

1985

THE PARLIAMENT OF THE COMMONWEALTH  
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BILLS OF EXCHANGE AMENDMENT BILL 1985

EXPLANATORY MEMORANDUM

(Circulated by authority of the Honourable Lionel Bowen,  
Deputy Prime Minister and Attorney-General)



## BILLS OF EXCHANGE AMENDMENT BILL 1985

### General Outline

The Bills of Exchange Amendment Bill 1985 will amend the Bills of Exchange Act 1909:

- . to make certain changes to that Act that are consequential upon the introduction of the Cheques Bill 1985; and
- . to make changes to the Act to give effect to certain recommendations of the 1964 Manning Committee Report into the Bills of Exchange Act.

2. The Bill will ensure that the Bills of Exchange Act will have no application to cheques once the Cheques Bill is enacted. However, the Act will continue to apply to cheques drawn before the day on which the Cheques Bill commences. Other amendments will clarify the meaning under the Act of a 'sum payable', extend the time limits in relation to the noting or protesting of bills of exchange (other than cheques) and revise the provisions in the Act relating to replacement of lost or destroyed bills.

3. The Bill will come into operation on the day on which the Cheques Bill commences.

4. This legislation has no financial implications.

NOTES ON THE CLAUSES OF THE BILLClauses 1 and 2: Short Title and Commencement

5. The first two clauses provide for the short title and commencement of the legislation. The Bill will come into operation on the day on which the Cheques Act 1985 comes into operation.

Clause 3: Application of Act

6. A new sub-section will be added to section 6 of the Bills of Exchange Act which will provide that the Act does not apply to an instrument to which the Cheques Act applies.

Clause 4: Sum payable

7. The clause will amend section 14 of the Bills of Exchange Act in accordance with the Manning Committee's recommendations so that:

- (a) it is clear the sum payable by a bill will be for a sum certain even though it is required to be paid with, by or according to any one or more of the matters referred to in paras. 14(1)(a) to (d) of the Act;
- (b) a sum payable by a bill will be a sum certain even though it is expressed to be payable with bank charges; and
- (c) sub-section 14(2) will be replaced with a new sub-section which will provide that where more than one sum is expressed to be payable in a bill, the lesser or least of the sums to be payable will be taken to be the only sum ordered to be paid by the bill. The present law provides that, if the sum specified in a bill of exchange is stated in words and figures, the sum denoted by the words is the operative amount. The new sub-section 14(2) will, therefore, overcome a possible injustice being caused to the drawer of a bill who makes an error in drawing the bill.

Clause 5: Noting or protest of bill

8. This clause will amend section 56 of the Bills of Exchange Act in the following respects:

- (a) sub-section 56(4) will provide for the time for noting a bill to be 48 hours. At present, the time limit is 24 hours;
- (b) sub-section 56(6) will provide that a bill which is returned by post dishonoured may be protested not later than the next business day after the day of its return.

9. The amendments to section 56 will allow for more flexibility in the procedures involved in protesting a bill of exchange and are in accordance with the Manning Committee's recommendations. The Committee considered that there may well be occasions when considerable technical difficulties are experienced in complying with the necessary procedures under the existing provisions in the Bills of Exchange Act. Hence, the need to extend the time limits under the section.

Clause 6: Replacement of lost or destroyed bill

10. Clause 6 of the Bill will repeal section 74 of the Bills of Exchange Act and replace it with a new provision which is generally based on Cheques Bill clause 99 and which largely results from recommendations of the Manning Committee.

11. The new section 74 sets out the procedure to be followed in respect of the replacement of a lost or destroyed bill of exchange. That procedure may be summarized as follows:

- (a) where a bill is lost or destroyed and was not, at that time, overdue, the person in possession of the bill at the time of the loss etc. ('the former holder') will be able, by notice in writing given to the drawer, to request the drawer to provide a replacement bill (sub-section 74(1));

- (b) the notice must contain sufficient particulars to enable the drawer to identify the original bill with reasonable certainty and draw a replacement bill to the same tenor as the original bill (sub-section 74(2));
- (c) the drawer will be able to request the former holder to give the drawer an indemnity in respect of any loss or expense reasonably incurred in having to draw the replacement bill and may also request adequate security (sub-section 74(3));
- (d) the drawer will be required to provide the replacement bill within 14 days of whichever of the times specified in sub-section 74(4) is applicable (sub-section 74(4));
- (e) where the original bill was accepted before its loss or destruction, the former holder may request the acceptor to accept the replacement bill to the same tenor as the original bill (sub-section 74(5));
- (f) sub-sections 74(6) and (7) make similar provision with respect to an acceptor as apply to a drawer under sub-sections 74(3) and (4);
- (g) where the original bill had been indorsed before its loss or destruction, the former holder may request the indorser to indorse the replacement bill to the same tenor as the original bill (sub-section 74(8));
- (h) sub-sections 74(9) and (10) make similar provision with respect to an indorser as apply to a drawer under sub-sections 74(3) and (4);
- (i) where a drawer, acceptor or indorser refuses or fails to comply with his duties under sub-sections 74(4), (7) or (10), as the case may be, the former holder may apply to a court for an order directing the drawer, acceptor or indorser to so comply (sub-section 74(11));

- (j) where an application for an order is made, the court may make the order on such terms and conditions as it considers just and equitable (sub-section 74(12)).

12. The new section 74 will expand upon the present Bills of Exchange Act provision in some important respects:

- (a) the means by which a request may be made for a replacement bill will be specified;
- (b) time limits will be set out within which a drawer, acceptor or indorser will be required to draw, accept or indorse a replacement bill;
- (c) the means of compelling a drawer, acceptor or indorser to draw, accept or indorse a replacement bill will be specified in detail in contrast to the general approach taken in the present Bills of Exchange Act provision.

Clause 7 : Application of amendments

13. Clause 7 of the Bill will provide that sections 14, 56 and 74 of the Bills of Exchange Act, as in force before the commencement of the amending Bill, continue to apply to bills of exchange, cheques and promissory notes drawn or made before the commencement of the amending Bill.

