

EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Cheques Act 1986

Cheques Regulations 2017

Section 119 of the *Cheques Act 1986* (the ‘Act’) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Cheques Regulations 2017* (the ‘Regulations’) is to remake and improve the *Cheques Regulations 1987* prior to their ‘sunsetting’. The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, are automatically repealed according to the progressive timetable set out in section 50 of that Act. Legislative instruments made in the 1980s that were registered on the Federal Register of Legislation on 1 January 2005, such as the *Cheques Regulations 1987*, will be automatically repealed on 1 April 2018. Legislative instruments generally cease to have effect after a specific date unless further legislative action is taken to extend their operation, such as remaking the instrument.

The Regulations remake and improve the *Cheques Regulations 1987*, by repealing redundant provisions, simplifying language and restructuring provisions for ease of navigation. The key changes are:

- simplifying language and removing redundant provisions that have no effect;
- using language more consistent with the Act, for example referring to ‘registered bodies’ rather than using ‘registered corporations’; and
- making language and formatting changes to reflect contextual changes and align with current drafting practices, such as referring to ‘sections’ rather than ‘regulations’.

These changes do not change the substantive meaning or operation of the provisions.

Further details of the Regulations are set out in [Attachment A](#).

The Act does not specify any conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on the day after they are registered on the Federal Register of Legislation.

ATTACHMENT A – Details of the *Cheques Regulations 2017*

This Attachment sets out further details of the *Cheques Regulations 2017* (the ‘Regulations’). All references are to the Regulations unless otherwise stated. References to a ‘corresponding provision’ are to the corresponding provision in the *Cheques Regulations 1987*, as identified by the finding table at [Attachment B](#).

Changes of a minor or machinery nature, such as the increased use of headings and references to ‘section’ rather than ‘regulation’ in accordance with modern drafting practices, are generally not specifically identified in this Attachment. Where the Regulations make changes that require further explanation, these are identified and explained in this Attachment.

Part 1 – Preliminary

Section 1 – Name of Regulations

This section provides that the title of the Regulations is the *Cheques Regulations 2017*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after they are registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Regulations are made under the *Cheques Act 1986* (the ‘Act’).

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Regulations has effect according to its terms.

Section 5 – Definitions

This section contains defined terms used in the Regulations. A note is added to the section to provide that certain expressions used in the Regulations are defined in the *Cheques Act 1986*.

Part 2 – Provisions for the purposes of cheques

Section 6 – FCA institutions

This section replicates the corresponding provision in the *Cheques Regulations 1987* (please refer to the finding table at [Attachment B](#)), with some minor changes to update the section without changing its operation.

The section is updated to refer to ‘registered bodies’ rather than ‘registered corporations’ as the Act defines FCA institutions as a ‘body’. This change merely updates the language of the provision without altering its meaning. The list of bodies prescribed is also updated to remove references to Elders Rural Finance Limited and Westralian Farmers Co-operative Limited as these entities are now deregistered.

Section 7 - Designated place – prescribed form of notice by a financial institution

This section replicates the corresponding provisions in the *Cheques Regulations 1987* (please refer to the finding table at [Attachment B](#)). The language used in the section has been updated to reflect current drafting practices and more closely align with the relevant provision in the Act.

Sections 8 to 10 (inclusive)

These sections replicate the corresponding provisions in the *Cheques Regulations 1987* (please refer to the finding table at [Attachment B](#)), with the following minor changes which do not change the operation of the relevant sections:

- The sections have been updated to reflect current drafting practice and use language more consistent with the relevant provisions in the Act;
- In section 8, the note has been moved from the bottom of the section to the bottom of the appropriate subsection; and
- Section 9 has been updated to remove a redundant provision that is not needed.

Section 11 – Damages on dishonour – rate of interest

This section replicates the corresponding provision in the *Cheques Regulations 1987* (please refer to the finding table at [Attachment B](#)), with some minor changes that are not intended to change its effect. The section has been updated to:

- reflect current drafting practice and use language more consistent with the relevant provisions in the Act;
- make it easier to understand; and
- clarify that the relevant period during which interest is payable for a dishonoured cheque is the period between the day the relevant cheque is dishonoured and the day the cheque’s principal amount is paid.

Part 3 – Application and transitional provisions

Sections 12 to 15 (inclusive) Provisions relating to the commencement of this instrument

These sections provide for application and transitional rules to deal with the change from the *Cheques Regulations 1987* to these Regulations. Under the transitional rules:

- a register kept under regulation 6 of the *Cheques Regulations 1987* immediately before the commencement of the Regulations is taken to be a register under section 8 of the Regulations from the commencement of the Regulations;
- a person who has paid the fee to inspect or obtain information from the register under the *Cheques Regulations 1987* can access the register or obtain the information under the Regulations; and
- the payment of interest in relation to dishonored cheques under section 11 is taken to also apply in relation to cheques that were dishonored prior to the Regulations commencing.

These transition provisions ensure that any obligations and rights that are triggered under the *Cheques Regulations 1987* will continue to apply as intended once that instrument is repealed and replaced with the Regulations.

Schedule 1 – Form of notice by a financial institution specifying a place as a designated place

Schedule 1 provides for the form of notice by a financial institution specifying a place as a designated place. The form replicates the existing form in the schedule to the *Cheques Regulations 1987* (please refer to the finding table at Attachment B), but omits some redundant content.

Schedule 2 – Repeals

This schedule provides for the repeal of the *Cheques Regulations 1987* as the instrument is due to sunset on 1 April 2018 and is being remade by the Regulations.

Under section 7 of the *Acts Interpretation Act 1901*, as applied to legislative instruments by subsection 13(1) of the *Legislation Act 2003*, the repeal of the *Cheques Regulations 1987* does not affect its previous operation.

ATTACHMENT B – Finding table

As a result of some of the changes described above, it became necessary to renumber provisions of the Regulations. This Explanatory Statement includes a finding table to assist in identifying which provision in the Regulations corresponds to a provision in the old law that has been rewritten or consolidated, and vice versa.

References to the old law are to the *Cheques Regulations 1987*. References to the new law are to the *Cheques Regulations 2017*. Also, in the finding table, ‘no equivalent’ means that this is a new provision that has no equivalent in the old law.

<i>Old law</i>	<i>New law</i>
<i>Cheques Regulations 1987</i>	<i>Cheques Regulation 2017</i>
1	1
No equivalent	2
No equivalent	3
No equivalent	4
2	5
2A	6
3	7
6	8
7	9
8	10
4	11
No equivalent	12
No equivalent	13
No equivalent	14
No equivalent	15
Schedule (Form 1)	Schedule 1 (Form of notice)
No equivalent	Schedule 2 (Repeals)

