



ANALYSIS

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1995, No. 35

An Act to amend the Bills of Exchange Act 1908

[30 June 1995]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Bills of Exchange Amendment Act 1995, and shall be read together with and deemed part of the Bills of Exchange Act 1908 (hereinafter referred to as the principal Act).

2. Amendments to Cheques Act 1960—The Cheques Act 1960 is hereby amended by inserting, after section 7, the following sections:

“**7A. Interpretation**—(1) For the purposes of sections 7D and 7E of this Act, ‘inter-bank clearing system’ means any system for the presentment and payment of cheques by electronic or other means between paying and collecting banks or between paying and collecting branches of banks and that is established in accordance with written rules that are binding on those banks or branches.

“(2) Notwithstanding section 7B of the Bills of Exchange Act 1908, for the purposes of sections 7B to 7E of this Act, a cheque includes—

“(a) A document issued by a customer of a bank that, although not a bill of exchange, is intended to

enable a person to obtain payment from the bank of a sum mentioned in the document; and

“(b) A draft payable on demand drawn by a bank upon that bank whether payable at the head office or some other office of that bank.

“7B. **Non-transferable cheques**—(1) This section applies to a cheque that is crossed and that bears across its face—

“(a) The words ‘Not transferable’ or ‘Non-transferable’; or

“(b) The words ‘account payee’ or ‘a/c payee’, either with or without the word ‘only’.

“(2) A cheque to which this section applies is valid only as between the parties to it and is not transferable.

“(3) Where a cheque to which this section applies contains an endorsement that is intended to have the effect of negotiating or transferring ownership of the cheque,—

“(a) The endorsement is not effective to transfer ownership of the cheque; and

“(b) To the extent that a banker collects the cheque without giving effect to the endorsement, the banker acts in the ordinary course of business and without negligence; and

“(c) To the extent that a banker collects the cheque giving effect to the endorsement, the banker does not act in the ordinary course of business and without negligence; and

“(d) If it is necessary for a banker who pays the cheque to consider whether the person by whom or on whose behalf the cheque is presented for payment is the true owner of the cheque,—

“(i) To the extent that the banker pays the cheque without giving effect to the endorsement, the banker acts in the ordinary course of business and without negligence; and

“(ii) To the extent that the banker pays the cheque giving effect to the endorsement, the banker does not act in the ordinary course of business and without negligence.

“(4) Nothing in section 8 (1) of the Bills of Exchange Act 1908 applies to a cheque.

“(5) This section shall come into force on the 1st day of January 1996.

“7C. **Transfer of dishonoured cheques permitted in certain cases**—(1) Nothing in section 7B of this Act prevents

the transfer of a cheque to which that section applies if the cheque is transferred—

“(a) After it has been presented for payment by or on behalf of the payee and been dishonoured by non-payment; and

“(b) In favour of any person (including the collecting banker in respect of the cheque) who—

“(i) Is authorised by the payee of the cheque to recover payment of the amount of the cheque on behalf of the payee; or

“(ii) Has paid or credited the payee of the cheque with the whole or part of the amount of the cheque and is authorised by the payee to recover payment of the amount of the cheque on that person’s own behalf.

“(2) This section shall come into force on the 1st day of January 1996.

“7D. **Presentment of cheques for payment**—(1) A cheque is presented for payment if it is presented in accordance with the following rules:

“(a) Presentment must be made within a reasonable time after the date of the cheque:

“(b) Presentment must be made—

“(i) By the holder, or by some person authorised to receive payment on behalf of the holder, presenting the cheque at the branch of the bank on which the cheque is drawn or at such other place as may be specified on the cheque, as the case may be, at a time when the branch or other place is open for business; or

“(ii) By the bank receiving payment for a customer or for that bank presenting the cheque at the place designated by the paying bank in accordance with the rules of an inter-bank clearing system; or

“(iii) If the cheque is a cheque referred to in subsection (4) of this section or belongs to a class of cheques referred to in that subsection, by the bank receiving payment for a customer or for that bank delivering to the paying bank particulars of the cheque by electronic or other means in accordance with the rules of an inter-bank clearing system:

“(c) Where a cheque is presented for payment in accordance with paragraph (b) (i) or (ii) of this subsection at the

proper place for presentment and no person with authority to pay or refuse payment of the cheque is available, no further presentment to the bank upon which the cheque is drawn is required.

“(2) Where a cheque is presented for payment in accordance with subsection (1) (b) (iii) of this section, the paying bank may—

“(a) Request the collecting bank to provide it with such further particulars in relation to the cheque as it may specify; or

“(b) Whether or not it has made a request under paragraph (a) of this subsection, request the collecting bank to exhibit the cheque or a copy of the cheque to it.

“(3) After a cheque that has been presented under subsection (1) (b) (iii) of this section is paid, the collecting bank must, when required to do so by the paying bank, but subject to such conditions as may be specified in the rules of the inter-bank clearing system, give possession of the cheque to the paying bank.

“(4) Any banks or branches of banks that are bound by the rules of an inter-bank clearing system may, from time to time, by agreement in writing, determine that subsection (1) (b) (iii) of this section shall apply in relation to such cheques or such classes of cheques as may be specified in the agreement.

“(5) Nothing in section 45 (2) of the Bills of Exchange Act 1908 applies to a cheque.

“7E. **Liability of paying bank**—(1) This section applies to a cheque that has been presented for payment in accordance with section 7D (1) (b) (iii) of this Act.

“(2) A paying bank that pays a cheque to which this section applies is not negligent and does not act otherwise than in the ordinary course of business by reason only of having determined, by an agreement entered into under subsection (4) of section 7D of this Act, that subsection (1) (b) (iii) of that section shall apply in relation to that cheque or to a class of cheques that includes that cheque.

“(3) Except as provided in subsection (2) of this section, a paying bank that pays a cheque to which this section applies is not relieved from any liability to which it would have been subject if the cheque had been presented otherwise than in accordance with section 7D (1) (b) (iii) of this Act.

“(4) Without limiting subsection (3) of this section, a paying bank that pays a cheque to which this section applies shall be

treated as having been required to make such inquiries and take such action as would have been required if the cheque had been presented for payment in accordance with section 7D (1) (b) (i) or (ii) of this Act.”

This Act is administered in the Department of Justice.
