CHEQUES BILL 1985

Date Introduced: 22 May 1985
House: House of Representatives
Presented by: Hon. Lionel Bowen, M.P., Attorney-General

Short Digest of Bill

Purpose

To provide for a separate law for cheques and certain other negotiable instruments.

Background

The present law on cheques is contained in the Bills of Exchange Act 1909 (BEA) which also deals with such other negotiable instruments as bills of exchange and promissory notes. The BEA is largely a transcript of the English equivalent Act of 1882.

An inquiry into cheque law was established by the Menzies Government 23 years ago and reported two years later. Some amendments were introduced as an "interim measure".

On 13 April 1962, the Commonwealth Government appointed a Committee to review the BEA. The Committee, chaired by the late Mr Justice Manning, reported on 1 May 1964 with the recommendation that there should be separate legislation dealing with cheques. This recommendation was based on the following factors:

- increased usage of cheques compared with other bills of exchange;
- cheques law becoming more important to a greater number of people; and
- confusion and uncertainty surrounding cheques law.

Although some amendments were made to the BEA in 1971, little action has been taken to give effect to the Manning Committee's recommendations.
In August 1983, the Government announced its intention to introduce a draft Bill clarifying the law on cheques. A draft Bill was subsequently released for public comment on 23 February 1984. The draft Bill incorporated recommendations of the Manning Committee and was the result of examination of the current law by the Attorney-General's Department in consultation with State Governments, the banking industry, unions, building societies, credit unions, and specialist legal practitioners.

A number of changes have been made to the draft Bill as a result of its public exposure. A comprehensive list of the changes is contained in an attachment to the Explanatory Memorandum.

Outline

The present Bill revises provisions of the BEA applicable to cheques, clarifies the law in areas of uncertainty and provides for separate legislation dealing with cheques and such negotiable instruments as:

1. inchoate instruments (i.e. an instrument in the form of a bill which does not contain the name of the drawer or payee);

2. bank cheques or bank drafts (i.e. cheques or drafts drawn by a bank usually on itself but occasionally upon another bank);

3. dividend warrants.

These instruments were not considered to be cheques under the BEA. This Bill will not affect electronic funds transfer systems.

Main Provisions

For a detailed explanation of the clauses of the Bill, refer to the Explanatory Memorandum.

The Bill will operate from a date to be proclaimed (clause 2).

Some of the more important changes provided by the Bill include:

1. Definition of "bank" is to be limited to the Reserve Bank, banks within the meaning of the Banking Act 1959, State Banks and persons who carry on the business of banking outside Australia (clause 3).
2. **Stale Cheques**

The period of a cheque's validity will be extended from 12 to 15 months to overcome the problem of drawers inadvertently referring to the year first passed when dating their cheques drawn early in a new year (sub-clause 3(5)).

3. **Alteration of rights, duties and liabilities by agreement**

Subject to the specified exceptions in sub-clause 6(2), the Bill will not prevent persons from altering by agreement their rights, duties and liabilities in relation to one another (clause 6).

4. **Discrepancies**

Where there is a discrepancy in the sums stated in a cheque, the lesser of the two sums will be taken to be the amount ordered (sub-clause 15(2)).

5. **Date of Cheque**

A cheque will not be invalid because it is not dated, ante-dated, post-dated or bears the date of a Sunday (clause 16).

6. **Transferability of Cheques**

Each cheque will be able to be transferred by negotiation until it is discharged, notwithstanding any attempt to limit the transferability of the cheque (clause 39).

7. **Crossing of cheques**

Crossings on cheques will be effective only by two parallel transverse lines with or without the words "not negotiable". Nothing else will be effective as a crossing (clause 53). Where a cheque that is crossed "not negotiable" is transferred by negotiation to a person, it means that a person receiving such a cheque is unable to receive a better title than the person from whom he received it (clause 55).

8. **Presentment for Payment**

A cheque may be presented to the paying bank for payment either physically or "by other means" (clause 62). Presentment of a cheque is essentially a demand for payment. The demand may be made by exhibition of a facsimile copy of the cheque, as there is no restriction on the means to
effect presentment. Such a demand for payment will have to contain the following particulars in order to identify the cheque with reasonable certainty, namely, the sum ordered to be paid by the cheque; the cheque number; the account against which the cheque is drawn, and the proper place in relation to the cheque. A deposit bank will be required to duly present the cheque for payment, or ensure that the cheque is duly presented for payment, as soon as is reasonably practicable (clause 66).

9. Dishonour of Cheques

There will be a duty on the paying bank to pay or dishonour a presented cheque as soon as is reasonably practicable. Failure to do so renders the bank liable for payment of the cheque (clause 67).

Dishonour is defined under clause 69 as a refusal of payment of a cheque by the paying bank where such refusal is communicated to the holder or his agent.

10. Material Alterations

An alteration will be material if it alters, in any respect, a right, duty or liability of the drawer, an indorser or the drawee bank (sub-clause 3(8)).

For further information, if required, contact:

21 August 1985

Law & Government Group
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Reference


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