



Cheques and Payment Orders Act 1986

No. 145 of 1986

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MODIFICATIONS OF ACT IN RELATION TO PAYMENT ORDERS



Cheques and Payment Orders Act 1986

No. 145 of 1986

An Act relating to cheques and certain other negotiable instruments

[Assented to 11 December 1986]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Cheques and Payment Orders Act 1986*.

Commencement

2. This Act shall come into operation on such day as is, or on such respective days as are, fixed by Proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—
“action” includes a counter-claim and set-off;
“Australia” includes the external Territories;

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“bank” means—

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

“bearer” means the person in possession of a cheque payable to bearer;

“building society” has the same meaning as in the *Financial Corporations Act 1974*;

“credit union” has the same meaning as in the *Financial Corporations Act 1974*;

“delivery”, in relation to a cheque, means the transfer of possession of the cheque from one person to another;

“drawee bank”, in relation to a cheque, means the bank upon which the cheque is drawn;

“financial institution” means a bank or a non-bank financial institution;

“holder” means—

- (a) in relation to a cheque payable to order—the payee or an indorsee who is in possession of the cheque as payee or indorsee, as the case may be; and
- (b) in relation to a cheque payable to bearer—the bearer;

“issue”, in relation to a cheque, means the first delivery of the cheque to a person who takes the cheque as holder;

“non-bank financial institution” means—

- (a) a building society or credit union that is a registered corporation within the meaning of the *Financial Corporations Act 1974*; and
- (b) any other registered corporation within the meaning of that Act, being a registered corporation prescribed, or included in a class of registered corporations prescribed, for the purposes of this definition;

“possession”, in relation to a cheque, means possession (whether actual or constructive) of the cheque;

“value” means valuable consideration as defined by section 35.

(2) A reference in this Act to an act or thing being done in good faith is a reference to the act or thing being done honestly, whether or not the act or thing is done negligently.

(3) Where a person obtains a cheque—

- (a) by fraud, duress or other unlawful means; or
- (b) for an illegal consideration,

the person’s title to the cheque is defective.

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(4) Sub-section (3) shall not be taken to limit by implication the circumstances in which the title of a person to a cheque is defective.

(5) Where, at any time, a cheque appears on its face to have been drawn more than 15 months before that time, the cheque is, at that time, a stale cheque.

(6) A reference in this Act to a signature or indorsement being written or placed on a cheque without the authority of the person whose signature or indorsement it purports to be includes a reference to the forging of the signature or indorsement.

(7) A reference in this Act to a cheque, or a copy of a cheque, being exhibited to a person includes a reference to the cheque or the copy, as the case may be, being delivered to the person.

(8) An alteration of a cheque is a material alteration if it alters, in any respect, a right, duty or liability of the drawer, an indorser or the drawee bank.

Application of rules in bankruptcy, laws of States and Territories and rules of the common law

4. (1) Nothing in this Act affects the application in relation to cheques of the rules in bankruptcy in force under the *Bankruptcy Act 1966* or the law of an external Territory.

(2) The laws of the States and Territories and the rules of the common law (including the law merchant), except in so far as they are inconsistent with the express provisions of this Act, continue to apply in relation to cheques.

Bank cheques and bank drafts

5. (1) Unless the contrary intention appears, a reference in this Act (other than in sections 10 to 15 (inclusive), sub-section 17 (3), sub-paragraph 59 (b) (i), sub-sections 60 (1) and 62 (12) and sections 88 to 91 (inclusive)) to a cheque includes a reference to a bank cheque or bank draft.

(2) Nothing in this Act (other than section 92, sub-section 93 (2) and section 94) shall be taken to affect any liability that a bank would, but for this Act, have in relation to a bank cheque or bank draft drawn by it.

Certain rights, duties and liabilities under Act may be altered by agreement

6. (1) Subject to sub-section (2), nothing in this Act shall be taken to prevent 2 or more persons negating, inverting or otherwise altering, by agreement, their rights, duties and liabilities in relation to one another under this Act.

(2) Section 5, this section and sections 7 to 16 (inclusive), 19 to 24 (inclusive), 30 to 32 (inclusive), 39 to 41 (inclusive), 43 to 45 (inclusive), 53 to 57 (inclusive), 61, 62, 64 to 67 (inclusive), 79, 88, 90 to 95 (inclusive),

97, 98, 100, 115 and 116 have effect notwithstanding any agreement to the contrary.

Application of Act

7. (1) This Act applies only in relation to cheques drawn on or after the day on which this Act comes into operation.

(2) Where a cheque is dated, the cheque shall be conclusively presumed, for the purposes of sub-section (1), to have been drawn on that day.

(3) Where a cheque is undated, the cheque shall, unless the contrary is proved, be presumed, for the purposes of sub-section (1), to have been drawn on or after the day on which this Act comes into operation.

(4) Where the drawer of an instrument that is signed, but is otherwise wanting in a material particular necessary for the instrument to be, on its face, a complete cheque, delivers the instrument to another person, on or after the day on which this Act comes into operation, in order that the instrument may be filled up as a complete cheque, this Act applies in relation to the filling up of the instrument.

Extension of Act to external Territories

8. This Act extends to every external Territory.

Act to bind Crown

9. This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

PART II—CHEQUES

Division 1—Form

Cheque defined

10. (1) A cheque is an unconditional order in writing that—

- (a) is addressed by a person to another person (being a bank);
- (b) is signed by the person giving it; and
- (c) requires the bank to pay on demand a sum certain in money.

(2) An instrument that does not comply with sub-section (1), or that orders any act to be done in addition to the payment of money, is not a cheque.

Order to pay

11. An order to pay must be more than an authorization or request to pay.

Unconditional order to pay

12. (1) An order to pay on a contingency is not an unconditional order to pay and the happening of the event does not make the order an unconditional order to pay.

(2) An order to pay shall not be taken not to be an unconditional order to pay by reason only that the order is coupled with either or both of the following:

- (a) an indication of a particular account to be debited by the bank to which the order is addressed;
- (b) a statement of the transaction giving rise to the order.

Order addressed to a bank

13. (1) An order to pay is not addressed to a bank unless—

- (a) the order is addressed to a bank and to no other person;
- (b) the order is addressed to one bank only; and
- (c) the bank is named, or otherwise indicated with reasonable certainty, in the instrument containing the order.

(2) An order to pay may be an order to pay addressed to a bank notwithstanding that a person other than the bank on which the instrument containing the order is drawn, the payee or the drawer is specified in the instrument.

Order to pay on demand

14. (1) Subject to sub-sections (2) and (3), an order to pay is an order to pay on demand if—

- (a) the order is expressed to require payment on demand, at sight or on presentation; or
- (b) no time for payment is expressed in the instrument containing the order.

(2) Subject to sub-section 16 (3), an order to pay is not an order to pay on demand if the order is expressed to require, or requires by implication, payment otherwise than on demand, at sight or on presentation.

(3) Without limiting the generality of sub-section (2), an order to pay is not an order to pay on demand if the order is expressed to require, or requires by implication, payment only—

- (a) at or before a particular time; or
- (b) where the instrument containing the order is presented at or before a particular time.

Order to pay a sum certain

15. (1) Subject to sub-section (2), an order to pay is not an order to pay a sum certain unless the sum ordered to be paid is specified with reasonable certainty in the instrument containing the order.

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(2) Where more than one sum is expressed to be payable in an instrument containing an order to pay, the lesser or least, as the case may be, of the sums so expressed to be payable shall be taken to be the only sum ordered to be paid by the instrument.

(3) An order to pay may be an order to pay a sum certain notwithstanding that the order requires a sum to be paid according to a rate of exchange specified in, or to be ascertained as directed by, the instrument containing the order.

(4) Where an instrument contains—

(a) an order to pay a specified sum; and

(b) an order to pay not more than a specified sum,

the instrument shall be taken to require payment of the lesser of the sums so specified.

Date of cheque, &c.

16. (1) Where a cheque, or any indorsement of a cheque, is dated, the date shall, unless the contrary is proved, be presumed to be the day on which the cheque was drawn or the indorsement made, as the case may be.

(2) A cheque is not invalid by reason only that—

(a) it is not dated;

(b) it is antedated or post-dated; or

(c) the date it bears is a Sunday.

(3) For the purpose of determining whether a post-dated instrument is a cheque, the fact that the instrument is post-dated shall be disregarded.

(4) A cheque is not incomplete or irregular on its face by reason only that it is post-dated (whether or not the date has arrived).

Optional stipulations

17. (1) The drawer of a cheque may, by an express stipulation written on the cheque, waive, as regards the drawer, the right to presentment of the cheque.

(2) An indorser of a cheque may, by an express stipulation written on the cheque—

(a) negative or limit the indorser's liability on the cheque; or

(b) waive, as regards the indorser, the right to presentment of the cheque.

(3) A stipulation written on a cheque, being a stipulation of the kind referred to in sub-section (1), shall not be taken to affect the rights, duties and liabilities of the drawer and drawee bank in relation to one another.

Inchoate instruments

18. (1) Where the drawer of an instrument that is signed, but is otherwise wanting in a material particular necessary for the instrument to be, on its face, a complete cheque, delivers the instrument to another person in order that the instrument may be filled up as a complete cheque, any person in possession of the instrument shall be presumed, unless the contrary is proved, to have authority to fill up the instrument as a complete cheque in any way the person sees fit.

(2) Subject to sub-section (4), an instrument to which sub-section (1) applies is not enforceable against the drawer or a person who becomes an indorser of the instrument before the instrument is filled up as a complete cheque unless the instrument is filled up within a reasonable time and strictly in accordance with the authority given.

(3) Reasonable time, for the purposes of sub-section (2), is a question of fact.

(4) An instrument of the kind referred to in sub-section (1) that has been filled up as a complete cheque shall, as regards a holder in due course, be conclusively presumed—

- (a)** to have been delivered to another person in order that the instrument might be filled up as a complete cheque; and
- (b)** to have been filled up within a reasonable time and strictly in accordance with the authority given.

Division 2—Order and bearer cheques

Meaning of specification of person in cheque as payee or indorsee

19. (1) A person shall not be taken to be specified in a cheque as payee or indorsee unless the person—

- (a)** is named, or otherwise indicated with reasonable certainty, in the cheque; and
- (b)** is not a fictitious or non-existing person.

(2) Where the holder for the time being of an office is specified in a cheque as payee or indorsee, the person who is the holder for the time being of the office shall be taken to be named in the cheque as payee or indorsee, as the case may be.

Cheques either payable to order or to bearer

20. A cheque is either payable to order or payable to bearer.

Cheques payable to order

21. A cheque is payable to order if the cheque is expressed, whether originally or by indorsement, to require the drawee bank to pay the sum ordered to be paid by the cheque to or to the order of, and only to or to the order of—

- (a)** a person specified in the cheque as payee or indorsee; or

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- (b) 2 or more persons specified in the cheque, jointly or in the alternative, as payee or indorsee.

Cheques payable to bearer

22. Where a cheque is not payable to order, the cheque—

- (a) is a cheque payable to bearer; and
- (b) shall be taken to require the drawee bank to pay the sum ordered to be paid by the cheque to bearer.

Conversion of cheque payable to bearer into cheque payable to order

23. (1) Where a cheque, as drawn, is payable to bearer, the holder may convert the cheque into a cheque payable to order by—

- (a) indorsing the cheque so that the cheque is expressed to require the drawee bank to pay the sum ordered to be paid by the cheque to or to the order of, and only to or to the order of—
 - (i) a person specified in the cheque as indorsee; or
 - (ii) 2 or more persons specified in the cheque, jointly or in the alternative, as indorsee; and
- (b) clearly indicating on the front of the cheque (whether or not by striking out any reference to the cheque being payable to or to the order of bearer) that the cheque is payable to order.

(2) Where the only, or the last, indorsement of a cheque requires the drawee bank to pay the sum ordered to be paid by the cheque to bearer, the holder may, using the signature of the indorser, convert the cheque into a cheque payable to order by adding to, or altering, the indorsement so that the cheque is expressed to require the drawee bank to pay the sum ordered to be paid by the cheque to or to the order of, and only to or to the order of—

- (a) a person specified in the cheque as indorsee; or
- (b) 2 or more persons specified in the cheque, jointly or in the alternative, as indorsee.

Cheques payable to order of specified person

24. Where a cheque is expressed, whether originally or by indorsement, to be payable to the order of a person specified in the cheque as payee or indorsee and not to or to the order of the person, the cheque is nevertheless payable to the person or to the person's order, at the person's option.

Division 3—Delivery

Delivery essential for drawing or indorsement

25. A contract arising out of the drawing or an indorsement of a cheque is incomplete and revocable until delivery of the cheque.

Requisites for effective delivery

26. The delivery of a cheque is not effective to complete a contract arising out of the drawing or an indorsement of the cheque unless the delivery is made by the drawer or indorser, as the case may be, in order to give effect to the drawing or indorsement, as the case may be.

Drawing or indorsement may be shown to be ineffective

27. Subject to section 28, the delivery of a cheque by the drawer or an indorser may be shown to have been conditional, or for a special purpose only, and not in order to issue the cheque or transfer it by negotiation, as the case may be.

Presumption of effective delivery

28. (1) The drawer of a cheque shall—

- (a) as regards a holder in due course—be conclusively presumed to have made an effective delivery of the cheque so as to complete the drawer's contract on the cheque; and
- (b) as regards a holder who is not a holder in due course—be presumed, unless the contrary is proved, to have made an effective delivery of the cheque so as to complete the drawer's contract on the cheque.

(2) An indorser of a cheque shall—

- (a) as regards a holder in due course—
 - (i) where the holder in due course took the cheque from the indorser—be presumed, unless the contrary is proved, to have made an effective delivery of the cheque so as to complete the indorser's contract on the cheque; or
 - (ii) in any other case—be conclusively presumed to have made an effective delivery of the cheque so as to complete the indorser's contract on the cheque; and
- (b) as regards a holder who is not a holder in due course—be presumed, unless the contrary is proved, to have made an effective delivery of the cheque so as to complete the indorser's contract on the cheque.

(3) Nothing in this section affects the operation of sub-section 18 (1) or

(4) in relation to an instrument of the kind referred to in that first-mentioned sub-section.

Delivery of cheque payable to bearer

29. Where the holder of a cheque payable to bearer delivers the cheque to another person (whether or not the holder also indorses the cheque), the delivery of the cheque is effective to transfer the cheque by negotiation, whether or not the holder delivered the cheque to the other person in order to transfer the cheque by negotiation.

Division 4—Capacity

Capacity to incur liability on cheque

30. (1) Capacity to incur liability on a cheque is co-extensive with capacity to contract.

(2) Sub-section (1) does not enable a corporation to incur liability on a cheque if, but for that sub-section, it would not have capacity to incur liability on the cheque.

(3) Where a cheque is drawn or issued by a person who does not have capacity or power to incur liability on a cheque, the cheque is nevertheless a valid cheque.

(4) Where a cheque is indorsed by a person who does not have capacity or power to incur liability on a cheque, the indorsement is nevertheless effective as an indorsement of the cheque.

Division 5—Signature

Signature essential to liability on cheque

31. (1) Subject to this section and section 75, a person is not liable as the drawer or an indorser of a cheque unless the person signs the cheque as the drawer or an indorser, as the case may be.

(2) Where a person signs a cheque in the person's business name or trade name or in a name other than the person's own name, the person is liable on the cheque as if the person had signed it in the person's own name.

(3) The signature of the name of a firm on a cheque shall be deemed to be the signature, by the person signing, of the names of all persons liable as partners in the firm.

(4) Nothing in sub-section (1) affects the liability, under any other law of the Commonwealth or under a law of a State or Territory, of a person who signs, issues or authorizes to be signed or issued on behalf of a company a cheque, or an indorsement on a cheque, on which the name of the company does not appear in legible characters.

Unauthorized signature

32. (1) Where a signature is written or placed on a cheque as that of the drawer without the authority of the person whose signature it purports to be (in this sub-section referred to as the "relevant person"), the signature is wholly inoperative as that of the relevant person unless—

(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, as the case requires; or

(b) the signature is ratified or adopted by the relevant person, but the signature operates as the signature of the person who wrote or placed it on the cheque in favour of any person who, in good faith and

without notice that it had been written or placed on the cheque without the authority of the relevant person, pays the cheque or takes the cheque for value.

(2) Subject to sections 74 and 92, sub-section 93 (2), section 94 and sub-sections 95 (1) and (3), where a signature is written or placed on a cheque otherwise than as that of the drawer without the authority of the person whose signature it purports to be (in this sub-section referred to as the "relevant person"), the signature is wholly inoperative as that of the relevant person unless—

- (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, as the case requires; or
- (b) the signature is ratified or adopted by the relevant person,

but the signature operates as the signature of the person who wrote or placed it on the cheque in favour of any person who, in good faith and without notice that it had been written or placed on the cheque without the authority of the relevant person, pays the cheque or takes the cheque for value.

Person signing as agent or in representative capacity

33. (1) Where—

- (a) a person (in this sub-section referred to as the "signer") signs a cheque for or on behalf of a principal or in a representative capacity;
- (b) the signer adds words to the signature indicating that the signer signs for or on behalf of a principal or in a representative capacity; and
- (c) the person for or on whose behalf the signer signs the cheque is named, or otherwise indicated with reasonable certainty, in the cheque,

the signer is not personally liable on the cheque.

(2) Where—

- (a) a person (in this sub-section referred to as the "signer") signs a cheque and adds words to the signature indicating that the signer signs for or on behalf of a principal or in a representative capacity, but—
 - (i) the signer does not in fact sign for or on behalf of the principal or in the representative capacity, as the case may be; or
 - (ii) the person for or on whose behalf the signer signs the cheque is not named, or otherwise indicated with reasonable certainty, in the cheque; or
- (b) a person (in this sub-section also referred to as the "signer") signs a cheque and merely adds words to the signature describing the signer as an agent or as having a representative capacity,

the addition of those words does not prevent the signer from being personally liable on the cheque.

Procurator signature

34. Where an agent writes or places a signature by procurator on a cheque—

- (a) the signature operates as notice that the agent has only limited authority to sign for the agent's principal; and
- (b) the principal is not bound by the signature unless the agent, in signing the cheque, acts within the limits of the agent's actual authority.

Division 6—Consideration

Valuable consideration defined

35. (1) Valuable consideration for a cheque may be constituted by—

- (a) any consideration sufficient to support a simple contract; or
- (b) an antecedent debt or liability.

(2) An antecedent debt or liability may constitute valuable consideration for a cheque whether or not the cheque is post-dated.

Presumption of value

36. The drawer and each indorser of a cheque shall, unless the contrary is proved, be presumed to have received value for the cheque.

Holder taking cheque for which value has been given

37. Where value has at any time been given for a cheque, the holder shall, as regards the drawer and indorsers who became indorsers before that time, be conclusively presumed to have taken the cheque for value.

Holder having lien

38. A holder of a cheque who has a lien on the cheque (whether arising from contract or by operation of law) shall, to the extent of the amount for which the holder has the lien, be conclusively presumed to have taken the cheque for value.

PART III—NEGOTIABILITY OF CHEQUES

Division 1—Transfer by negotiation

Every cheque transferable by negotiation

39. (1) Every cheque may be transferred by negotiation until it is discharged.

(2) Sub-section (1) has effect in relation to a cheque notwithstanding anything written or placed on the cheque.

(3) Without limiting the generality of sub-section (2), the crossing of a cheque does not affect the transferability of the cheque by negotiation.

(4) Nothing in this section affects the transferability of a cheque otherwise than by negotiation.

Transfer of cheque by negotiation

40. (1) The transfer of a cheque by negotiation is the transfer of the cheque from the holder to another person in such manner as to constitute the other person the holder.

(2) A cheque payable to order is transferred by negotiation if—

(a) it is indorsed by the holder; and

(b) the cheque is delivered so as to complete the contract arising out of the indorsement.

(3) A cheque payable to bearer is transferred by negotiation if it is delivered by the holder to another person (whether or not the cheque is indorsed by the holder).

Requisites for indorsement

41. (1) An indorsement of a cheque is not effective to transfer the cheque by negotiation unless—

(a) the indorsement is written or placed on the cheque and signed by the indorser; and

(b) the indorsement is an indorsement of the entire cheque.

(2) An indorsement written or placed on an allonge to a cheque shall be taken to be written or placed, as the case may be, on the cheque.

(3) A mere signature on a cheque is, in point of form, sufficient for an indorsement of the cheque.

(4) Without limiting the generality of paragraph (1) (b), an indorsement of a cheque that purports to transfer a part only of the sum ordered to be paid by the cheque is not effective to transfer the cheque by negotiation.

Transfer of order cheque without indorsement

42. (1) Where the holder of a cheque payable to order, without indorsing the cheque, delivers the cheque, for value, to another person in order to transfer the cheque by negotiation, the other person, by virtue of the delivery—

(a) receives the title that the holder had in the cheque; and

(b) acquires the right to have the holder indorse the cheque to the other person.

(2) Without limiting the generality of sub-section 17 (2), where a person is under an obligation by virtue of sub-section (1) to indorse a cheque as an agent or in a representative capacity, the person may indorse the cheque in terms negating the person's own liability on the cheque.

Indorsement of order cheque payable jointly to 2 or more persons

43. Where a cheque payable to order is expressed to require the drawee bank to pay the sum ordered to be paid by the cheque jointly to or to the order of 2 or more payees or indorsees who are not partners, all those persons must indorse the cheque in order to transfer the cheque by negotiation unless the person indorsing has, or the persons indorsing between them have, authority to sign for the person, or all the persons, not indorsing the cheque.

Indorsement where payee or indorsee misdescribed

44. Where, in a cheque payable to order—

- (a) the payee or an indorsee is wrongly designated; or
- (b) the name of the payee or an indorsee is misspelt,

the payee or indorsee, as the case may be (in this section referred to as the “relevant person”), may indorse the cheque by indorsing the cheque in accordance with the designation or spelling in the cheque and, if the relevant person does so, the relevant person shall also add the relevant person’s proper signature.

Conditional indorsement

45. Where an indorsement of a cheque purports to be conditional—

- (a) the indorsement is effective as an indorsement of the cheque, whether or not the condition is fulfilled;
- (b) a person paying the cheque may disregard the condition and may pay the cheque to the indorsee or a subsequent holder, whether or not the condition is fulfilled; and
- (c) the fact that the indorsement purports to be conditional shall be disregarded for the purpose of determining whether the holder is a holder in due course.

Transfer of stale or dishonoured cheque by negotiation

46. (1) Where a stale cheque is transferred by negotiation to a person, the person—

- (a) takes the cheque subject to any defect of title affecting the cheque at the time when the cheque became a stale cheque; and
- (b) does not receive, and is not capable of giving, a better title to the cheque than the title that the person from whom the first-mentioned person took the cheque had.

(2) Where—

- (a) a cheque that has been dishonoured is transferred by negotiation to a person who takes the cheque with notice of the dishonour; and
- (b) the cheque is not a stale cheque at the time of the transfer,

the person takes the cheque subject to any defect of title affecting the cheque at the time when the cheque was dishonoured.

(3) Where a cheque is a stale cheque, every transfer of the cheque by negotiation shall, unless the contrary is proved, be presumed to have been effected before the cheque became a stale cheque.

Transfer by negotiation back to drawer or indorser

47. (1) Where a cheque is transferred by negotiation back to the drawer, the drawer—

- (a) may strike out the indorsements (if any) of the cheque; and
- (b) may, whether or not the indorsements have been struck out, re-issue the cheque, but is not entitled to enforce payment against any person to whom the drawer was previously liable.

(2) Where a cheque is transferred by negotiation back to an indorser, the indorser—

- (a) may strike out the indorser's own indorsement and subsequent indorsements (if any); and
- (b) may, whether or not the indorser's own indorsement and subsequent indorsements have been struck out, further transfer the cheque by negotiation, but is not entitled to enforce payment against any person to whom the indorser was previously liable.

Order of indorsements

48. Where there are 2 or more indorsements of a cheque, the indorsements shall, unless the contrary is proved, be presumed to have been made in the order (if any) in which they appear on the cheque.

Rights acquired by transfer by negotiation

49. (1) The holder of a cheque may sue on the cheque in the holder's own name.

(2) A holder of a cheque who is a holder in due course—

- (a) holds the cheque free from any defect in the title of prior indorsers as well as from mere personal defences available to the drawer and prior indorsers against one another; and
- (b) may enforce payment of the cheque against any person liable on the cheque.

(3) Where—

- (a) the title of the holder of a cheque is defective; and
- (b) the holder transfers the cheque by negotiation to a holder in due course,

the holder in due course receives a good and complete title to the cheque.

Division 2—Holder in due course

Holder in due course defined

50. (1) The holder of a cheque is a holder in due course if—

- (a) the cheque was transferred by negotiation to the holder and, at the time when the holder took the cheque, the cheque—

- (i) was complete and regular on the face of it;
 - (ii) was not a stale cheque; and
 - (iii) did not bear a crossing of the kind referred to in paragraph 53 (1) (b); and
- (b) the holder took the cheque—
- (i) in good faith;
 - (ii) for value; and
 - (iii) without notice—
 - (A) of any dishonour of the cheque; or
 - (B) of any defect in the title of the person who transferred the cheque to the holder or that the person who transferred the cheque to the holder had no title to the cheque.

(2) Without limiting the generality of paragraph (1) (b), the holder of a cheque shall, for the purposes of that paragraph, be deemed to have taken the cheque with notice of a defect in the title of the person who transferred the cheque to the holder if the holder took the cheque with notice that the person transferred the cheque to the holder in breach of faith or under circumstances amounting to a fraud.

Presumption that holder is holder in due course

51. (1) Subject to sub-section (2), the holder of a cheque shall, unless the contrary is proved, be presumed to be a holder in due course.

(2) Where, in an action or proceeding on a cheque, it is admitted or proved that the drawing or issue, or a transfer by negotiation, of the cheque is affected by fraud, duress or illegality, the holder shall not be presumed, by virtue of sub-section (1), to be a holder in due course unless and until the holder proves that, after the alleged fraud, duress or illegality, value was, in good faith, given for the cheque.

Holder deriving title through holder in due course

52. A holder of a cheque (whether or not the holder took the cheque for value) who—

- (a) derives title to the cheque through a holder in due course; and
 - (b) is not a party to any fraud, duress or illegality affecting the cheque,
- has, as regards the drawer and the indorsers prior to the holder in due course, all the rights of the holder in due course.

Division 3—Crossings

Crossing and crossed cheque defined

53. (1) Where a cheque clearly bears across the front of the cheque the addition of—

- (a) 2 parallel transverse lines; or

(b) 2 parallel transverse lines with the words “not negotiable” between, or substantially between, the lines,
the addition is a crossing of the cheque, and the cheque is a crossed cheque.

(2) Nothing written or placed on a cheque, other than an addition of a kind referred to in sub-section (1), is effective as a crossing of the cheque.

(3) Without limiting the generality of sub-section (2), the addition of the words “not negotiable” to a cheque otherwise than between, or substantially between, 2 parallel transverse lines across the front of the cheque is not effective as a crossing of the cheque.

Effect of crossing on payment of cheque

54. A crossing of a cheque has effect as a direction by the drawer to the drawee bank not to pay the cheque otherwise than to a bank.

Effect of taking cheque crossed “not negotiable”

55. Where a cheque that bears a crossing of the kind referred to in paragraph 53 (1) (b) is transferred by negotiation to a person, the person does not receive, and is not capable of giving, a better title to the cheque than the title that the person from whom the first-mentioned person took the cheque had.

Persons who may add crossing to cheque

56. A crossing may be added to a cheque by—

- (a) the drawer; or
- (b) any other person in possession of the cheque.

Multiple crossings

57. (1) A person in possession of a cheque may add a crossing to the cheque notwithstanding that, when the cheque came into the person’s possession, a crossing had already been added to the cheque.

(2) A person in possession of a cheque that, when it came into the person’s possession, bore across the front of the cheque 2 parallel transverse lines, without the words “not negotiable” between, or substantially between, the lines, may add those words between, or substantially between, the lines.

PART IV—PRESENTMENT AND DISHONOUR

Division 1—Presentment

Drawer and indorsers of cheque not liable unless cheque presented

58. Subject to section 59, a person who is the drawer or an indorser of a cheque is not liable on the cheque unless the cheque is duly presented for payment.

When presentment dispensed with

59. Presentment of a cheque for payment is dispensed with—

- (a) where the cheque cannot, with the exercise of reasonable diligence, be duly presented;
- (b) as regards the drawer, in the following cases, namely:
 - (i) where—
 - (A) the drawee bank is not, as between the drawer and itself, under an obligation to pay the cheque; and
 - (B) the drawer had no reason to believe, at the time of the issue of the cheque, that the cheque would be paid if duly presented;
 - (ii) where the drawer has, expressly or by implication, waived the right to presentment; or
- (c) as regards an indorser, where the indorser has, expressly or by implication, waived the right to presentment.

Effect of failure to present within reasonable time

60. (1) Where—

- (a) a cheque is not duly presented for payment within a reasonable time after its issue;
- (b) the drawee bank becomes insolvent after the issue of the cheque;
- (c) the drawer is, by reason of the insolvency of the drawee bank, unable to obtain payment from the drawee bank of the whole or a part of funds maintained with the drawee bank to meet the cheque; and
- (d) the drawer assigns to the holder the drawer's rights against the drawee bank in respect of those funds or that part of those funds, as the case may be,

the drawer is not liable on the cheque to the extent of those funds or that part of those funds, as the case may be.

(2) Due presentment of a cheque for payment is not effective to render an indorser liable on the cheque unless the presentment is effected within a reasonable time after its indorsement by the indorser.

(3) In determining what is a reasonable time for the purposes of subsection (1) or (2), regard shall be had to—

- (a) the fact that the instrument is a cheque and that it is reasonable to expect a cheque to be presented for payment promptly;
- (b) usage, including the usage of trade and banks, in relation to the presentment of cheques; and
- (c) the facts of the particular case, including—
 - (i) the nature of the cheque and, in particular, but without limiting the generality of the foregoing, the date of the cheque (if any) and the sum ordered to be paid by the cheque; and

- (ii) whether any delay in presenting the cheque for payment was—
 - (A) caused by circumstances beyond the control of the holder; and
 - (B) not imputable to default, misconduct or negligence on the part of the holder.

Due presentment defined

61. (1) Subject to sub-section (2), a cheque is duly presented for payment if a demand for payment of the cheque is made, in accordance with section 62 or 63, on the drawee bank by or on behalf of the holder.

(2) Where a demand for payment of a cheque is made before the date of the cheque arrives, the cheque shall not, by reason of the demand, be taken to have been duly presented for payment.

Presentment by bank

62. (1) A bank (in this section referred to as the “collecting bank”) may, on behalf of a customer, another financial institution or otherwise, present a cheque for payment by making a demand for payment of the cheque on the drawee bank at—

- (a) the proper place in relation to the cheque; or
- (b) a place that is a designated place in relation to the cheque for the purposes of this sub-section,

at a reasonable hour on a day on which the drawee bank is open for business at the place at which the demand is made.

(2) The demand may be made by exhibiting the cheque to the drawee bank or by any other means.

(3) Where the cheque is not exhibited to the drawee bank, the demand shall—

- (a) identify the cheque with reasonable certainty; and
- (b) be in a form that is intelligible to, or readily decipherable by, the drawee bank.

(4) Without limiting the generality of sub-section (3), the demand shall, for the purposes of that sub-section, be taken to identify the cheque with reasonable certainty if—

- (a) the sum ordered to be paid by the cheque;
- (b) the cheque number;
- (c) the account against which the cheque is drawn; and
- (d) the proper place in relation to the cheque,

are specified in the demand or are readily ascertainable by the drawee bank from the demand.

(5) Where the cheque is not exhibited to the drawee bank, the drawee bank—

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- (a) may request the collecting bank to furnish specified further particulars in relation to the cheque to it; or
- (b) may, whether or not a request has been made by virtue of paragraph (a), request the collecting bank to exhibit the cheque, or a copy of the cheque of a specified kind, to it.

(6) The request may be made to the collecting bank at a place that is a designated place in relation to the cheque for the purposes of this sub-section, by any means, at a reasonable hour on a day on which the collecting bank is open for business at the place at which the request is made.

(7) The request shall—

- (a) identify the cheque with reasonable certainty; and
- (b) be in a form that is intelligible to, or readily decipherable by, the collecting bank.

(8) Without limiting the generality of sub-section (7), the request shall, for the purposes of that sub-section, be taken to identify the cheque with reasonable certainty if—

- (a) the sum ordered to be paid by the cheque;
- (b) the cheque number;
- (c) the account against which the cheque is drawn; and
- (d) the proper place in relation to the cheque,

are specified in the request or are readily ascertainable by the collecting bank from the request.

(9) Where the drawee bank makes a request in relation to the cheque, the collecting bank may—

- (a) furnish the further particulars; or
- (b) exhibit the cheque or a copy of the cheque of the specified kind,

as the case requires, to the drawee bank at—

- (c) the proper place in relation to the cheque; or
- (d) a place that is a designated place in relation to the cheque for the purposes of this sub-section,

at a reasonable hour on a day on which the drawee bank is open for business at the place at which the particulars are furnished, or the cheque or copy exhibited, as the case may be.

(10) Where the drawee bank makes a request by virtue of paragraph (5) (a) in relation to the cheque, the further particulars may be furnished to the drawee bank by any means.

(11) In furnishing the further particulars, the collecting bank shall—

- (a) identify the request with reasonable certainty; and
- (b) provide the further particulars,

in a form that is intelligible to, or readily decipherable by, the drawee bank.

(12) Where a cheque is presented for payment otherwise than by exhibiting it to the drawee bank, nothing in this section shall be taken to relieve the drawee bank from any liability to which the drawee bank would have been subject in relation to the cheque if it had been presented by being exhibited to the drawee bank.

Presentment by person other than bank

63. A person other than a bank may present a cheque for payment by exhibiting the cheque, in person, to the drawee bank at the proper place in relation to the cheque at a reasonable hour on a day on which the drawee bank is open for business at the place at which the cheque is exhibited.

Proper place

64. The proper place in relation to a cheque is—

- (a) in a case where there is specified in the cheque a place of business of the drawee bank—that place; or
- (b) in any other case—the place of business of the branch of the drawee bank at which the account on which the cheque is drawn is maintained.

Designated places

65. (1) A bank may, by notice in the prescribed form published in the *Gazette*, specify a place as a designated place in relation to cheques for the purposes of this Act.

(2) The notice shall specify—

- (a) one or more of the following, namely:
 - (i) the cheques in relation to which the place is to be a designated place for the purpose of sub-section 62 (1);
 - (ii) the cheques in relation to which the place is to be a designated place for the purpose of sub-section 62 (6);
 - (iii) the cheques in relation to which the place is to be a designated place for the purpose of sub-section 62 (9);
- (b) the days on which, and the hours during which, the bank will be open for business at the place; and
- (c) the means by which communications may be made to the bank at the place.

(3) The notice has effect on and from the day on which the notice is published in the *Gazette* or such later day as is specified in the notice.

Deposit bank to present cheques promptly

66. (1) Subject to section 59, where the holder of a cheque lodges the cheque with a bank (in this section referred to as the “deposit bank”) for collection for the holder, the deposit bank shall duly present the cheque for payment itself, or ensure that the cheque is duly presented for payment on its behalf, as soon as is reasonably practicable and, if the deposit bank fails to do so, it is liable to the holder for any loss that the holder thereby suffers.

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(2) Where the drawee bank makes a request under sub-section 62 (5) in relation to the cheque, the cheque shall, for the purposes of sub-section (1), be deemed not to have been duly presented for payment unless, and until, the request is complied with.

(3) In determining, for the purposes of sub-section (1), whether the deposit bank failed to duly present the cheque for payment itself, or to ensure that the cheque was duly presented for payment on its behalf, as soon as was reasonably practicable, regard shall be had to—

- (a) the fact that the instrument is a cheque and that it is reasonable to expect a cheque to be presented for payment promptly;
- (b) the means that were available to it for duly presenting the cheque itself and the means that were available to it for having the cheque duly presented on its behalf;
- (c) the relative speed, reliability and cost of those means;
- (d) the usage of banks in relation to the presentment of cheques;
- (e) in a case where a request under sub-section 62 (5) was made in relation to the cheque—the following matters, namely:
 - (i) the making of the request;
 - (ii) the nature of the request;
 - (iii) whether the request was made to the deposit bank or to another bank acting on its behalf in relation to the presentment of the cheque;
 - (iv) if the request was made to another bank acting on its behalf in relation to the presentment of the cheque—whether or not the other bank had actual possession of the cheque;
 - (v) whether or not the request was complied with;
 - (vi) if the request was complied with—the time within which the request was complied with and the means by which the request was complied with;
 - (vii) the means that were available for complying with the request;
 - (viii) the relative speed, reliability and cost of those means;
 - (ix) the usage of banks in relation to requests under sub-section 62 (5); and
- (f) any other facts of the particular case, including—
 - (i) the nature of the cheque and, in particular, but without limiting the generality of the foregoing, the date of the cheque (if any) and the sum ordered to be paid by the cheque; and
 - (ii) whether any delay in presenting the cheque was—
 - (A) caused by circumstances beyond the control of the deposit bank; and
 - (B) not imputable to default, misconduct or negligence on the part of the deposit bank.

Drawee bank to pay or dishonour promptly

67. (1) Where a cheque is duly presented for payment, the drawee bank shall either pay or dishonour the cheque as soon as is reasonably practicable and, if the drawee bank fails to do so, then, unless it has become aware of a defect in the holder's title or that the holder has no title to the cheque, the drawee bank—

- (a) may not dishonour the cheque; and
- (b) is liable to pay the cheque to the holder.

(2) In determining, for the purposes of sub-section (1), whether the drawee bank failed to pay or dishonour the cheque as soon as was reasonably practicable, regard shall be had to—

- (a) the fact that the instrument is a cheque and that it is reasonable to expect a cheque that has been duly presented for payment to be either paid or dishonoured promptly;
- (b) the means by which, and the place at which, the cheque was presented;
- (c) the means that were available to it for paying or dishonouring the cheque;
- (d) the relative speed, reliability and cost of those means;
- (e) the usage of banks in relation to the payment and dishonour of cheques;
- (f) in a case where a request under sub-section 62 (5) was made by it in relation to the cheque—the following matters, namely:
 - (i) the making of the request;
 - (ii) the nature of the request;
 - (iii) the time within which the request was made;
 - (iv) the means by which the request was made;
 - (v) the means that were available to it for making the request;
 - (vi) the relative speed, reliability and cost of those means;
 - (vii) whether or not the request was complied with;
 - (viii) if the request was complied with—the time within which the request was complied with;
 - (ix) if the request was a request to furnish further particulars and the request was complied with—the nature of the particulars furnished to it;
 - (x) the usage of banks in relation to the making of requests under sub-section 62 (5); and
- (g) any other facts of the particular case, including—
 - (i) the nature of the cheque; and
 - (ii) whether any delay in paying or dishonouring the cheque was—
 - (A) caused by circumstances beyond the control of the drawee bank; and

- (B) not imputable to default, misconduct or negligence on the part of the drawee bank.

How paid cheque to be dealt with

68. (1) Where—

- (a) a cheque is duly presented for payment by exhibiting the cheque to the drawee bank; and
- (b) the drawee bank pays the cheque,

the drawee bank has, as against the person who presented the cheque, the right to possession of the cheque.

(2) Where—

- (a) a cheque is duly presented for payment by a bank (in this sub-section referred to as the “collecting bank”) otherwise than by exhibiting the cheque to the drawee bank;
- (b) the cheque is exhibited to the drawee bank pursuant to a request under sub-section 62 (5); and
- (c) the drawee bank pays the cheque,

the drawee bank has, as against the collecting bank and any financial institution on whose behalf the collecting bank duly presented the cheque, the right to possession of the cheque.

(3) Where—

- (a) a cheque is duly presented for payment by a bank (in this sub-section and sub-section (4) referred to as the “collecting bank”) otherwise than by exhibiting the cheque to the drawee bank;
- (b) the cheque is not exhibited to the drawee bank pursuant to a request under sub-section 62 (5);
- (c) the drawee bank pays the cheque; and
- (d) the cheque is in the actual possession of the collecting bank or another financial institution on whose behalf the collecting bank duly presented the cheque,

the collecting bank or other financial institution, as the case requires (in sub-section (4) referred to as the “relevant financial institution”), shall—

- (e) subject to sub-section (4), retain the cheque, on behalf of the drawee bank, for such period as is prescribed; and
- (f) at the expiration of that period, deal with the cheque in accordance with the regulations.

(4) The drawee bank may, at any time while the cheque is being retained by the relevant financial institution in accordance with sub-section (3), request the relevant financial institution to deliver up the cheque to it and the relevant financial institution shall forthwith comply with the request.

(5) Nothing in sub-section (3) shall be taken to affect a right that a person has, as against the drawee bank, to possession of the cheque.

(6) Where a cheque is paid otherwise than by the drawee bank, the person paying the cheque has, as against the person paid, the right to possession of the cheque.

Division 2—Dishonour

Dishonour defined

69. A cheque is dishonoured if the cheque is duly presented for payment and payment is refused by the drawee bank, being a refusal that is communicated by the drawee bank to the holder or the person who presented the cheque on the holder's behalf.

Drawer and indorsers of cheque liable whether or not given notice of dishonour

70. A person who is the drawer or an indorser of a cheque that has been dishonoured is liable on the cheque whether or not the person is given notice by any person of the dishonour.

PART V—LIABILITIES ON CHEQUES

Division 1—Liabilities of parties

Liability of drawer

71. Subject to sub-section 17 (1), section 59 and sub-section 60 (1), the drawer of a cheque, by drawing the cheque, undertakes—

- (a) that, on due presentment for payment, the cheque will be paid according to its tenor as drawn; and
- (b) that—
 - (i) if the cheque is dishonoured when duly presented for payment; or
 - (ii) if presentment of the cheque for payment is dispensed with by virtue of paragraph 59 (a) and the cheque is unpaid after its date has arrived,

the drawer will compensate the holder or an indorser who is compelled to pay the cheque.

Estoppel against drawer

72. The drawer of a cheque, by issuing the cheque, is estopped from denying to a holder in due course that the cheque was, at the time when the cheque was issued, a valid cheque.

Liability of indorser

73. Subject to sub-section 17 (2), section 59 and sub-section 60 (2), an indorser of a cheque, by indorsing the cheque, undertakes—

- (a) that, on due presentment for payment, the cheque will be paid according to its tenor as indorsed by the indorser; and
- (b) that—

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- (i) if the cheque is dishonoured when duly presented for payment; or
- (ii) if presentment of the cheque for payment is dispensed with by virtue of paragraph 59 (a) and the cheque is unpaid after its date has arrived,

the indorser will compensate the holder or a subsequent indorser who is compelled to pay the cheque.

Estoppels against indorser

74. (1) An indorser of a cheque, by indorsing the cheque, is estopped—

- (a) from denying to a holder in due course the genuineness and regularity, in all respects, of the drawer's signature and all previous indorsements; and
- (b) from denying to the indorsee to whom the indorser indorsed the cheque or a subsequent indorsee or to a holder who is not an indorsee—
 - (i) that the cheque was, at the time when the indorser indorsed it, a valid and undischarged cheque; and
 - (ii) that the indorser had, at that time, a good title to the cheque.

(2) The reference in paragraph (1) (a) to a holder in due course includes a reference to a person who, but for a signature being written or placed on the cheque without the authority of the person whose signature it purports to be, would be a holder in due course.

Stranger signing cheque liable as indorser

75. (1) Where a person signs a cheque, otherwise than as the drawer or an indorser, intending to become liable on the cheque, the provisions of this Act (other than sections 25, 26 and 27 and sub-section 28 (2)) apply, *mutatis mutandis*, to the person as if the person were an indorser and the person's signature were an indorsement.

(2) A person who signs a cheque shall, for the purposes of sub-section (1)—

- (a) as regards a holder in due course—be conclusively presumed to have signed the cheque intending to become liable on the cheque; or
- (b) as regards a holder who is not a holder in due course—be presumed, unless the contrary is proved, to have signed the cheque intending to become liable on the cheque,

unless it is apparent, on the face of the cheque, that the person did not sign the cheque intending to become liable on the cheque.

Measure of damages on dishonour

76. (1) Subject to sub-section (2), where a cheque is dishonoured, the holder may recover as damages from any person liable on the cheque, and an indorser who has been compelled to pay the cheque may recover as damages from the drawer or a prior indorser—

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- (a) if the cheque is dishonoured in Australia—
 - (i) the sum ordered to be paid by the cheque; and
 - (ii) the amount of any interest that, in accordance with the regulations, is payable in respect of that sum; and
- (b) if the cheque is dishonoured outside Australia—
 - (i) the amount of the re-exchange of the cheque; and
 - (ii) the amount of any interest that, in accordance with the regulations, is payable in respect of that amount.

(2) Where an action or proceeding is brought in a court for the recovery of damages under sub-section (1), the court may, if it is of the opinion that justice so requires, direct that interest payable under that sub-section be withheld in whole or in part.

(3) Damages recoverable under sub-section (1) shall be deemed to be liquidated damages.

Transferor by delivery

77. (1) A transferor by delivery is a holder of a cheque payable to bearer who transfers the cheque by negotiation without indorsing the cheque.

(2) A transferor by delivery is not liable on the cheque.

(3) Where the person to whom a transferor by delivery transfers the cheque by negotiation takes the cheque for value, the transferor by delivery warrants to the person—

- (a) that the cheque is what it purports to be;
- (b) that the transferor by delivery has the right to transfer the cheque by negotiation; and
- (c) that the transferor by delivery is not, at the time of the transfer, aware of any fact that renders the cheque valueless.

Division 2—Discharge of liabilities of parties

When cheque discharged

78. (1) A cheque is discharged if—

- (a) the cheque is paid in due course by the drawee bank;
- (b) subject to section 80, the holder, at any time, absolutely and unconditionally renounces the holder's rights against the drawer or all persons liable on the cheque; or
- (c) subject to sub-section 81 (1), the holder intentionally cancels the cheque or the drawer's signature and the cancellation is apparent from the cheque.

(2) A cheque is also discharged if the cheque is fraudulently and materially altered by the holder.

(3) Nothing in this section affects the discharge of a cheque otherwise than in accordance with this section.

Payment in due course

79. A cheque is paid in due course if the cheque is paid to the holder in good faith and without notice of any defect in the holder's title or that the holder had no title to the cheque.

Renunciation of rights against drawer or all persons liable on cheque

80. The renunciation by the holder of a cheque of the holder's rights against the drawer or all persons liable on the cheque does not discharge the cheque unless the renunciation is completed by delivery of the cheque to the drawer by the holder in order to give effect to the renunciation.

Cancellation of cheque or drawer's signature

81. (1) The cancellation of a cheque, or the drawer's signature on a cheque, does not discharge the cheque if the cancellation is made under a mistake of fact.

(2) Where a cheque, or the drawer's signature on a cheque, has been cancelled, the cancellation shall, unless the contrary is proved, be presumed—

- (a) to have been made intentionally by a holder; and
- (b) not to have been made under a mistake of fact.

Effect of discharge of cheque

82. (1) Subject to sub-sections (2) and (3), where a cheque is discharged under sub-section 78 (1) or (2), all rights on the cheque are extinguished.

(2) Where—

- (a) a cheque is discharged by virtue of paragraph 78 (1) (b) by the renunciation of the holder's rights against the drawer or all persons liable on the cheque;
- (b) a person takes the cheque without notice of the renunciation; and
- (c) the person would, but for the discharge of the cheque, be a holder in due course of the cheque,

the person may enforce payment of the cheque as if the cheque had not been discharged.

(3) Where a cheque is discharged under sub-section 78 (2) by an alteration of the cheque, then—

- (a) a person who, but for the discharge of the cheque, would be the holder may enforce payment of the cheque, according to the tenor of the cheque as altered, against—
 - (i) the person who made the alteration;
 - (ii) a person who authorized or agreed to the alteration; or
 - (iii) a person who indorsed the cheque after the alteration was made,

as if the cheque had not been discharged; and

- (b) in a case where the alteration is not apparent—a person who, but for the discharge of the cheque, would be a holder in due course

may enforce payment of the cheque, according to the original tenor of the cheque, against any other person as if the cheque had not been discharged.

(4) Sub-section (1) shall not be taken to limit by implication the effects of the discharge of a cheque.

When indorser discharged

83. (1) An indorser of a cheque is discharged if—

- (a) subject to section 84, the holder, at any time, absolutely and unconditionally renounces the holder's rights against the indorser; or
- (b) subject to sub-section 85 (1), the holder intentionally cancels the indorser's signature and the cancellation is apparent from the cheque.

(2) Where an indorser is discharged by virtue of paragraph (1) (a) or (b), any indorser who would have had a right of recourse against the first-mentioned indorser is also discharged.

(3) Nothing in this section affects the discharge of an indorser otherwise than in accordance with this section.

Renunciation of rights against indorser

84. The renunciation by the holder of a cheque of the holder's rights against an indorser does not discharge the indorser unless the renunciation is in writing signed by the holder.

Cancellation of indorser's signature

85. (1) The cancellation of the signature of an indorser does not discharge the indorser if the cancellation is made under a mistake of fact.

(2) Where the signature of an indorser has been cancelled, the cancellation shall, unless the contrary is proved, be presumed—

- (a) to have been made intentionally by a holder; and
- (b) not to have been made under a mistake of fact.

Effect of discharge of indorser

86. (1) Subject to sub-section (2), where an indorser is discharged under sub-section 83 (1) or (2), all rights on the cheque against the indorser are extinguished.

(2) Where—

(a) an indorser is discharged—

- (i) by virtue of paragraph 83 (1) (a) by the renunciation of the holder's rights against the indorser; or
- (ii) under sub-section 83 (2) by the renunciation of the holder's rights against an indorser against whom the first-mentioned indorser would have had a right of recourse; and

(b) a person takes the cheque without notice of the renunciation,

the person may enforce payment of the cheque as if the first-mentioned indorser had not been discharged.

Effect of payment by drawer or indorser

87. (1) Where a cheque is paid by the drawer or an indorser (in this sub-section referred to as the "relevant party"), the cheque is not discharged and, if the cheque is a cheque payable to order and the cheque is not indorsed to the relevant party, the relevant party acquires the right to have the person who was paid indorse the cheque to the relevant party so as to transfer the cheque by negotiation to the relevant party.

(2) The reference in sub-section (1) to the drawer of a cheque does not include a reference to a drawer of a cheque who is also the drawee bank.

PART VI—DUTIES AND LIABILITIES OF BANKS

Division 1—The drawee bank

Cheque not assignment of funds

88. The drawing of a cheque does not, of itself, operate as an assignment of funds that are available, in the hands of the drawee bank, for the payment of the cheque.

Stale cheque

89. (1) Subject to sub-section (2), where a cheque becomes a stale cheque, the duty and authority of the drawee bank to pay the cheque are terminated.

(2) Sub-section (1) does not apply in relation to a cheque if—

- (a) the drawee bank is obliged, by an agreement with the drawer, to pay the cheque notwithstanding that it is a stale cheque; or
- (b) the drawer directs the drawee bank to pay the cheque notwithstanding that it is a stale cheque.

Countermand of payment and notice of death or mental incapacity

90. (1) Subject to sub-section (2), the duty and authority of a bank to pay a cheque drawn upon it are terminated by—

- (a) countermand of payment;
- (b) notice of the drawer's mental incapacity to incur liability on a cheque; or
- (c) notice of the drawer's death.

(2) Paragraph (1) (c) does not apply in relation to a cheque if—

- (a) not more than 10 days have elapsed since the day on which the drawee bank received notice of the customer's death; and
- (b) it has not received a countermand of payment from a person who claims that the person is, or will be—

- (i) entitled to administer the drawer's estate; or
- (ii) a beneficiary of the drawer's estate.

Protection of bank paying improperly raised cheque

91. Where—

- (a) a cheque is fraudulently altered so as to increase the sum ordered to be paid by the cheque;
- (b) the alteration is the only material alteration of the cheque made fraudulently; and
- (c) the drawee bank, in good faith and without negligence, pays the cheque to the holder,

the drawee bank may, without prejudice to any other rights that it may have against the drawer, debit the drawer's account according to the tenor of the cheque as drawn.

Protection of bank paying crossed cheque in accordance with crossing

92. Subject to sub-section 32 (1), where a bank, in good faith and without negligence, pays a crossed cheque drawn upon it to a bank, the bank shall be deemed to have paid the cheque in due course.

Payment of crossed cheque otherwise than in accordance with crossing

93. (1) Subject to sub-section (2), where a bank upon which a crossed cheque is drawn pays the cheque otherwise than to a bank, the bank is liable to the true owner of the cheque for any loss that the true owner suffers as a result of the cheque having been paid otherwise than to a bank.

(2) Subject to sub-section 32 (1), where—

- (a) a crossed cheque is presented for payment to the drawee bank;
- (b) the cheque, at the time of presentment, does not appear, on its face, to be, or at any time to have been, a crossed cheque; and
- (c) the bank, in good faith and without negligence, pays the cheque otherwise than to a bank,

the bank—

- (d) does not, in paying the cheque, incur any liability by reason only of its failure to pay the cheque to a bank; and
- (e) shall be deemed to have paid the cheque in due course.

Protection of bank paying cheque lacking indorsement or with irregular or unauthorized indorsement

94. (1) Subject to sub-section 32 (1), where—

- (a) a bank, in good faith and without negligence, pays a cheque drawn upon it, whether to a bank or otherwise; and
- (b) an indorsement has been written or placed on the cheque without the authority of the person whose indorsement it purports to be,

the bank—

- (c) does not, in paying the cheque, incur any liability by reason only of—
 - (i) the indorsement having been written or placed on the cheque without the authority of the person whose indorsement it purports to be; or
 - (ii) its failure to concern itself with the genuineness of, or the existence of authority for, the indorsement; and
- (d) shall be deemed to have paid the cheque in due course.

(2) Subject to sub-section 32 (1), where—

- (a) a bank, in good faith and without negligence, pays a cheque drawn upon it to a bank; and
- (b) the cheque is not indorsed or is irregularly indorsed, the bank—
 - (c) does not, in paying the cheque, incur any liability by reason only of the absence of, or the irregularity in, the indorsement; and
 - (d) shall be deemed to have paid the cheque in due course.

Division 2—The collecting bank

Protection of bank collecting cheque for customer or another bank

95. (1) Where—

- (a) a bank, in good faith and without negligence—
 - (i) receives payment of a cheque for a customer; or
 - (ii) receives payment of a cheque and, before or after receiving payment, credits a customer's account with the sum ordered to be paid by the cheque; and
- (b) the customer has no title, or has a defective title, to the cheque, the bank does not incur any liability to the true owner by reason only of having received payment of the cheque.

(2) Where—

- (a) a bank—
 - (i) receives payment of a cheque for a customer; or
 - (ii) receives payment of a cheque and, before or after receiving payment, credits a customer's account with the sum ordered to be paid by the cheque;
- (b) the cheque is a cheque drawn payable to order that has not been transferred by negotiation; and
- (c) the name specified in the cheque as the name of the payee—
 - (i) is the same as the name of the customer;
 - (ii) is the same as a business name or trade name of the customer; or
 - (iii) is so similar to the name of the customer, or a business name or trade name of the customer, that it is reasonable in all

the circumstances for the bank to have assumed that the customer was the person intended by the drawer to be the payee,

the bank shall not be treated, for the purposes of sub-section (1), as having been negligent by reason only of its failure to concern itself with the absence of, or irregularity in, an indorsement of the cheque by the customer.

(3) Where a bank, in good faith and without negligence, receives payment of a cheque for another bank, the bank does not incur any liability to the true owner by reason only of having received payment of the cheque.

(4) Where—

(a) a bank—

(i) receives payment of a cheque for another bank; and

(ii) before or after receiving payment of the cheque, pays the other bank the sum ordered to be paid by the cheque; and

(b) the cheque is a cheque drawn payable to order that has not been transferred by negotiation,

the first-mentioned bank shall not be treated, for the purposes of sub-section (3), as having been negligent by reason only of its failure to concern itself with the absence of, or irregularity in, an indorsement of the cheque.

Rights of bank collecting order cheque not indorsed by payee

96. Where—

(a) the payee of a cheque payable to order, without indorsing the cheque, lodges the cheque with a bank for collection for the payee; and

(b) the bank gives value for, or has a lien on, the cheque, the bank has such rights (if any) as it would have had if, before the lodgment of the cheque with it, the payee had indorsed the cheque in blank.

PART VII—SPECIAL PROVISIONS RELATING TO NON-BANK FINANCIAL INSTITUTIONS

Division 1—Presentment and collection of cheques by non-bank financial institutions

Non-bank financial institution to ensure cheques presented promptly

97. (1) Subject to section 59, where the holder of a cheque lodges the cheque with a non-bank financial institution for collection for the holder, the non-bank financial institution shall ensure that the cheque is duly presented for payment on its behalf as soon as is reasonably practicable and, if the non-bank financial institution fails to do so, it is liable to the holder for any loss that the holder thereby suffers.

(2) Where the drawee bank makes a request under sub-section 62 (5) in relation to the cheque, the cheque shall, for the purposes of sub-section (1),

be deemed not to have been duly presented for payment unless, and until, the request is complied with.

(3) In determining, for the purposes of sub-section (1), whether the non-bank financial institution failed to ensure that the cheque was duly presented for payment on its behalf as soon as was reasonably practicable, regard shall be had to—

- (a) the fact that the instrument is a cheque and that it is reasonable to expect a cheque to be presented for payment promptly;
- (b) the means that were available to it for having the cheque duly presented on its behalf;
- (c) the relative speed, reliability and cost of those means;
- (d) the usage of financial institutions in relation to the presentment of cheques;
- (e) in a case where a request under sub-section 62 (5) was made in relation to the cheque—the following matters, namely:
 - (i) the making of the request;
 - (ii) the nature of the request;
 - (iii) whether or not the bank to which the request was made had actual possession of the cheque;
 - (iv) whether or not the request was complied with;
 - (v) if the request was complied with—the time within which the request was complied with and the means by which the request was complied with;
 - (vi) the means that were available for complying with the request;
 - (vii) the relative speed, reliability and cost of those means;
 - (viii) the usage of financial institutions in relation to requests under sub-section 62 (5); and
- (f) any other facts of the particular case, including—
 - (i) the nature of the cheque and, in particular, but without limiting the generality of the foregoing, the date of the cheque (if any) and the sum ordered to be paid by the cheque; and
 - (ii) whether any delay in presenting the cheque was—
 - (A) caused by circumstances beyond the control of the non-bank financial institution; and
 - (B) not imputable to default, misconduct or negligence on the part of the non-bank financial institution.

Protection of non-bank financial institution collecting cheque for customer

98. (1) Where—

- (a) a non-bank financial institution, in good faith and without negligence—
 - (i) receives payment of a cheque for a customer; or

- (ii) receives payment of a cheque and, before or after receiving payment, credits a customer's account with the sum ordered to be paid by the cheque; and
- (b) the customer has no title, or has a defective title, to the cheque, the non-bank financial institution does not incur any liability to the true owner by reason only of having received payment of the cheque.

(2) Where—

- (a) a non-bank financial institution—
 - (i) receives payment of a cheque for a customer; or
 - (ii) receives payment of a cheque and, before or after receiving payment, credits a customer's account with the sum ordered to be paid by the cheque;
- (b) the cheque is a cheque drawn payable to order that has not been transferred by negotiation; and
- (c) the name specified in the cheque as the name of the payee—
 - (i) is the same as the name of the customer;
 - (ii) is the same as a business name or trade name of the customer; or
 - (iii) is so similar to the name of the customer, or a business name or trade name of the customer, that it is reasonable in all the circumstances for the non-bank financial institution to have assumed that the customer was the person intended by the drawer to be the payee,

the non-bank financial institution shall not be treated, for the purposes of sub-section (1), as having been negligent by reason only of its failure to concern itself with the absence of, or irregularity in, an indorsement of the cheque by the customer.

Rights of non-bank financial institution collecting order cheque not indorsed by payee

99. Where—

- (a) the payee of a cheque payable to order, without indorsing the cheque, lodges the cheque with a non-bank financial institution for collection for the payee; and
- (b) the non-bank financial institution gives value for, or has a lien on, the cheque,

the non-bank financial institution has such rights (if any) as it would have had if, before the lodgment of the cheque with it, the payee had indorsed the cheque in blank.

Division 2—Agency cheques

Agency cheques

100. (1) Where—

- (a) the drawer of a cheque is a non-bank financial institution; and

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- (b) the cheque was, at a time when it was wanting in a material particular necessary for it to be, on its face, a complete cheque, delivered by the non-bank financial institution to a customer pursuant to an agreement under which the customer was authorised to fill up the cheque,
then, unless the cheque is signed by the customer—
- (c) the customer is not liable on the cheque; and
- (d) the customer's account with the non-bank financial institution may not be debited with the sum ordered to be paid by the cheque.
- (2) If the cheque is signed by the customer, then—
- (a) as regards the holder or an indorser, the following provisions apply, namely:
 - (i) the non-bank financial institution shall be taken—
 - (A) not to have drawn the cheque; and
 - (B) not to have signed the cheque;
 - (ii) the customer shall be taken—
 - (A) to have drawn the cheque; and
 - (B) to have signed the cheque as drawer; and
- (b) as regards the customer, the non-bank financial institution shall be taken to have the same duties and liabilities, and the same rights, in relation to the cheque as it would have had if—
 - (i) the customer had drawn the cheque;
 - (ii) the cheque were addressed by the customer to the non-bank financial institution;
 - (iii) the cheque were drawn against the customer's account with the non-bank financial institution;
 - (iv) the non-bank financial institution were a bank;
 - (v) in a case where the drawee bank pays the cheque to a person—the non-bank financial institution had paid the cheque to the person; and
 - (vi) in a case where the drawee bank dishonours the cheque—the non-bank financial institution had dishonoured the cheque.

PART VIII—PAYMENT ORDERS

Division 1—General

Payment order defined

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

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(d) clearly bears the words “payment order” on the front of the instrument.

(2) An instrument that does not comply with sub-section (1), or that orders any act to be done in addition to the payment of money, is not a payment order.

Form of payment orders

102. In determining whether an instrument is a payment order, sections 11 to 15 (inclusive) and sub-section 16 (3) apply as if—

- (a) references in those provisions to a bank were references to a non-bank financial institution; and
- (b) the reference in sub-section 16 (3) to a cheque were a reference to a payment order.

Application of the rules of the common law

103. (1) The rules of the common law (including the law merchant) that apply in relation to cheques apply, *mutatis mutandis*, in relation to payment orders.

(2) For the purposes of the application of the rules of the common law in relation to payment orders, a member of a building society or credit union shall be taken to be a customer of the building society or credit union, as the case may be.

Application of Act to payment orders

104. (1) This Act (other than sections 10 to 15 (inclusive), sub-section 16 (3) and sections 61 to 68 (inclusive), 97 to 100 (inclusive), 117 and 118) applies, subject to the modifications set out in the Schedule, in relation to payment orders as if—

- (a) references (other than in this Part and the Schedule) to a cheque were references to a payment order; and
- (b) references (other than in the definitions of “bank” and “financial institution” in sub-section 3 (1), this Part and the Schedule) to a bank were references to a non-bank financial institution.

(2) Without limiting the generality of sub-section (1), sub-section 7 (4) and section 18 apply in relation to an instrument that is signed, but otherwise wanting in a material particular necessary for the instrument to be, on its face, a complete payment order, as if references in those provisions to a cheque were references to a payment order.

(3) For the purposes of the application of this Act in relation to payment orders in accordance with sub-section (1), a member of a building society or credit union shall be taken to be a customer of the building society or credit union, as the case may be.

Division 2—Presentment of payment orders

Due presentment of payment order defined

105. (1) Subject to sub-section (2), a payment order is duly presented for payment if a demand for payment of the payment order is made, in accordance with section 106 or 107, on the drawee non-bank financial institution by or on behalf of the holder.

(2) Where a demand for payment of a payment order is made before the date of the payment order arrives, the payment order shall not, by reason of the demand, be taken to have been duly presented for payment.

Presentment of payment order by financial institution

106. (1) A financial institution (in this section referred to as the “collecting financial institution”) may, on behalf of a customer, another financial institution or otherwise, present a payment order for payment by making a demand for payment of the payment order on the drawee non-bank financial institution at—

- (a) the proper place in relation to the payment order; or
- (b) a place that is a designated place in relation to the payment order for the purposes of this sub-section,

at a reasonable hour on a day on which the drawee non-bank financial institution is open for business at the place at which the demand is made.

(2) The demand may be made by exhibiting the payment order to the drawee non-bank financial institution or by any other means.

(3) Where the payment order is not exhibited to the drawee non-bank financial institution, the demand shall—

- (a) identify the payment order with reasonable certainty; and
- (b) be in a form that is intelligible to, or readily decipherable by, the drawee non-bank financial institution.

(4) Without limiting the generality of sub-section (3), the demand shall, for the purposes of that sub-section, be taken to identify the payment order with reasonable certainty if—

- (a) the sum ordered to be paid by the payment order;
- (b) the payment order number;
- (c) the account against which the payment order is drawn; and
- (d) the proper place in relation to the payment order,

are specified in the demand or are readily ascertainable by the drawee non-bank financial institution from the demand.

(5) Where the payment order is not exhibited to the drawee non-bank financial institution, the drawee non-bank financial institution—

- (a) may request the collecting financial institution to furnish specified further particulars in relation to the payment order to it; or

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- (b) may, whether or not a request has been made by virtue of paragraph (a), request the collecting financial institution to exhibit the payment order, or a copy of the payment order of a specified kind, to it.

(6) The request may be made to the collecting financial institution at a place that is a designated place in relation to the payment order for the purposes of this sub-section, by any means, at a reasonable hour on a day on which the collecting financial institution is open for business at the place at which the request is made.

(7) The request shall—

- (a) identify the payment order with reasonable certainty; and
- (b) be in a form that is intelligible to, or readily decipherable by, the collecting financial institution.

(8) Without limiting the generality of sub-section (7), the request shall, for the purposes of that sub-section, be taken to identify the payment order with reasonable certainty if—

- (a) the sum ordered to be paid by the payment order;
- (b) the payment order number;
- (c) the account against which the payment order is drawn; and
- (d) the proper place in relation to the payment order,

are specified in the request or are readily ascertainable by the collecting financial institution from the request.

(9) Where the drawee non-bank financial institution makes a request in relation to the payment order, the collecting financial institution may—

- (a) furnish the further particulars; or
- (b) exhibit the payment order or a copy of the payment order of the specified kind,

as the case requires, to the drawee non-bank financial institution at—

- (c) the proper place in relation to the payment order; or
- (d) a place that is a designated place in relation to the payment order for the purposes of this sub-section,

at a reasonable hour on a day on which the drawee non-bank financial institution is open for business at the place at which the particulars are furnished, or the payment order or copy exhibited, as the case may be.

(10) Where the drawee non-bank financial institution makes a request by virtue of paragraph (5) (a) in relation to the payment order, the further particulars may be furnished to the drawee non-bank financial institution by any means.

(11) In furnishing the further particulars, the collecting financial institution shall—

- (a) identify the request with reasonable certainty; and
- (b) provide the further particulars,

in a form that is intelligible to, or readily decipherable by, the drawee non-bank financial institution.

(12) Where a payment order is presented for payment otherwise than by exhibiting it to the drawee non-bank financial institution, nothing in this section shall be taken to relieve the drawee non-bank financial institution from any liability to which the drawee non-bank financial institution would have been subject in relation to the payment order if it had been presented by being exhibited to the drawee non-bank financial institution.

Presentation by person other than financial institution

107. A person other than a financial institution may present a payment order for payment by exhibiting the payment order, in person, to the drawee non-bank financial institution at the proper place in relation to the payment order at a reasonable hour on a day on which the drawee non-bank financial institution is open for business at the place at which the payment order is exhibited.

Proper place

108. The proper place in relation to a payment order is—

- (a) in a case where there is specified in the payment order a place of business of the drawee non-bank financial institution—that place; or
- (b) in any other case—the place of business of the branch of the drawee non-bank financial institution at which the account on which the payment order is drawn is maintained.

Designated places

109. (1) A financial institution may, by notice in the prescribed form published in the *Gazette*, specify a place as a designated place in relation to payment orders for the purposes of this Act.

(2) The notice shall specify—

- (a) one or more of the following, namely:
 - (i) the payment orders in relation to which the place is to be a designated place for the purpose of sub-section 106 (1);
 - (ii) the payment orders in relation to which the place is to be a designated place for the purpose of sub-section 106 (6);
 - (iii) the payment orders in relation to which the place is to be a designated place for the purpose of sub-section 106 (9);
- (b) the days on which, and the hours during which, the financial institution will be open for business at the place; and
- (c) the means by which communications may be made to the financial institution at the place.

(3) The notice has effect on and from the day on which the notice is published in the *Gazette* or such later day as is specified in the notice.

Deposit financial institution to present payment orders promptly

110. (1) Subject to section 59, where the holder of a payment order lodges the payment order with a financial institution (in this section referred to as the “deposit financial institution”) for collection for the holder, the deposit financial institution shall duly present the payment order for payment itself, or ensure that the payment order is duly presented for payment on its behalf, as soon as is reasonably practicable and, if the deposit financial institution fails to do so, it is liable to the holder for any loss that the holder thereby suffers.

(2) Where the drawee non-bank financial institution makes a request under sub-section 106 (5) in relation to the payment order, the payment order shall, for the purposes of sub-section (1), be deemed not to have been duly presented for payment unless, and until, the request is complied with.

(3) In determining, for the purposes of sub-section (1), whether the deposit financial institution failed to duly present the payment order for payment itself, or to ensure that the payment order was duly presented for payment on its behalf, as soon as was reasonably practicable, regard shall be had to—

- (a)** the fact that the instrument is a payment order and that it is reasonable to expect a payment order to be presented for payment promptly;
- (b)** the means that were available to it for duly presenting the payment order itself and the means that were available to it for having the payment order duly presented on its behalf;
- (c)** the relative speed, reliability and cost of those means;
- (d)** the usage of financial institutions in relation to the presentment of payment orders;
- (e)** in a case where a request under sub-section 106 (5) was made in relation to the payment order—the following matters, namely:
 - (i)** the making of the request;
 - (ii)** the nature of the request;
 - (iii)** whether the request was made to the deposit financial institution or to another financial institution acting on its behalf in relation to the presentment of the payment order;
 - (iv)** if the request was made to another financial institution acting on its behalf in relation to the presentment of the payment order—whether or not the other financial institution had actual possession of the payment order;
 - (v)** whether or not the request was complied with;
 - (vi)** if the request was complied with—the time within which the request was complied with and the means by which the request was complied with;
 - (vii)** the means that were available for complying with the request;
 - (viii)** the relative speed, reliability and cost of those means;

- (ix) the usage of financial institutions in relation to requests under sub-section 106 (5); and
- (f) any other facts of the particular case, including—
 - (i) the nature of the payment order and, in particular, but without limiting the generality of the foregoing, the date of the payment order (if any) and the sum ordered to be paid by the payment order; and
 - (ii) whether any delay in presenting the payment order was—
 - (A) caused by circumstances beyond the control of the deposit financial institution; and
 - (B) not imputable to default, misconduct or negligence on the part of the deposit financial institution.

Drawee non-bank financial institution to pay or dishonour payment orders promptly

111. (1) Where a payment order is duly presented for payment, the drawee non-bank financial institution shall either pay or dishonour the payment order as soon as is reasonably practicable and, if the drawee non-bank financial institution fails to do so, then, unless it has become aware of a defect in the holder's title or that the holder has no title to the payment order, the drawee non-bank financial institution—

- (a) may not dishonour the payment order; and
- (b) is liable to pay the payment order to the holder.

(2) In determining, for the purposes of sub-section (1), whether the drawee non-bank financial institution failed to pay or dishonour the payment order as soon as was reasonably practicable, regard shall be had to—

- (a) the fact that the instrument is a payment order and that it is reasonable to expect a payment order that has been duly presented for payment to be either paid or dishonoured promptly;
- (b) the means by which, and the place at which, the payment order was presented;
- (c) the means that were available to it for paying or dishonouring the payment order;
- (d) the relative speed, reliability and cost of those means;
- (e) the usage of non-bank financial institutions in relation to the payment and dishonour of payment orders;
- (f) in a case where a request under sub-section 106 (5) was made by it in relation to the payment order—the following matters, namely:
 - (i) the making of the request;
 - (ii) the nature of the request;
 - (iii) the time within which the request was made;
 - (iv) the means by which the request was made;
 - (v) the means that were available to it for making the request;
 - (vi) the relative speed, reliability and cost of those means;

- (vii) whether or not the request was complied with;
 - (viii) if the request was complied with—the time within which the request was complied with;
 - (ix) if the request was a request to furnish further particulars and the request was complied with—the nature of the particulars furnished to it;
 - (x) the usage of non-bank financial institutions in relation to the making of requests under sub-section 106 (5); and
- (g) any other facts of the particular case, including—
- (i) the nature of the payment order; and
 - (ii) whether any delay in paying or dishonouring the payment order was—
 - (A) caused by circumstances beyond the control of the drawee non-bank financial institution; and
 - (B) not imputable to default, misconduct or negligence on the part of the drawee non-bank financial institution.

How paid payment orders to be dealt with

112. (1) Where—

- (a) a payment order is duly presented for payment by exhibiting the payment order to the drawee non-bank financial institution; and
- (b) the drawee non-bank financial institution pays the payment order, the drawee non-bank financial institution has, as against the person who presented the payment order, the right to possession of the payment order.

(2) Where—

- (a) a payment order is duly presented for payment by a financial institution (in this sub-section referred to as the “collecting financial institution”) otherwise than by exhibiting the payment order to the drawee non-bank financial institution;
- (b) the payment order is exhibited to the drawee non-bank financial institution pursuant to a request under sub-section 106 (5); and
- (c) the drawee non-bank financial institution pays the payment order, the drawee non-bank financial institution has, as against the collecting financial institution and any financial institution on whose behalf the collecting financial institution duly presented the payment order, the right to possession of the payment order.

(3) Where—

- (a) a payment order is duly presented for payment by a financial institution (in this sub-section and sub-section (4) referred to as the “collecting financial institution”) otherwise than by exhibiting the payment order to the drawee non-bank financial institution;
- (b) the payment order is not exhibited to the drawee non-bank financial institution pursuant to a request under sub-section 106 (5);

- (c) the drawee non-bank financial institution pays the payment order; and
- (d) the payment order is in the actual possession of the collecting financial institution or another financial institution on whose behalf the collecting financial institution duly presented the payment order, the collecting financial institution or other financial institution, as the case requires (in sub-section (4) referred to as the “relevant financial institution”), shall—
 - (e) subject to sub-section (4), retain the payment order, on behalf of the drawee non-bank financial institution, for such period as is prescribed; and
 - (f) at the expiration of that period, deal with the payment order in accordance with the regulations.

(4) The drawee non-bank financial institution may, at any time while the payment order is being retained by the relevant financial institution in accordance with sub-section (3), request the relevant financial institution to deliver up the payment order to it, and the relevant financial institution shall forthwith comply with the request.

(5) Nothing in sub-section (3) shall be taken to affect a right that a person has, as against the drawee non-bank financial institution, to possession of the payment order.

(6) Where a payment order is paid otherwise than by the drawee non-bank financial institution, the person paying the payment order has, as against the person paid, the right to possession of the payment order.

PART IX—MISCELLANEOUS

Payment of unindorsed order cheque as evidence of receipt by payee

113. A cheque drawn payable to order that—

- (a) has not been indorsed by the payee; and
- (b) appears to have been paid by the drawee bank,

is evidence of the receipt by the payee of the sum ordered to be paid by the cheque.

Signature

114. A person shall be taken to sign a cheque or other instrument if the person’s signature is written or placed on the cheque or instrument by another person with or under the first-mentioned person’s authority.

Replacement of lost or destroyed cheque

115. (1) Where—

- (a) a cheque (in this section referred to as the “original cheque”) is lost or destroyed; and

(b) the original cheque had not, at the time of its loss or destruction, been presented for payment or discharged,
a person (in this section referred to as the “former holder”) who was the holder of, or otherwise lawfully in possession of, the original cheque at the time of its loss or destruction may, by notice in writing given to the drawer of the original cheque, request the drawer to give the former holder a replacement cheque to the same tenor as the original cheque.

(2) The notice is not effective for the purposes of this section unless it contains sufficient particulars of the original cheque to enable the drawer to—

- (a) identify the original cheque with reasonable certainty; and
- (b) draw a replacement cheque to the same tenor as the original cheque.

(3) The drawer may, by notice in writing given to the former holder within 14 days after the day on which the notice under sub-section (1) is given to the drawer, request the former holder to give the drawer an indemnity in respect of any loss and expenses that the drawer may reasonably incur by reason of the drawing of a replacement cheque to the same tenor as the original cheque, and may also request the former holder to provide adequate security for the indemnity.

(4) The drawer shall—

- (a) in a case where the drawer requests the former holder, by notice under sub-section (3), to give the drawer an indemnity and also to provide security for the indemnity—within 14 days after the day on which the indemnity is given to the drawer or the day on which the security is provided, whichever last occurs;
- (b) in a case where the drawer requests the former holder, by notice under sub-section (3), to give the drawer an indemnity, but does not also request the former holder to provide security for the indemnity—within 14 days after the day on which the indemnity is given to the drawer; or
- (c) in any other case—within 14 days after the day on which the notice under sub-section (1) is given to the drawer,

draw a replacement cheque to the same tenor as the original cheque and give the replacement cheque to the former holder.

(5) Where the original cheque had been indorsed before its loss or destruction, the former holder may give the replacement cheque to the indorser and request the indorser, by notice in writing, to indorse the replacement cheque to the same tenor as the indorser’s indorsement of the original cheque.

(6) The indorser may, by notice in writing given to the former holder within 14 days after the day on which the notice under sub-section (5) is given to the indorser, request the former holder to give the indorser an indemnity in respect of any loss and expenses that the indorser may reasonably incur by reason of the indorsing of the cheque to the same tenor

as the indorser's indorsement of the original cheque, and may also request the former holder to provide adequate security for the indemnity.

(7) The indorser shall—

- (a) in a case where the indorser requests the former holder, by notice under sub-section (6), to give the indorser an indemnity and also to provide security for the indemnity—within 14 days after the day on which the indemnity is given to the indorser or the day on which the security is provided, whichever last occurs;
- (b) in a case where the indorser requests the former holder, by notice under sub-section (6), to give the indorser an indemnity, but does not also request the former holder to provide security for the indemnity—within 14 days after the day on which the indemnity is given to the indorser; or
- (c) in any other case—within 14 days after the day on which the notice under sub-section (5) is given to the indorser,

indorse the replacement cheque to the same tenor as the indorser's indorsement of the original cheque and give the replacement cheque so indorsed to the former holder.

(8) Where the drawer or indorser refuses or fails to comply with sub-section (4) or (7), as the case requires, the former holder may apply to a court of competent jurisdiction for an order directing—

- (a) the drawer to draw a replacement cheque to the same tenor as the original cheque and give the replacement cheque to the former holder; or
- (b) the indorser to indorse the replacement cheque to the same tenor as the indorser's indorsement of the original cheque and give the replacement cheque so indorsed to the former holder,

as the case may be.

(9) Where an application is made to a court of competent jurisdiction for an order of a kind referred to in sub-section (8), the court may make the order on such terms and conditions as it considers just and equitable.

Action on lost or destroyed cheque

116. Where an action or proceeding is brought in a court on a cheque that has been lost or destroyed, the court may, on such terms and conditions as it considers just and equitable, order that the loss or destruction of the cheque not be set up.

Conflict of laws

117. (1) Where a cheque drawn in one country is—

- (a) payable in another country; or
- (b) transferred by negotiation in another country,

the rights, duties and liabilities of the drawer, indorsers and holder shall be ascertained in accordance with this section.

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(2) Subject to sub-sections (4), (5) and (6), the validity, as regards requisites in form, of a cheque shall be determined in accordance with the law of the place of issue.

(3) Without limiting the generality of sub-section (2), the question whether a particular instrument is a cheque shall be determined in accordance with the law of the place of issue.

(4) A cheque issued outside Australia is not invalid by reason only that it is not stamped or properly stamped in accordance with the law of the place of issue or any other law.

(5) A cheque issued in Australia and payable outside Australia that is not stamped or properly stamped in accordance with the law of the place of issue or any other law—

- (a) is not invalid by reason only that it not so stamped; and
- (b) may be received in evidence if the proper duty and penalty (if any) is paid.

(6) A cheque issued outside Australia that conforms, as regards requisites in form, to the law of Australia is, for the purpose of enforcing payment of the cheque, valid as between all persons who, in Australia, transfer the cheque by negotiation or hold or become indorsers of the cheque.

(7) The validity, as regards requisites in form, of a supervening contract on a cheque shall be determined in accordance with the law of the place where the contract is made.

(8) Subject to sub-section (10), the effects of a transfer of a cheque by negotiation shall be determined in accordance with the law of the place where the cheque is transferred by negotiation.

(9) The capacity of a person to incur liability on a contract on a cheque shall be determined in accordance with the law of the place where the contract is made.

(10) Subject to sub-sections (12), (13) and (14), a contract on a cheque shall be interpreted and have effect in accordance with the law of the place where the contract is to be performed.

(11) Without limiting the generality of sub-section (10), where a cheque is dishonoured, the amount (if any) recoverable as damages in respect of a contract on the cheque shall be determined in accordance with the law of the place where the contract is to be performed.

(12) The necessity for presentment for payment, and the sufficiency of a presentment for payment, in relation to a cheque shall be determined in accordance with the law of the place where the cheque is payable.

(13) Where a cheque is dishonoured, the necessity for, and the sufficiency of, a notice of dishonour, and any other act, in relation to the dishonour shall be determined in accordance with the law of the place where the cheque is payable.

(14) Where a cheque drawn in one country is payable in another country, the date on and after which the cheque may be paid by the drawee bank shall be determined in accordance with the law of the place where the cheque is payable.

(15) In this section—

“contract”, in relation to a cheque, includes—

- (a) a contract or warranty arising out of the drawing; and
- (b) a supervening contract in relation to the cheque;

“supervening contract”, in relation to a cheque, includes a contract or warranty arising out of—

- (a) an indorsement; or
- (b) a transfer by negotiation.

Dividend warrants

118. (1) A reference in this Act to a cheque includes a reference to a warrant for payment of dividend.

(2) Nothing in this Act affects the validity of any usage relating to, or to the indorsement of, warrants for payment of dividend.

Regulations

119. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

SCHEDULE

Sub-section 104 (1)

MODIFICATIONS OF ACT IN RELATION TO PAYMENT ORDERS

Sub-section 5 (1)—

- (a) Omit “sections 10 to 15 (inclusive)”, substitute “sections 11 to 15 (inclusive)”.
- (b) Omit “sub-sections 60 (1) and 62 (12)”, substitute “sub-section 60 (1)”.
- (c) Omit “and sections 88 to 91 (inclusive)”, substitute “, sections 88 to 91 (inclusive) and 100 to 102 (inclusive) and sub-section 106 (12)”.
- (d) Omit “a bank cheque or bank draft”, substitute “a payment order drawn by a non-bank financial institution on itself or on another branch of the non-bank financial institution”.

Sub-section 5 (2)—

Omit “a bank cheque or bank draft drawn by it”, substitute “a payment order drawn by the non-bank financial institution on itself or on another branch of the non-bank financial institution”.

Sub-section 6 (2)—

- (a) Omit “7 to 16 (inclusive)”, substitute “7 to 9 (inclusive), 11 to 16 (inclusive)”.

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SCHEDULE—continued

(b) Omit “61, 62, 64 to 67 (inclusive)”.

(c) Insert “101 to 103 (inclusive), 105, 106, 108 to 111 (inclusive),” after “100.”.

Section 54—

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

Paragraph 60 (3) (b)—

Omit “banks”, substitute “financial institutions”.

Section 92—

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

Sub-section 93 (1)—

Omit “bank” (second and last occurring), substitute “financial institution”.

Paragraphs 93 (2) (c) and (d)—

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

Paragraph 94 (1) (a)—

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

Paragraph 94 (2) (a)—

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

Heading to Division 2 of Part VI—

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

Section 95—

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

Section 96—

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

[*Minister's second reading speech made in—
House of Representatives on 22 May 1985
Senate on 18 September 1985*]