines three key terms used in the Bill.

Clause 4 - Act binds the Crown

Ensures the Crown is bound by the provisions of the Bill.

Clause 5 - Provision for merger

Introduces the general power to provide for individual bank mergers by:

- regulations;
- an order adopting a relevant law of another state or territory; or
- a combination of these two methods.

PART 2 - REGULATIONS AS TO THE MERGER OF BANKS

This part provides the power to make regulations under a series of subject headings.

Clause 6 - Regulations, general power

Provides a broad, overall power to make regulations for bank mergers.

Subclause (2) indicates that the power may extend beyond the specific issues listed in subsequent clauses but protects the requirement for the Treasurer to require payment in lieu of State taxes and charges.

Clause 7 - Regulations for merger

Lists a series of specific issues, related to the transfer of one banking entity into another bank, for which regulations may be made.

Subclause (2) protects the interest of the Minister responsible for Corporations Law in liquidation or dissolution of a bank.

Clause 8 - Regulations as to effect of merger

Regulations made under this clause deal primarily with the transfer of contractual and legal issues between the merging banks.

Clause 9 - Regulations as to duties, taxes etc

Provides for regulations to be made relating to the payment of, or exemption from, duties, taxes, charges, rates etc.

(Note that a requirement to make payments in lieu of State taxes and charges will be made under the Bank Mergers (Taxing) Bill).

Clause 10 - Regulations as to miscellaneous matters

As the name implies, this clause provides for regulations on various issues beyond the specific topics covered by clauses 7 to 9.

Clause 11 - Prerequisite to regulations

Provides a link with the Bank Mergers (Taxing) Bill and requires that regulations to facilitate a bank merger are not made until the Treasurer is satisfied that a requirement relating to payment in lieu of taxes and charges has been complied with.

Clause 12 - Regulations may override provisions of another Act

Provides for regulations to override other Acts in the specified areas. This is necessary to allow the merger facilitation arrangements to work.

Clause 13 - Extra-territorial application

Allows the Bill's provisions to extend to any jurisdiction outside the State where this State's laws may have effect.

PART 3 - APPLICATION OF LAW OF ANOTHER STATE OR A TERRITORY

Clause 14 - Definition

Defines the term "declared law" as used in this Part.

Clause 15 - Declaration of law

Provides power to apply to Western Australia, a law of another State or Territory relating to bank mergers.

The application will be achieved by an order and can include such additions, exclusions and modifications as the case may require.

Application can be amended or revoked by subsequent orders.

Subclause (5) provides for Parliamentary scrutiny by requiring such orders to be tabled and subject to disallowance in the same manner as for regulations.

Clause 16 - Prerequisite to order

Similarly to clause 11, this clause requires that an order to apply a law of another State or Territory shall not be made until the Treasurer is satisfied that a requirement relating to payment in lieu of taxes and charges has been complied with.

Clause 17 - Application of declared law

Provides the power for a law, declared by an order under clause 15, to apply in this State subject to exclusions, modifications and additions as appropriate.

Subclause (4) provides for a specific confirmation requirement in respect of any guarantee or exemption provisions in a declared law.

**PART 4 - PROVISIONS SUPPLEMENTARY TO BANK MERGERS
(TAXING) ACT 1977**

The power of the Treasurer to require payment in lieu of taxes and charges, which might otherwise be foregone in a merger under this Bill, is contained in the Bank Mergers (Taxing) Bill.

Part 4 provides for related matters other than power to require payment.

Clause 18 - Determination of amount payable

Enables the Treasurer to determine the amount payable according to such principles as he or she thinks appropriate.

Clause 19 - Liability for amount

Establishes clear liability for payment of amounts determined by the Treasurer.

Clause 20 - Certificate to be given

Requires the Treasurer to provide certificates of compliance when banks meet requirements related to payments in lieu of taxes and charges.

Clause 21 - Effect of certificate

Protects banks from further payment or action in relation to payments in lieu once a certificate has been given.