

Bills of Exchange

No. 4 of 1971

An Act to amend the *Bills of Exchange Act 1909–1958*.

[Assented to 12 March 1971]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1.—(1.) This Act may be cited as the *Bills of Exchange Act 1971*.

Short title
and citation.

(2.) The *Bills of Exchange Act 1909–1958** is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Bills of Exchange Act 1909–1971*.

2. This Act shall come into operation on a date to be fixed by Proclamation.

Commence-
ment.

3. Section 3 of the Principal Act is repealed and the following section inserted in its stead:—

“ 3. This Act is divided into Parts, as follows:—

Parts.

Part I.—Preliminary (Sections 1–7).

* Act No. 27, 1909, as amended by No. 24, 1912; No. 61, 1932; No. 74, 1936; and No. 10, 1958.

Part II.—Bills of Exchange.

Division 1.—Form and Interpretation (Sections 8–26).

Division 2.—Capacity and Authority of Parties (Sections 27–31).

Division 3.—The Consideration for a Bill (Sections 32–35).

Division 4.—Negotiation of Bills (Sections 36–43).

Division 5.—General Duties of the Holder (Sections 44–57).

Division 6.—Liabilities of Parties (Sections 58–63).

Division 7.—Discharge of Bill (Sections 64–69).

Division 8.—Acceptance and Payment for Honour (Sections 70–73).

Division 9.—Lost Instruments (Sections 74–75).

Division 10.—Bill in a Set (Section 76).

Division 11.—Conflict of Laws (Sections 77–77A).

Part III.—Cheques on a Banker.

Division 1.—Cheques Generally (Sections 78–81).

Division 2.—Crossed Cheques (Sections 82–88A).

Division 3.—Other Provisions relating to Cheques (Sections 88B–88E).

Part IV.—Promissory Notes (Sections 89–95).

Part V.—Supplementary (Sections 96–101).”.

Protection to
collecting
banker.

4. Section 88 of the Principal Act is repealed.

5. After section 88A of the Principal Act the following Division is inserted:—

“ *Division 3.—Other Provisions relating to Cheques.*Protection of
bankers paying
unindorsed or
irregularly
indorsed
cheques or
drafts.

“ 88B.—(1.) Where a banker in good faith and in the ordinary course of business pays to another banker a cheque drawn on the first-mentioned banker that is not indorsed, is irregularly indorsed or has been indorsed without authority—

(a) the first-mentioned banker does not, in paying the cheque, incur any liability by reason only of the absence of, or irregularity in, indorsement or his failure to concern himself with the existence of authority for indorsement; and

(b) he shall be deemed to have paid the cheque in due course.

“ (2.) Where a banker in good faith and in the ordinary course of business pays to another banker a draft drawn by the first-mentioned banker upon himself and payable on demand, whether the draft is payable at the head office or at some other office of the banker—

(a) the first-mentioned banker does not, in paying the draft, incur any liability by reason only of the absence of, or irregularity in,

indorsement or his failure to concern himself with the existence of authority for indorsement; and

(b) the payment discharges the draft.

“(3.) For the purposes of the last two preceding sub-sections, a banker who—

(a) has paid a cheque drawn on him or a draft drawn by him upon himself; and

(b) has credited the account of a customer with the amount of the cheque or draft,

shall be deemed to have paid the cheque or draft to another banker.

“88C.—(1.) An unindorsed cheque payable to order that appears to have been paid by the banker on whom it is drawn is evidence of the receipt by the payee of the sum payable by the cheque.

Payment of unindorsed cheque or draft as evidence of receipt by payee.

“(2.) The last preceding sub-section applies in relation to a draft drawn by a banker upon himself and payable on demand, whether the draft is payable at the head office or at some other office of the banker, as it applies in relation to a cheque.

“88D.—(1.) Where—

(a) a banker, in good faith and without negligence—

(i) receives payment for a customer of a cheque; or

(ii) having credited a customer's account with the amount of a cheque, receives payment of the cheque for himself; and

(b) the customer has no title, or has a defective title, to the cheque, the banker does not incur any liability to the true owner of the cheque by reason only of having received payment of the cheque.

Protection of bankers collecting payment of cheques, &c.

“(2.) Subject to the next succeeding sub-section, a banker shall not be treated for the purposes of this section as having been negligent by reason only of his failure to concern himself with the absence of, or irregularity in, indorsement of a cheque.

“(3.) The last preceding sub-section does not apply in relation to a cheque unless the name appearing on the cheque as the name of the payee—

(a) is the same as the name of the customer; or

(b) is so similar to the name of the customer that it was reasonable, in all the circumstances, for the banker to assume that the customer was the person intended by the drawer to be the payee.

“(4.) This section applies in relation to a draft drawn by a banker upon himself and payable on demand, whether the draft is payable at the head office or at some other office of the banker, as it applies in relation to a cheque.

Rights of
banker
collecting
cheque not
indorsed
by payee.

“ 88E. A banker who gives value for, or has a lien on, a cheque payable to order that the payee, without indorsing the cheque, delivers to the banker for collection for the payee has such rights (if any) as he would have had if, upon the delivery of the cheque to him, the payee had indorsed it in blank.”
