



Cheques and Payment Orders Amendment Act 1998

No. 76, 1998



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***An Act to amend the *Cheques and Payment Orders
Act 1986*, and for related purposes***

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Cheques and Payment Orders Amendment Act 1998

No. 76, 1998

An Act to amend the *Cheques and Payment Orders Act 1986*, and for related purposes

[Assented to 2 July 1998]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Cheques and Payment Orders Amendment Act 1998*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

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- (2) Subject to subsection (3), the items in Schedule 1, other than item 27 and items 70 to 82, and the items of Schedules 2 and 3, commence on a day to be fixed by Proclamation.
- (3) If the items to which subsection (2) applies do not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.
- (4) Items 27, 70 to 78, 81 and 82 of Schedule 1 commence as follows:
- (a) if item 6 of Schedule 1 to the *Cheques and Payment Orders Amendment (Turnback of Cheques) Act 1998* (in this subsection and subsection (5) referred to as the **Turnback Act**) commences on or before the commencement of the items to which subsection (2) applies—items 27, 70 to 78, 81 and 82 of Schedule 1 commence on the later of the following times:
 - (i) immediately after the commencement of item 6 of Schedule 1 to the Turnback Act;
 - (ii) the commencement of the items to which subsection (2) applies;
 - (b) if item 5 of Schedule 1 to the Turnback Act commences on or before the commencement of the items to which subsection (2) applies and paragraph (a) does not apply—items 27, 70 to 78, 81 and 82 of Schedule 1 commence on the later of the following times:
 - (i) immediately after the commencement of item 5 of Schedule 1 to the Turnback Act;
 - (ii) the commencement of the items to which subsection (2) applies;
 - (c) if item 5 of Schedule 1 to the Turnback Act commences after the commencement of the items to which subsection (2) applies and item 6 of Schedule 1 to the Turnback Act commences immediately after the commencement of item 5 of that Schedule—items 27, 70 to 78, 81 and 82 of Schedule 1 commence immediately after the commencement of item 6 of Schedule 1 to the Turnback Act;
 - (d) if item 5 of Schedule 1 to the Turnback Act commences after the commencement of the items to which subsection (2)

applies and paragraph (c) does not apply—items 27, 70 to 78, 81 and 82 of Schedule 1 commence immediately after the commencement of item 5 of Schedule 1 to the Turnback Act.

- (5) Items 79 and 80 of Schedule 1 commence as follows:
- (a) if item 6 of Schedule 1 to the Turnback Act commences:
 - (i) after the commencement of the items to which subsection (2) applies; and
 - (ii) after, but not immediately after, the commencement of item 5 of Schedule 1 to that Act;items 79 and 80 of Schedule 1 commence immediately after the commencement of item 6 of Schedule 1 to the Turnback Act;
 - (b) in any other case—items 79 and 80 of Schedule 1 do not commence.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Cheques and Payment Orders Act 1986 allowing cheques to be drawn on financial institutions and abolishing payment orders

Part 1—Main amendments

Note 1: Most of the consequential amendments relating to these amendments are in Part 2 of this Schedule and in Schedule 3. Transitional provisions are in Part 3 of this Schedule.

Note 2: The other consequential amendments are made as part of amendments in Schedule 2.

1 Section 1

Omit “*and Payment Orders*”.

2 Subsection 3(1) (definition of *bank*)

Repeal the definition.

3 Subsection 3(1) (definition of *building society*)

Repeal the definition.

4 Subsection 3(1) (definition of *credit union*)

Repeal the definition.

5 Subsection 3(1) (definition of *drawee bank*)

Repeal the definition.

6 Subsection 3(1)

Insert:

drawee institution, in relation to a cheque, means the financial institution on which the cheque is drawn.

7 Subsection 3(1)

Insert:

FCA institution means a body that is a registered corporation under the *Financial Corporations Act 1974* and that is:

- (a) a building society or a credit union as defined in that Act; or
- (b) prescribed for the purposes of this definition.

8 Subsection 3(1)

Insert:

FIC institution means a body corporate that is, for the purposes of any of the Financial Institutions Codes:

- (a) a building society; or
- (b) a credit union; or
- (c) a special services provider.

9 Subsection 3(1) (definition of *financial institution*)

Repeal the definition, substitute:

financial institution means:

- (a) the Reserve Bank of Australia; or
- (b) a bank within the meaning of the *Banking Act 1959*; or
- (c) an FIC institution; or
- (d) a person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution; or
- (e) a person (other than a person referred to in paragraph (a), (b), (c) or (d)) who carries on the business of banking outside Australia.

10 Subsection 3(1)

Insert:

Financial Institutions Codes means the following codes:

- (a) the Financial Institutions (NSW) Code of New South Wales;
 - (b) the Financial Institutions (Victoria) Code of Victoria;
 - (c) the Financial Institutions (Queensland) Code of Queensland;
 - (d) the Financial Institutions (Western Australia) Code of Western Australia;
 - (e) the Financial Institutions (South Australia) Code of South Australia;
-

Schedule 1 Amendment of the Cheques and Payment Orders Act 1986 allowing cheques to be drawn on financial institutions and abolishing payment orders

Part 1 Main amendments

- (f) the Financial Institutions (Tasmania) Code of Tasmania;
- (g) the Financial Institutions (ACT) Code of the Australian Capital Territory;
- (h) the Financial Institutions (NT) Code of the Northern Territory.

11 Subsection 3(1) (definition of *non-bank financial institution*)

Repeal the definition.

12 At the end of section 4

Add:

- (3) The rules of the common law (including the law merchant) that apply to cheques drawn on banks also apply (by force of this subsection) to cheques drawn on financial institutions other than banks, as if those institutions were banks.

13 Section 5

Repeal the section, substitute:

5 Cheques a financial institution draws on itself

- (1) Subject to subsection (2), a reference in this Act to a cheque includes a reference to a cheque that a financial institution draws on itself.
- (2) Subsection (1) does not apply to a reference to a cheque in a provision in which a contrary intention appears, or in any of the following provisions:
 - (a) sections 10, 11, 12, 13, 14 and 15;
 - (b) subsection 17(3);
 - (c) subparagraph 59(b)(i);
 - (d) subsections 60(1), 62(12) and 62A(8);
 - (e) sections 88, 89, 90 and 91.
- (3) Nothing in this Act (other than section 92, subsection 93(2) and section 94) is to be taken to affect any liability that, but for this

Act, a financial institution would have in relation to a cheque drawn by it on itself.

- (4) A reference in subsection (1) or (3) to a cheque drawn by a financial institution on itself is a reference to an instrument that would be a cheque if the drawer and drawee were not the same person.

14 Subsection 10(1)

Repeal the subsection, substitute:

- (1) A cheque is an unconditional order in writing that:
- (a) is addressed by a person to another person, being a financial institution; and
 - (b) is signed by the person giving it; and
 - (c) requires the financial institution to pay on demand a sum certain in money.

Note: In this Act, *financial institution* has a restricted meaning—see the definition in subsection 3(1).

15 Part VIII

Repeal the Part.

16 Schedule

Repeal the Schedule.

Part 2—Consequential amendments

17 Subsection 3(8)

Omit “drawee bank”, substitute “drawee institution”.

18 Paragraph 12(2)(a)

Omit “bank”, substitute “financial institution”.

19 Section 13

Omit “bank” (wherever occurring), substitute “financial institution”.

Note: The heading to section 13 is altered by omitting “**bank**” and substituting “**financial institution**”.

20 Subsection 17(3)

Omit “drawee bank”, substitute “the drawee institution”.

21 Section 21

Omit “drawee bank”, substitute “drawee institution”.

22 Paragraph 22(b)

Omit “drawee bank”, substitute “drawee institution”.

23 Subsection 23(2)

Omit “drawee bank” (wherever occurring), substitute “drawee institution”.

24 Section 43

Omit “drawee bank”, substitute “drawee institution”.

25 Section 54

Omit “drawee bank”, substitute “drawee institution”.

26 Section 54

Omit “a bank”, substitute “a financial institution”.

27 Paragraph 59(aa)

Omit “drawee bank has become a failed bank”, substitute “drawee institution has become a failed financial institution”.

28 Sub-subparagraph 59(b)(i)(A)

Omit “drawee bank”, substitute “drawee institution”.

29 Paragraphs 60(1)(b), (c) and (d)

Omit “drawee bank” (wherever occurring), substitute “drawee institution”.

30 Paragraph 60(3)(b)

Repeal the paragraph, substitute:

(b) usage in relation to the presentment of cheques, including usage of trade and of financial institutions; and

31 Subsection 61(1)

Omit “drawee bank”, substitute “drawee institution”.

32 Section 61A

Omit “bank”, substitute “financial institution”.

Note: The heading to section 61A is altered by omitting “**bank**” and substituting “**financial institution**”.

33 Section 62

Omit “drawee bank” (wherever occurring, other than in subsection (1) and paragraph (9)(b)), substitute “drawee institution”.

34 Section 62

Omit “collecting bank” (wherever occurring, other than in subsection (1)), substitute “collecting institution”.

35 Section 62A

Omit “drawee bank” (wherever occurring, other than in subsection (2)), substitute “drawee institution”.

Note: The heading to section 62A is altered by omitting “**bank**” and substituting “**drawee institution**”.

36 Section 63

Omit “a bank”, substitute “a financial institution”.

Note: The heading to section 63 is altered by omitting “**bank**” and substituting “**financial institution**”.

37 Section 63

Omit “drawee bank” (wherever occurring), substitute “drawee institution”.

38 Section 64

Omit “drawee bank” (wherever occurring), substitute “drawee institution”.

39 Subsection 65(1A)

Omit “banks”, substitute “financial institutions”.

Note: The heading to section 65 is altered by omitting “**banks**” and substituting “**financial institutions**”.

40 Subsections 65(1) and (2)

Omit “bank” (wherever occurring), substitute “financial institution”.

41 Paragraphs 65(2A)(b) and (2B)(b)

Omit “bank”, substitute “financial institution”.

42 Subsections 65(2C) and (2D)

Omit “bank” (wherever occurring), substitute “financial institution”.

43 Subsection 65A(1)

Omit “banks”, substitute “financial institutions”.

Note: The heading to section 65A is altered by omitting “**banks**” and substituting “**financial institutions**”.

44 Subsection 65A(2)

Omit “bank”, substitute “financial institution”.

45 Paragraph 65A(3)(b)

Omit “bank”, substitute “financial institution”.

46 Subsection 66(1)

Omit “a bank (in this section referred to as the *deposit bank*)”, substitute “a financial institution (the *deposit institution*)”.

Note: The heading to section 66 is altered by omitting “**bank**” and substituting “**institution**”.

47 Section 66

Omit “deposit bank” (wherever occurring, other than the occurrence omitted by item 46), substitute “deposit institution”.

48 Subsection 66(2)

Omit “drawee bank”, substitute “drawee institution”.

49 Paragraph 66(3)(d)

Omit “banks”, substitute “financial institutions”.

50 Subparagraph 66(3)(e)(iii)

Omit “another bank”, substitute “another financial institution”.

51 Subparagraph 66(3)(e)(iv)

Omit “bank” (wherever occurring), substitute “financial institution”.

52 Subparagraph 66(3)(e)(ix)

Omit “banks”, substitute “financial institutions”.

53 Subsections 67(1) and (2)

Omit “drawee bank” (wherever occurring), substitute “drawee institution”.

Note: The heading to section 67 is altered by omitting “**Drawee bank**” and substituting “**Drawee institution**”.

54 Paragraph 67(2)(e)

Omit “banks”, substitute “financial institutions”.

55 Subparagraph 67(2)(f)(x)

Omit “banks”, substitute “financial institutions”.

56 Subsections 68(1) and (2)

Schedule 1 Amendment of the Cheques and Payment Orders Act 1986 allowing cheques to be drawn on financial institutions and abolishing payment orders

Part 2 Consequential amendments

Omit “drawee bank” (wherever occurring), substitute “drawee institution”.

57 Paragraph 68(2)(a)

Omit “a bank (in this subsection referred to as the *collecting bank*)”, substitute “a financial institution (the *collecting institution*)”.

58 Subsection 68(2)

Omit “collecting bank” (wherever occurring, other than the occurrence omitted by item 57), substitute “collecting institution”.

59 Subsection 68(2)

After “financial institution”, insert “or FCA institution”.

60 Paragraph 68(3)(a)

Omit “a bank (in this subsection and subsection (4) referred to as the *collecting bank*)”, substitute “a financial institution (the *collecting institution*)”.

61 Subsection 68(3)

Omit “collecting bank” (wherever occurring, other than the occurrence omitted by item 60), substitute “collecting institution”.

62 Subsection 68(3)

Omit “drawee bank” (wherever occurring, other than last occurring), substitute “drawee institution”.

63 Paragraph 68(3)(d)

After “financial institution”, insert “or an FCA institution”.

64 Subsection 68(3)

Omit “or other financial institution”, substitute “, or the other financial institution or the FCA institution”.

65 Subsection 68(3B)

Omit “a bank”, substitute “a financial institution”.

66 Subsection 68(3B)

Omit “the bank, the bank”, substitute “it, it”.

67 Subsections 68(5) and (6)

Omit “drawee bank”, substitute “drawee institution”.

68 Subsection 68(7)

After “financial institution”, insert “or an FCA institution”.

69 Section 69

Omit “drawee bank” (wherever occurring), substitute “drawee institution”.

70 Division 3 of Part IV (heading)

Repeal the heading, substitute:

Division 3—Turnback of cheques drawn on failed financial institutions

71 Subsection 70A(1)

Omit “drawee bank” (wherever occurring, including in note 1), substitute “drawee institution”.

72 Subsection 70A(1)

Omit “failed bank” (wherever occurring, including in note 1), substitute “failed financial institution”.

73 Subsection 70A(2)

Omit “drawee bank”, substitute “drawee institution”.

74 Subsection 70A(2)

Omit “failed bank” (first occurring), substitute “failed financial institution”.

75 Paragraphs 70A(2)(a) and (b)

Omit “bank” (wherever occurring), substitute “institution”.

76 Paragraph 70A(2)(b)

Omit “bank’s” (wherever occurring), substitute “institution’s”.

77 Subparagraph 70A(2)(c)(i)

Omit “bank” (wherever occurring), substitute “institution”.

78 Subparagraph 70A(2)(c)(ii)

Omit “the bank is to be treated as a failed bank”, substitute “the institution is to be treated as a failed financial institution”.

79 Subparagraph 70A(2)(c)(i)

Omit “bank” (wherever occurring), substitute “institution”.

80 Subparagraph 70A(2)(c)(ii)

Omit “the bank is to be treated as a failed bank”, substitute “the institution is to be treated as a failed financial institution”.

81 Paragraph 70A(3)(b)

Omit “bank’s”, substitute “institution’s”.

82 Paragraph 70B(d)

Omit “drawee bank”, substitute “drawee institution”.

83 Paragraph 78(1)(a)

Omit “drawee bank”, substitute “drawee institution”.

84 Subsection 87(2)

Omit “drawee bank”, substitute “drawee institution”.

85 Part VI (heading)

Repeal the heading, substitute:

Part VI—Duties and liabilities of financial institutions

86 Division 1 of Part VI (heading)

Repeal the heading, substitute:

Division 1—The drawee institution

87 Section 88

Omit “drawee bank”, substitute “drawee institution”.

88 Subsection 89(2)

Omit “drawee bank” (wherever occurring), substitute “drawee institution”.

89 Subsection 90(1)

Omit “a bank to pay a cheque drawn upon it”, substitute “the drawee institution to pay a cheque”.

90 Paragraph 90(2)(a)

Omit “drawee bank”, substitute “drawee institution”.

91 Section 91

Omit “drawee bank” (wherever occurring), substitute “drawee institution”.

Note: The heading to section 91 is altered by omitting “**bank**” and substituting “**drawee institution**”.

92 Section 92

Repeal the section substitute:

92 Protection of drawee institution paying crossed cheque in accordance with crossing

Subject to subsection 32(1), where the drawee institution, in good faith and without negligence, pays a crossed cheque to a financial institution, the drawee institution is taken to have paid the cheque in due course.

93 Subsection 93(1)

Repeal the subsection, substitute:

Schedule 1 Amendment of the Cheques and Payment Orders Act 1986 allowing cheques to be drawn on financial institutions and abolishing payment orders

Part 2 Consequential amendments

- (1) Subject to subsection (2), where the drawee institution pays a crossed cheque otherwise than to a financial institution, the drawee institution is liable to the true owner of the cheque for any loss the true owner suffers as a result of the cheque having been paid otherwise than to a financial institution.

94 Paragraph 93(2)(a)

Omit “drawee bank”, substitute “drawee institution”.

95 Subsection 93(2)

Omit “the bank” (wherever occurring), substitute “the drawee institution”.

96 Subsection 93(2)

Omit “a bank” (wherever occurring), substitute “a financial institution”.

97 Paragraph 94(1)(a)

Repeal the paragraph, substitute:

- (a) the drawee institution, in good faith and without negligence, pays a cheque, whether or not to a financial institution; and

Note: The heading to section 94 is altered by omitting “**bank**” and substituting “**drawee institution**”.

98 Subsection 94(1)

Omit “the bank”, substitute “the drawee institution”.

99 Paragraph 94(2)(a)

Repeal the paragraph, substitute:

- (a) the drawee institution, in good faith and without negligence, pays a cheque to a financial institution; and

100 Subsection 94(2)

Omit “the bank”, substitute “the drawee institution”.

101 Division 2 of Part VI (heading)

Repeal the heading, substitute:

Division 2—The collecting institution

102 Paragraph 95(1)(a)

Omit “a bank”, substitute “a financial institution (the *collecting institution*)”.

Note: The heading to section 95 is altered by omitting “**bank**” (wherever occurring) and substituting “**institution**”.

103 Subsection 95(1)

Omit “the bank”, substitute “the collecting institution”.

104 Paragraph 95(2)(a)

Omit “a bank”, substitute “a financial institution (the *collecting institution*)”.

105 Subsection 95(2)

Omit “the bank” (wherever occurring), substitute “the collecting institution”.

106 Paragraph 96(a)

Omit “a bank”, substitute “a financial institution (the *collecting institution*)”.

Note: The heading to section 96 is altered by omitting “**bank**” and substituting “**institution**”.

107 Section 96

Omit “the bank” (wherever occurring), substitute “the collecting institution”.

108 Part VII (heading)

Repeal the heading, substitute:

Part VII—Special provisions relating to FCA and FIC institutions

109 Division 1 of Part VII (heading)

Repeal the heading, substitute:

Schedule 1 Amendment of the Cheques and Payment Orders Act 1986 allowing cheques to be drawn on financial institutions and abolishing payment orders

Part 2 Consequential amendments

Division 1—Presentment and collection of cheques by FCA institutions

110 Subsection 97(1)

Omit “a non-bank financial institution”, substitute “an FCA institution”.

Note: The heading to section 97 is altered by omitting “**Non-bank financial institution**” and substituting “**FCA institution**”.

111 Subsection 97(1)

Omit “the non-bank financial institution” (wherever occurring), substitute “the FCA institution”.

112 Subsection 97(2)

Omit “drawee bank”, substitute “drawee institution”.

113 Subsection 97(3)

Omit “the non-bank financial institution” (wherever occurring), substitute “the FCA institution”.

114 Paragraph 97(3)(d)

After “financial institutions”, insert “and FCA institutions”.

115 Subparagraph 97(3)(e)(iii)

Omit “bank”, substitute “financial institution”.

116 Subparagraph 97(3)(e)(viii)

After “financial institutions”, insert “and FCA institutions”.

117 Paragraph 98(1)(a)

Omit “a non-bank financial institution”, substitute “an FCA institution”.

Note: The heading to section 98 is altered by omitting “**non-bank**” and substituting “**FCA**”.

118 Subsection 98(1)

Omit “the non-bank financial institution”, substitute “the FCA institution”.

119 Paragraph 98(2)(a)

Omit “a non-bank financial institution”, substitute “an FCA institution”.

120 Subsection 98(2)

Omit “the non-bank financial institution” (wherever occurring), substitute “the FCA institution”.

121 Paragraph 99(a)

Omit “a non-bank financial institution”, substitute “an FCA institution”.

Note: The heading to section 99 is altered by omitting “**non-bank**” and substituting “**FCA**”.

122 Section 99

Omit “the non-bank financial institution” (wherever occurring), substitute “the FCA institution”.

123 Paragraph 100(1)(a)

Repeal the paragraph, substitute:

- (a) the drawer of a cheque (the *issuing institution*) is an FIC institution or an FCA institution; and

124 Subsection 100(1)

Omit “non-bank financial” (wherever occurring, other than in paragraph (a)), substitute “issuing”.

125 Subsection 100(2)

Omit “non-bank financial” (wherever occurring, other than in subparagraph (b)(iv)), substitute “issuing”.

126 At the end of subparagraphs 100(2)(b)(i), (ii) and (iii)

Add “and”.

127 Subparagraph 100(2)(b)(iv)

Repeal the subparagraph, substitute:

- (iv) if the issuing institution is an FCA institution—the issuing institution were a financial institution; and

Schedule 1 Amendment of the Cheques and Payment Orders Act 1986 allowing cheques to be drawn on financial institutions and abolishing payment orders

Part 2 Consequential amendments

128 Subparagraphs 100(2)(b)(v) and (vi)

Omit “drawee bank”, substitute “drawee institution”.

129 Paragraph 113(b)

Omit “drawee bank”, substitute “drawee institution”.

130 Subsection 117(14)

Omit “drawee bank”, substitute “drawee institution”.

Part 3—Transitional provisions

131 Definitions

In this Part:

amended Act means the *Cheques Act 1986* as in force after the commencement of this Part.

non-bank financial institution has the same meaning as in the old Act.

old Act means the *Cheques and Payment Orders Act 1986* as in force immediately before the commencement of this Part.

132 Old Act continues to apply to certain payment orders

The old Act, as modified by the Schedule to that Act, continues to apply to:

- (a) payment orders completed before the commencement of this Part; and
- (b) payment orders completed partly before and partly after the commencement of this Part; and
- (c) payment orders completed after the commencement of this Part using forms issued to customers of non-bank financial institutions before that commencement.

133 Preservation of regulations prescribing institutions

Regulations in force immediately before the commencement of this Part for the purposes of paragraph (b) of the definition of *non-bank financial institution* in subsection 3(1) of the old Act have effect, after that commencement, as if they were regulations for the purposes of paragraph (b) of the definition of *FCA institution* in subsection 3(1) of the amended Act.

Schedule 2—Other amendments of the Cheques and Payment Orders Act 1986

1 Subsection 3(1)

Insert:

agency cheque means a cheque to which subsection 100(2) applies.

Note: Under section 100A, subsection 100(2) may, in specified circumstances, apply to a cheque even if the customer's signature on the cheque is not authorised.

2 Subsection 3(1)

Insert:

to or to the order of has the meaning given by subsection (1A).

3 After subsection 3(1)

Insert:

(1A) For the purposes of this Act, a cheque is payable *to or to the order of* a person or persons if:

- (a) it is expressed to be payable:
 - (i) to the person or persons; or
 - (ii) to the order of the person or persons (or words to that effect); or
 - (iii) to the person or persons or to the order of the person or persons (or words to that effect); and
- (b) it is not also expressed to be payable to bearer.

4 Section 21

Omit “, and only to or to the order of”.

5 Subsection 23(1)

Repeal the subsection.

6 Cheques already converted under subsection 23(1) continue to be cheques payable to order

A cheque that, on the commencement of item 5, was a cheque payable to order as a result of a conversion under the subsection repealed by that item continues to be a cheque payable to order after that commencement despite the repeal of that subsection.

7 Subsection 23(2)

Omit “, and only to or to the order of”.

8 Section 44

Omit all the words after “indorse the cheque”, substitute “in accordance with section 41, but using the designation or spelling in the cheque. The relevant person may also add his or her proper signature, but this is not necessary for the indorsement to be effective.”.

9 Paragraph 49(2)(a)

Omit “indorsers” (first occurring), substitute “parties”.

10 Paragraph 49(2)(a)

Omit “the drawer and prior indorsers”, substitute “prior parties”.

11 Application of amendment made by item 10

The amendment made by item 10 applies to cheques that are issued after the commencement of that item.

12 Subsection 62(1)

Repeal the subsection (including the notes), substitute:

- (1) A financial institution (the *collecting institution*) makes an external presentment of a cheque if the collecting institution makes a demand for payment of the cheque on the drawee institution (which is not the same institution as the collecting institution) on behalf of a customer, another financial institution or otherwise and the demand:
 - (a) is made:
 - (i) by exhibiting the cheque to the drawee institution at the proper place in relation to the cheque; and
-

- (ii) at a reasonable hour on a day on which the drawee institution is open for business at that place; or
- (b) is made:
 - (i) by exhibiting the cheque to the drawee institution at a place that is a designated exhibition place in relation to the cheque for the purposes of this subsection; and
 - (ii) at a time that is a designated time for the drawee institution at that place; or
- (c) is made:
 - (i) otherwise than by exhibiting the cheque; and
 - (ii) at a place that is a designated place in relation to the cheque for the purposes of this subsection; and
 - (iii) at a time that is a designated time for the drawee institution at that place; and
 - (iv) using a means of communication that is a designated means of communication for the drawee institution at that place.

Note 1: Section 64 defines *proper place*.

Note 2: Section 65 defines *designated exhibition place*, *designated time* and *designated means of communication*.

Note: The heading to section 62 is altered by omitting “**bank**” and substituting “**financial institution**”.

13 Paragraph 62(9)(b)

Repeal the paragraph, substitute:

- (b) in the case of a request to exhibit the cheque or a copy of the cheque of a specified kind—exhibit the cheque or the copy to the drawee institution:
 - (i) at the proper place in relation to the cheque, at a reasonable hour on a day on which the drawee institution is open for business at that place; or
 - (ii) at a place that is a designated exhibition place in relation to the cheque for the purposes of this subsection, at a time that is a designated time for the drawee institution at that place.

14 Subsection 62A(2)

Repeal the subsection, substitute:

(2) If the demand is made:

- (a) otherwise than by exhibiting the cheque; and
- (b) at the proper place in relation to the cheque, or at a place that is a notified place for the purposes of subsection (1);

the drawee institution may:

- (c) request itself to exhibit the cheque, or a copy of the cheque of a specified kind, to itself at a specified place; or
- (d) request itself to provide specified further particulars in relation to the cheque to itself at a specified place.

Note 1: Section 64 defines *proper place*.

Note 2: Section 65A defines *notified place*.

15 Subsection 62A(4)

After “made”, insert “at the proper place in relation to the cheque, or”.

16 Subsection 62A(4) (note)

Repeal the note, substitute:

Note 1: Section 64 defines *proper place*.

Note 2: Section 65A defines *notified place*.

17 After subsection 65A(3)

Insert:

- (3A) The place is a *notified place* in relation to particular cheques for the purposes of subsection 62A(1), (3) or (4) if the notice specifies that the place is a notified place in relation to the cheques for the purposes of that subsection.

18 Section 67

Add at the end:

- (3) Subsection (1) does not prejudice any rights that the drawee institution may have to debit the drawer’s account with the amount of the cheque.

19 Paragraph 68(1)(a)

After “a cheque”, insert “, other than an agency cheque,”.

20 Paragraph 68(2)(a)

After “a cheque”, insert “, other than an agency cheque,”.

21 After subsection 68(2)

Insert:

(2A) If:

(a) an agency cheque is duly presented for payment by a financial institution (the *collecting institution*); and

(b) the drawee institution pays the cheque;

the FIC institution or FCA institution that is the drawer of the cheque (disregarding the effect of subsection 100(2)) has, as against the drawee institution, the collecting institution and any institution on whose behalf the collecting institution duly presented the cheque, the right to possession of the cheque.

22 Subsection 68(3)

Omit “drawee bank” (last occurring), substitute “entitled institution”.

23 At the end of subsection 68(3)

Add:

For this purpose, the *entitled institution* is the drawee institution, unless the cheque is an agency cheque. If the cheque is an agency cheque, the *entitled institution* is the FIC institution or FCA institution that is the drawer of the cheque (disregarding the effect of subsection 100(2)).

24 Subsection 68(3A)

Repeal the subsection, substitute:

(3A) If:

(a) the drawee institution obtains possession of a relevant cheque; and

(b) the drawee institution pays or has paid the cheque; and

(c) the cheque is not an agency cheque;

the drawee institution must retain the cheque (subject to subsection (5)), or a copy of the cheque, for the period ending 7 years after the date of the cheque.

(3AA) If:

- (a) an FIC institution or an FCA institution obtains possession of a relevant cheque, being an agency cheque; and
- (b) the institution is the drawer of the cheque (disregarding the effect of subsection 100(2)); and
- (c) the drawee institution has paid the cheque;

the institution must retain the cheque (subject to subsection (5)), or a copy of the cheque, for the period ending 7 years after the date of the cheque.

25 Subsection 68(4)

Omit “drawee bank” (first occurring), substitute “entitled institution referred to in subsection (3)”.

26 Subsection 68(4)

Omit “drawee bank” (last occurring), substitute “entitled institution”.

27 Subsection 68(7)

After “(3A)”, insert “, (3AA)”.

28 Subsection 89(1)

Repeal the subsection, substitute:

- (1) Subject to subsections (2) and (3), the drawee institution may refuse payment of a stale cheque.

29 Subsection 89(2)

Omit “Subsection (1) does not apply in relation to a cheque if:”, substitute “The drawee institution must not refuse payment of a stale cheque if:”.

30 At the end of section 89

Add:

- (3) The drawee institution must refuse payment of a stale cheque if:
- (a) the drawee institution is obliged, by an agreement with the drawer, not to pay the cheque after it has become stale; or
 - (b) the drawer directs the drawee institution not to pay the cheque after it has become stale.

31 Amendments of section 89 apply to cheques that become stale after amendments commence

The amendments made by items 28, 29 and 30 apply to cheques that become stale after the commencement of those items.

32 Subsection 95(2)

Omit “by the customer”.

33 Subsection 95(3)

Repeal the subsection, substitute:

- (3) Where a financial institution (the *collecting agent*), in good faith and without negligence:
- (a) receives payment of a cheque for another financial institution or for an FCA institution; or
 - (b) receives payment of a cheque and, before or after receiving payment, pays another financial institution or an FCA institution the sum ordered to be paid by the cheque;
- the collecting agent does not incur any liability to the true owner by reason only of having received payment of the cheque.

34 Paragraph 95(4)(a)

Repeal the paragraph, substitute:

- (a) a financial institution (the *collecting agent*):
 - (i) receives payment of a cheque for another financial institution or for an FCA institution; or
 - (ii) receives payment of a cheque and, before or after receiving payment, pays another financial institution or an FCA institution the sum ordered to be paid by the cheque; and

35 Subsection 95(4)

Omit “the bank”, substitute “the collecting agent”.

36 Subsection 98(2)

Omit “by the customer”.

37 Subparagraph 100(2)(b)(vi)

Omit “check”, substitute “cheque”.

38 After section 100

Insert in Division 2 of Part VII:

100A Unauthorised signature

- (1) A signature that is written or placed on a cheque as that of a customer of an FIC institution or an FCA institution without the authority of the customer whose signature it purports to be, only operates as the customer’s signature for the purposes of section 100 if:
 - (a) the person against whom it is sought to assert a right on the cheque is estopped from denying the genuineness of the signature or the existence of authority for the signature; or
 - (b) the signature is ratified or adopted by the customer.
- (2) Subsection 32(1) does not apply to the signature.

39 Section 114

Repeal the section, substitute:

114 Signature

- (1) A person is taken to sign a cheque or other instrument if:
 - (a) the person’s signature is written on the cheque or instrument by the person or by another person acting under the first person’s authority; or
 - (b) the person’s signature is placed on the cheque or instrument, as provided in subsection (2), by the person or by another person acting under the first person’s authority.

- (2) A financial institution, or an FCA institution, and a customer of the institution, may agree that the customer's signature may be placed on a cheque or other instrument drawn on the institution by a stamp or other mechanical means as provided for in the agreement.

40 Paragraph 117(5)(a)

After "it", insert "is".

Schedule 3—Amendment of other Acts

Bills of Exchange Act 1909

1 Subsection 6(2)

Omit “*and Payment Orders*”.

Debits Tax Administration Act 1982

2 Subsection 3(1) (definition of *account*)

Repeal the definition, substitute:

account means an account kept with a financial institution, being an account to which payments by the institution in respect of cheques drawn on the institution by the account holder, or by one or more of the account holders, may be debited.

3 Subsection 3(1) (paragraph (a) of the definition of *account transaction*)

Add at the end “or”.

4 Subsection 3(1) (paragraph (b) of the definition of *account transaction*)

Repeal the paragraph.

5 Subsection 3(1) (definition of *cheque*)

Omit “bank” (wherever occurring), substitute “financial institution”.

6 Subsection 3(1) (subparagraph (b)(ii) of the definition of *excluded debit*)

Omit “or payment order” (wherever occurring).

7 Subsection 3(1) (definition of *incomplete*)

Omit “or payment order” (wherever occurring).

8 Subsection 3(1) (definition of *non-bank financial institution*)

Repeal the definition, substitute:

non-bank financial institution means an institution:

- (a) that is an FIC institution as defined in subsection 3(1) of the *Cheques Act 1986*; and
- (b) that carries on a business that includes the keeping of accounts that may be drawn on by cheque.

9 Subsection 3(1) (definition of *payment order*)

Repeal the definition.

10 Subsection 57(1A)

Omit “payment order”, substitute “cheque”.

[*Minister's second reading speech made in—
House of Representatives on 8 April 1998
Senate on 29 May 1998*]

(51/98)
