

**USURY, BILLS OF LADING, AND WRITTEN MEMORANDA  
(REPEAL) ACT 1990 No. 7**

**NEW SOUTH WALES**

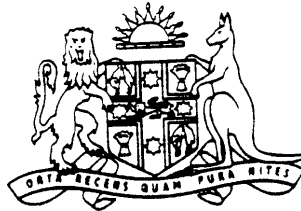


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**USURY, BILLS OF LADING, AND WRITTEN MEMORANDA  
(REPEAL) ACT 1990 No. 7**

NEW SOUTH WALES



**Act No. 7, 1990**

An Act to repeal the Usury, Bills of Lading, and Written Memoranda Act 1902 and to re-enact certain of its provisions in the Sale of Goods Act 1923 and the Law Reform (Miscellaneous Provisions) Act 1965.  
[Assented to 22 May 1990]

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Usury, Bills of Lading, and Written Memoranda (Repeal) Act 1990.

**Commencement**

2. This Act commences on a day to be appointed by proclamation.

**Repeal of Usury, Bills of Lading, and Written Memoranda Act 1902 No. 43**

3. The Usury, Bills of Lading, and Written Memoranda Act 1902 is repealed.

**Amendment of Sale of Goods Act 1923 No. 1**

4. The Sale of Goods Act 1923 is amended by inserting after Part 5 the following Part:

**PART 5A—CONSIGNMENT OR INDORSEMENT OF  
BILLS OF LADING**

**Rights of consignee or indorsee under bills of lading** (see Act No. 43 1902 s.5)

50A. Every consignee of goods named in a bill of lading, and every indorsee of a bill of lading, to whom the property in the goods described in the bill of lading passes on or by reason of the consignment or indorsement, shall have transferred to and vested in him or her all rights of action and be subject to the same liabilities in respect of the goods as if the contract contained in the bill of lading had been made with the consignee or indorsee.

**Saving as to right of stoppage in transitu or claims for freight** (see Act No. 43 1902 s.6)

50B. Nothing in this Part prejudices or affects:

- (a) any right of stoppage in transitu; or
- (b) any right to claim freight against the original shipper or owner; or

- (c) any liability of the consignee or indorsee arising.
  - (i) as a consignee or indorsee; or
  - (ii) because of receiving the goods,by reason or in consequence of the consignment or indorsement of the bill of lading.

**Bill of lading conclusive evidence of shipment** (see Act No. 43 1902 s.7)

50C. (1) Every bill of lading held by a consignee or indorsee for valuable consideration which represents that goods have been shipped on board a vessel is conclusive evidence of the shipment of the goods as against the master or other person signing the bill of lading even if the goods or some part of the goods have not been so shipped.

(2) The holder of a bill of lading is not entitled to rely on subsection (1) if the holder had actual notice, at the time the holder received the bill of lading, that the goods had not been in fact loaded on board the vessel.

**Amendment of Law Reform (Miscellaneous Provisions) Act 1965 No. 32**

5. The Law Reform (Miscellaneous Provisions) Act 1965 is amended by omitting section 3 and by inserting after Part 1 the following Part:

**PART 2—GUARANTEES**

**Surety discharging liability to be entitled to securities** (see Act No. 43 1902 s.8A)

3. (1) A person who, being surety for the debt or duty of another, or being liable with another for a debt or duty, pays that debt, or performs that duty, is entitled
- (a) to have assigned to that person, or to a trustee for that person, every judgment, specialty or other security held by the creditor in respect of that debt or duty, whether or not that judgment, specialty or other security is taken at law to have been satisfied by the payment of the debt or the performance of the duty; and

(b) to stand in the place of the creditor and to use all the remedies, and, if necessary, and on a proper indemnity, to use the name of the creditor in any proceedings to obtain from the principal debtor or any co-surety, co-contractor or co-debtor (as the case requires) indemnity for the advances made and loss sustained by the person who paid the debt or performed the duty.

(2) The payment of the debt or the performance of the duty by a surety is not a defence to any such proceedings referred to in subsection (1).

(3) A co-surety, co-contractor or co-debtor is not entitled under this section to recover from another co-surety, co-contractor or co-debtor more than the proportion to which, as between those parties themselves, that person is justly liable.

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*[Minister's second reading speech made in-  
Legislative Assembly on 1 May 1990  
Legislative Council on 4 April 1990]*