



Bills of Exchange Amendment Act 1986

No. 146 of 1986

An Act to amend the *Bills of Exchange Act 1909*, and for related purposes

[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:

Short title, &c.

1. (1) This Act may be cited as the *Bills of Exchange Amendment Act 1986*.

(2) The *Bills of Exchange Act 1909*¹ is in this Act referred to as the Principal Act.

Commencement

2. This Act shall come into operation on the day on which the *Cheques and Payment Orders Act 1986* comes into operation.

Application of Act

3. Section 6 of the Principal Act is amended by adding at the end the following sub-section:

“(2) This Act does not apply to an instrument to which the *Cheques and Payment Orders Act 1986* applies.”.

Sum payable

4. Section 14 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “paid—” and substituting “paid with, by or according to, as the case requires, any one or more of the following, namely:”;
- (b) by omitting from paragraph (1) (a) “with interest” and substituting “interest or bank charges”;
- (c) by omitting from paragraphs (1) (b) and (c) “by”;
- (d) by omitting from paragraph (1) (d) “according to” (wherever occurring); and
- (e) by omitting sub-section (2) and substituting the following sub-section:

“(2) Where more than one sum is expressed to be payable in a bill, 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 bill.”.

Noting or protest of bill

5. Section 56 of the Principal Act is amended—

- (a) by omitting from sub-section (4) “twenty-four” and substituting “48”; and
- (b) by omitting from paragraph (a) of the proviso to sub-section (6) all the words after “returned” (last occurring) and substituting “not later than the next business day after the day of its return”.

6. Section 74 of the Principal Act is repealed and the following section is substituted:

Replacement of lost or destroyed bill

“74. (1) Where—

- (a) a bill (in this section referred to as the ‘original bill’) is lost or destroyed; and
- (b) the original bill was not, at the time of its loss or destruction, overdue,

a person (in this section referred to as the ‘former holder’) who was the holder of, or otherwise lawfully in possession of, the original bill at the time of its loss or destruction may, by notice in writing given to the drawer of the original bill, request the drawer to give the former holder a replacement bill to the same tenor as the original bill.

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

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

“(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 bill to the same tenor as the original bill, 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 bill to the same tenor as the original bill and give the replacement bill to the former holder.

“(5) Where the original bill had been accepted before its loss or destruction, the former holder may give the replacement bill to the acceptor and request the acceptor, by notice in writing, to accept the replacement bill to the same tenor as the acceptor’s acceptance of the original bill.

“(6) The acceptor 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 acceptor, request the former holder to give the acceptor an indemnity in respect of any loss and expenses that the acceptor may reasonably incur by reason of the accepting of the bill to the same tenor as the acceptor’s acceptance of the original bill, and may also request the former holder to provide adequate security for the indemnity.

“(7) The acceptor shall—

- (a) in a case where the acceptor requests the former holder, by notice under sub-section (6), to give the acceptor an indemnity and also to provide security for the indemnity—within 14 days after the day on which the indemnity is given to the acceptor or the day on which the security is provided, whichever last occurs;
- (b) in a case where the acceptor requests the former holder, by notice under sub-section (6), to give the acceptor 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 acceptor; or

(c) in any other case—within 14 days after the day on which the notice under sub-section (5) is given to the acceptor, accept the replacement bill to the same tenor as the acceptor's acceptance of the original bill and give the replacement bill so accepted to the former holder.

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

“(9) 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 (8) 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 bill to the same tenor as the indorser's indorsement of the original bill, and may also request the former holder to provide adequate security for the indemnity.

“(10) The indorser shall—

- (a) in a case where the indorser requests the former holder, by notice under sub-section (9), 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 (9), 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 (8) is given to the indorser,

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

“(11) Where the drawer, acceptor or indorser refuses or fails to comply with sub-section (4), (7) or (10), 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 bill to the same tenor as the original bill and give the replacement bill to the former holder;
- (b) the acceptor to accept the replacement bill to the same tenor as the acceptor's acceptance of the original bill and give the replacement bill so accepted to the former holder; or
- (c) the indorser to indorse the replacement bill to the same tenor as the indorser's indorsement of the original bill and give the replacement bill so indorsed to the former holder,

as the case may be.

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“(12) Where an application is made to a court of competent jurisdiction for an order of a kind referred to in sub-section (11), the court may make the order on such terms and conditions as it considers just and equitable.”.

Application of amendments

7. Notwithstanding the amendments of the Principal Act made by sections 4 and 5 of this Act and the repeal effected by section 6 of this Act, sections 14, 56 and 74 of the Principal Act continue to apply to bills of exchange, cheques and promisory notes drawn or made, as the case may be, before the commencement of this Act as if those amendments had not been made and that repeal had not been effected.

NOTE

1. No. 27, 1909, as amended. For previous amendments, see No. 24, 1912; No. 61, 1932; No. 74, 1936; No. 10, 1958; No. 4, 1971; and No. 216, 1973.

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