

[AS REPORTED FROM THE FINANCE AND EXPENDITURE  
COMMITTEE]

House of Representatives, 22 June 1995.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

*Rt. Hon. W. F. Birch*

**BANKING LAW REFORM**

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ANALYSIS

Title 1. Short Title	6. New Part inserted
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PART II AMENDMENTS TO EVIDENCE ACT 1908	PART IV AMENDMENTS TO BILLS OF EXCHANGE ACT 1908
3. Part to be read with Evidence Act 1908	7. Part to be read with Bills of Exchange Act 1908
4. New sections inserted	8. Amendments to Cheques Act 1960
<i>Evidence of Banking Records</i>	7A. Interpretation
47A. Interpretation	7B. Non-transferable cheques
47B. Proof of entries in banking records of banks	7C. Transfer of dishonoured che- ques permitted in certain cases
47C. Officer not compellable to pro- duce banking records	7D. Presentment of cheques for payment
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A BILL INTITULED

An Act to—

- (a) **Repeal the Banking Act 1982; and**  
(b) **Amend the Bills of Exchange Act 1908; and**  
(c) **Provide for related matters**

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*Price Code: J*

No. 82—2

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

**1. Short Title**—This Act may be cited as the Banking Law Reform Act 1995.

## PART I

### REPEAL OF BANKING ACT 1982

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**2. Banking Act 1982 repealed**—(1) The Banking Act 1982\* is hereby repealed.

(2) Any reference in any other enactment, regulation, order, notice, or instrument to a bank, within the meaning of the Banking Act 1982 shall be read as a reference to a person carrying on in New Zealand the business of banking.

(3) The repeal of the Banking Act 1982 does not affect the amendment to the Public Finance Act 1977 made by section 13 of that Act.

### *New*

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(4) The enactments specified in the Schedule to this Act are hereby amended in the manner indicated in that Schedule.

\*1982, No. 144

## PART II

### AMENDMENTS TO EVIDENCE ACT 1908

**3. Part to be read with Evidence Act 1908**—This Part of this Act shall be read together with and deemed part of the Evidence Act 1908\* (in this Part of this Act referred to as the principal Act).

\*R.S. Vol. 28, p. 451

Amendments: 1994, No. 31; 1995, No. 6

**4. New sections inserted**—The principal Act is hereby amended by inserting, after section 47, the following heading and sections:

### *“Evidence of Banking Records*

“47A. **Interpretation**—For the purposes of sections 47B and 47C of this Act, ‘bank’ means—

“(a) A registered bank within the meaning of section 2 of the Reserve Bank of New Zealand Act 1989:

“(b) The Reserve Bank of New Zealand:

“(c) Any other person carrying on in New Zealand the business of banking.

**“47B. Proof of entries in banking records of banks—**

5 (1) Subject to this section, a copy of any entry in the (*business*)  
banking records of a bank is admissible as prima facie evidence  
of such entry and of the matters, transactions, and accounts  
recorded in those records.

“(2) No such copy shall be received in evidence under this  
section unless it is proved—

10 “(a) That the record was, at the time of the making of the  
entry, one of the ordinary banking records of the  
bank; and

“(b) That the entry was made in the usual and ordinary  
course of banking business; and

“(c) That the record is in the custody or control of the bank;  
and

15 *Struck Out*

20 “(d) Where the record is of information recorded or stored  
by means of a computer or other electronic device,  
that the record has been produced in the usual and  
ordinary course of producing such records from the  
information so recorded or stored; and

“(e) Where the record is of information recorded or stored in  
written form, that the copy has been compared  
with the original entry and is correct.

*New*

25 “(d) Where the record is of information that is not in written  
form and is recorded or stored by means of a  
computer or other electronic device or by other  
means, that the copy has been produced in the  
usual and ordinary course of producing such copies  
30 and is an accurate extract from the information so  
recorded or stored; and

35 “(e) Where the record is of information recorded or stored in  
written form, that the copy has been compared  
with the original entry or with a copy made in  
accordance with **section 156A (4)** of the Reserve Bank of  
New Zealand Act 1989, as the case may be, and is  
correct.

*Struck Out*

“(2) A certificate signed by an officer of the bank that the requirements of **subsection (1)** of this section have been complied with is prima facie evidence that those requirements have been complied with.

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*New*

“(3) A certificate purporting to be signed by an officer of the bank that the requirements of **subsection (2)** of this section have been complied with is prima facie evidence that those requirements have been complied with.

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“47c. **Officer not compellable to produce banking records**—Except pursuant to an order of a Court made for special cause, in any legal proceedings to which the bank is not a party, an officer of a bank is not compellable—

“(a) To produce any banking record of the bank the contents of which can be proved pursuant to **section 47b** of this Act; or

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“(b) To appear as a witness to prove the matters, transactions, and accounts recorded in those records.”

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## PART III

## AMENDMENTS TO RESERVE BANK OF NEW ZEALAND ACT 1989

**5. Part to be read with Reserve Bank of New Zealand Act 1989**—This Part of this Act shall be read together with and deemed part of the Reserve Bank of New Zealand Act 1989\* (in this Part of this Act referred to as the principal Act).

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\*1989, No. 157

Amendments: 1990, No. 96; 1992, No. 32; 1993, No. 118; 1995, No. 5

**6. New Part inserted**—The principal Act is hereby amended by inserting, after Part V, the following Part:

## “PART VA

## “RETENTION OF DOCUMENTS BY BANKS

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“156A. **Retention of documents by banks**—(1) For the purposes of this section, ‘bank’ means—

“(a) A registered bank:

“(b) The Reserve Bank of New Zealand:

“(c) Any other person carrying on in New Zealand the business of banking.

“(2) Subject to this section, every bank—

5 “(a) Shall retain, until the expiration of the period specified in **subsection (3) (a)** of this section, every cheque or bank draft that is drawn on that bank and that is presented to it for payment; and may thereafter destroy it:

10 “(b) Shall retain, until the expiration of the period specified in **subsection (3) (a)** of this section, every bill of exchange or promissory note that is made payable at that bank and that is presented to it for payment; and may thereafter destroy it:

15 “(c) Shall retain, until the expiration of the period specified in **subsection (3) (b)** of this section, every voucher used in connection with account transactions at a bank or branch of a bank (including every deposit or withdrawal slip); and may thereafter destroy it.

“(3) For the purposes of **subsection (2)** of this section,—

20 “(a) The period applicable in respect of a document to which **paragraph (a)** or **paragraph (b)** of that subsection applies shall be,—

25 “(i) In the case of a document payable on demand, the period of 7 years beginning with the date of the document; and

“(ii) In the case of any other document, the period of 7 years beginning with the due date of the document; and

30 “(b) The period applicable in respect of a voucher to which **paragraph (c)** of that subsection applies, shall be the period of 7 years beginning with the date of the transaction to which the voucher relates.

“(4) It is sufficient compliance with the duty to retain imposed by **subsection (2)** of this section if—

35 “(a) A copy of the document has been made by the bank on microfilm, microfiche, tape, disc, (or electronic or photographic storage media) electronic or photographic storage media, or other means; and

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40 “(b) The copy is capable of being reproduced therefrom in usable form; and

## New

“(b) The copy is able to be reproduced therefrom in a form that can be produced in evidence under **section 47B** of the Evidence Act 1908; and

“(c) The copy is retained by the bank for the same period as the document is required to be retained pursuant to that subsection. 5

“(5) It is sufficient compliance with the duty to retain imposed by **subsection (2)** of this section, in the case of a cheque (to which **section 7D** of the Cheques Act 1960 (as inserted by **section 8** of the Banking Law Reform Act 1995) applies) that has been presented for payment in accordance with **section 7D (1) (b) (iii)** of the Cheques Act 1960, if— 10

“(a) The paying bank arranges, in accordance with the rules of an inter-bank clearing system (within the meaning of **section 7A** of that Act), for the retention, on behalf of the paying bank, of the cheque or a copy of it in accordance with **subsection (4)** of this section; and 15

“(b) The paying bank is entitled to obtain possession of the cheque or the copy; and 20

“(c) The cheque or copy is retained on behalf of the paying bank for the period specified in **subsection (3) (a)** of this section.

“(6) No document shall be destroyed pursuant to this section at any time after a demand for the delivery of the document has been made to the bank by the person entitled to it. 25

“(7) A copy of a document made pursuant to this section is admissible in evidence in legal proceedings to the same extent as the document of which it is a copy would have been admissible. 30

“(8) This section applies to cheques, drafts, bills, and promissory notes received by a bank and vouchers in the possession of a bank either before or after the coming into operation of this section.” 35

PART IV

AMENDMENTS TO BILLS OF EXCHANGE ACT 1908

5 **7. Part to be read with Bills of Exchange Act 1908**—This Part of this Act shall be read together with and deemed part of the Bills of Exchange Act 1908\*.

\*R.S. Vol. 1, p. 283  
Amendment: 1979, No. 3

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

10 **“7A. Interpretation**—(1) For the purposes of (*sections 7c to 7E*) *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  
15 that are binding on those banks or branches.

“**(2)** Notwithstanding section 73 of the Bills of Exchange Act 1908, for the purposes of *sections 7B to 7E* of this Act, a cheque includes—

20 “(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

25 “(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.

*Struck Out*

30 **“7B. Non-transferable cheques**—(1) This section applies to a cheque that is crossed and that bears across its face the words ‘not-transferable’, or 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.

35 “**(3)** No endorsement or purported endorsement of a cheque to which this section applies that is intended to have the effect of negotiating or transferring the cheque and no transfer or purported transfer of any such cheque shall have any effect.

“**(4)** Where a bank in good faith and in the ordinary course of business pays a cheque to which this section applies that

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purports to be endorsed, the bank shall disregard the endorsement and, in doing so,—

“(a) Is deemed to have paid the cheque in due course; and

“(b) Does not incur any liability by reason of the endorsement. 5

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

“7c. **Rules as to presentment of cheques for payment—**

(1) A cheque is presented for payment if it is presented in accordance with the following rules: 10

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

“(b) Presentment, if made other than by a bank receiving payment for a customer or for that bank through an inter-bank clearing system, must be made by the holder, or by some person authorised to receive payment on behalf of the holder, at the branch of the bank on which the cheque is drawn or at such other place as may be specified on the cheque, at a time when the branch or other place is open for business: 15 20

“(c) Where a cheque is presented in accordance with paragraph (b) of this subsection at the proper place and no person with authority to pay or refuse payment is available, no further presentment to the bank upon which the cheque is drawn is required: 25

“(d) Where presentment is made by a bank receiving payment for a customer or for that bank through an inter-bank clearing system, presentment is made— 30

“(i) In the case of a cheque to which section 7d of this Act applies, at the time determined in accordance with that section; or

“(ii) In the case of a cheque to which section 7d of this Act does not apply or in respect of which a notice under subsection (3) of that section applies, as the case may be, when the cheque is received at the proper place for presentment. 35

“(2) Nothing in section 45 (2) of the Bills of Exchange Act 1908 applies to a cheque. 40



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5 “7D. **Truncation**—(1) Any banks or branches of banks that are bound by the rules establishing an inter-bank clearing system may from time to time, by agreement in writing, determine that this section shall apply in relation to cheques or such classes of cheques as may be specified in the agreement.

10 “(2) Subject to **subsection (3)** of this section, a cheque to which this section applies is deemed to be presented for payment to the paying bank at the time, when, in accordance with the rules applying to the inter-bank clearing system, the collecting bank enters the cheque for collection in that system and, for that purpose, a cheque is entered for collection by—

15 “(a) Delivering the cheque to a person operating the inter-bank clearing system; or

“(b) Recording particulars of the cheque by electronic or other means in any device or facility used for the purposes of that inter-bank clearing system.

20 “(3) Where a cheque is presented for payment in accordance with this section, the paying bank may, at any time not later than the close of the first business day after the day on which the cheque is entered for collection in the inter-bank clearing system, give notice to the collecting bank that the paying bank requires the cheque to be presented in accordance with **section 7c (1) (d) (ii)** of this Act.

25 “(4) Where a notice is given under **subsection (3)** of this section in relation to a cheque, any credit entered in the account of the collecting bank under the inter-bank clearing system may be reversed.

30 “(5) Where no notice is given under **subsection (3)** of this section in relation to a cheque, any credit entered in the account of the collecting bank under the inter-bank clearing system shall be final and binding as between the paying bank and the collecting bank and the cheque shall, on the entry of the credit, be deemed to have been paid on presentment.

35 “(6) After a cheque to which this section applies is paid, the paying bank is entitled to obtain possession of the cheque from the collecting bank subject to such conditions as may be specified in the rules of the inter-bank clearing system.

40 “7E. **Liability of paying bank**—(1) Where a cheque to which **section 7D** of this Act applies is deemed to have been paid in accordance with that section, the paying bank shall not be

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treated as having been negligent or as having acted otherwise than in the ordinary course of business by reason only of having agreed to that section applying to that cheque or to a class of cheques that includes that cheque.

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“(2) Except as provided in **subsection (1)** of this section, where a cheque to which **section 7D** of this Act applies is deemed to have been paid in accordance with that section, the paying bank shall not be relieved of any liability to which it would be subject if presentment were made otherwise than in accordance with that section.

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“(3) Without limiting **subsection (2)** of this section, where a cheque to which **section 7D** of this Act applies is deemed to have been paid in accordance with that section, the paying bank 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 7C (1) (d) (ii)** of this Act.”

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*New*

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

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- “(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.

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“(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

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- “(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

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- “(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

*New*

5 “(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

10 “*(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.

15 “(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.

20 “**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

25 “*(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

30 “*(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.

35 “(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:

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

## New

“(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 5

“(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 10

“(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: 15 20

“(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. 25

“(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 30

“(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. 35

“(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. 40

*New*

5 “(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.

10 “**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.

15 “(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.

20 “(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.

25 “(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.”

*New***Section 2 (4)****SCHEDULE****ENACTMENTS AMENDED**

Enactment	Amendment
1966, No. 19—The Customs Act 1966 (R.S. Vol. 2, p. 57)	By omitting from section 218 (2) (as substituted by section 14 (1) of the Customs Acts Amendment Act 1985 and amended by section 14 (3) of the Trade in Endangered Species Amendment Act 1991) the words “, notwithstanding any provision of the Banking Act 1982,”.
1989, No. 157—The Reserve Bank of New Zealand Act 1989	By repealing section 170.
1994, No. 166—The Tax Administration Act 1994	By omitting from section 220 (14) the words “section 5 of the Banking Act 1982”, and substituting the words “ <b>section 47B</b> of the Evidence Act 1908”.