

CHEQUES BILL

EXPLANATORY NOTE

THIS Bill adopts provisions of the United Kingdom Parliament contained in the Cheques Act 1957. The Bill follows closely the U.K. legislation which is part of the U.K. Bills of Exchange Act 1882 on which our Bills of Exchange Act 1908 is modelled.

The main purpose of the Bill is to save the time of persons engaged in banking by removing the necessity of considering certain questions relating to indorsement.

Clause 2: Subclause (1) provides that where a banker in good faith and in the ordinary course of business pays a cheque drawn on him which is not indorsed or is irregularly indorsed he does not incur liability by reason only of the absence of or irregularity in indorsement and is deemed to have paid it in due course.

Subclause (2) extends the protection given by *subclause (1)* in respect of cheques to various other instruments. The effect of the clause will be that a paying banker who acts in good faith and in the ordinary course of business need not concern himself with the back of a cheque.

Clause 3: The main object of this clause is to preserve the rights of a collecting banker who receives a cheque for collection which has not been indorsed by the holder.

Clause 4: The purpose of this clause is to ensure that the absence of indorsement on a paid cheque does not affect its value as evidence of payment. The words "in the absence of proof to the contrary", which do not occur in the U.K. legislation, have been inserted in this clause. This is to emphasise that the "evidence" referred to in the clause is prima facie evidence.

Clause 5: Subclause (1) provides that where a banker in good faith and without negligence either receives payment for a customer of an instrument to which the clause applies or, having credited a customer's account with the amount of any such instrument, receives payment thereof for himself, and the customer has no title, or a defective title, to the instrument, the banker does not incur any liability to the true owner of the instrument by reason only of having received payment thereof.

Subclause (2) specifies the instruments to which the clause is applicable. A slight departure from the U.K. legislation is made in this subclause to meet New Zealand conditions. *Paragraphs (c)* and *(d)* relate to Government accounts or accounts to some extent under the control of the Government.

Subclause (3) is necessary to clarify the position of collecting bankers in relation to negligence and indorsements and makes it clear that a collecting banker is not to be held negligent in an action for conversion merely because he did not concern himself with the absence of, or irregularity in, indorsement of an instrument.

Clause 6: The purpose of this clause is to apply the provisions of the Bills of Exchange Act 1908 relating to crossed cheques to instruments referred to in *clause 5* which are not cheques.

Clause 7 ensures that the provisions of the proposed Act do not make negotiable any instrument which, apart from those provisions, is not negotiable.

Hon. Mr Mason

CHEQUES

ANALYSIS

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A BILL INTITULED

An Act to amend the law relating to cheques and certain other instruments

5 BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

10 **1. Short Title and commencement**—(1) This Act may be cited as the Cheques Act 1960, and shall be read together with and deemed part of the Bills of Exchange Act 1908 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the first day of April, nineteen hundred and sixty-one.

15 **2. Protection of bankers paying unindorsed or irregularly indorsed cheques**—(1) Where a banker in good faith and in the ordinary course of business pays a cheque drawn on him which is not indorsed or is irregularly indorsed, he shall not, in doing so, incur any liability by reason only of the absence of, or irregularity in, indorsement, and he shall be deemed to have paid it in due course.

(2) Where a banker in good faith and in the ordinary course of business pays any such instrument as the following, namely—

- (a) A document issued by a customer of his which, though not a bill of exchange, is intended to enable a person to obtain payment from him of the sum mentioned in the document; or 5
- (b) A draft payable on demand drawn by him upon himself whether payable at the head office or some other office of his bank— 10

he shall not, in doing so, incur any liability by reason only of the absence of, or irregularity in, indorsement, and the payment shall discharge the instrument.

3. Rights of bankers collecting cheques not indorsed by holders—A banker who gives value for, or has a lien on, a cheque payable to order which the holder delivers to him for collection without indorsing it shall have such rights (if any) as he would have had if, upon delivery, the holder had indorsed it in blank. 15

4. Unindorsed cheques as evidence of payment—An unindorsed cheque which appears to have been paid by a banker on whom it is drawn shall, in the absence of proof to the contrary, be sufficient evidence of the receipt by the payee of the sum payable by the cheque. 20

5. Protection of bankers collecting payment of cheques— 25

(1) Where a banker in good faith and without negligence—

- (a) Receives payment for a customer of an instrument to which this section applies; or
- (b) Having credited a customer's account with the amount of any such instrument receives payment thereof for himself— 30

and the customer has no title, or a defective title, to the instrument, the banker shall not incur any liability to the true owner of the instrument by reason only of having received payment thereof. 35

(2) This section applies to the following instruments, namely:

- (a) Cheques:
- (b) Any document issued by a customer of a banker which, though not a bill of exchange, is intended to enable a person to obtain payment from that banker of the sum mentioned in the document: 40

- 5 (c) Any document, not being a bill of exchange, issued by
an official in the service of Her Majesty which is
intended to enable a person to obtain payment from
the Public Account or any other Government
account under Part III, Part IV, or Part VI of the
Public Revenues Act 1953 of the sum mentioned in
the document:
- 10 (d) Any document, not being a bill of exchange, issued by
any person or authority which is intended to enable
a person to obtain payment from any such account
as may from time to time be specified in that behalf
by the Governor-General by Order in Council of
the sum mentioned in the document:
- 15 (e) Any draft payable on demand drawn by a banker upon
himself, whether payable at the head office or some
other office of his bank.
- 20 (3) 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 an instrument.

6. Application of certain provisions of principal Act—The provisions of the principal Act relating to crossed cheques shall, so far as applicable, have effect in relation to instruments (other than cheques) to which section 5 of this Act applies
25 as they have effect in relation to cheques.

7. Effect of Act—Nothing in the provisions of this Act shall be deemed to make negotiable any instrument which, apart from those provisions, is not negotiable.

8. Repeal and saving—(1) Section 82 of the principal Act
30 is hereby repealed.

(2) Where in any enactment a reference is made to section 82 of the principal Act, the reference shall, with the necessary modifications, be deemed to be a reference to this Act.