

[Act 1997 No 92]



New South Wales

Sea-Carriage Documents Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to update the law in relation to rights of action under bills of lading, to extend the law to sea waybills and ship's delivery orders and to provide for the law to apply to paperless transactions involving the electronic exchange of data.

A bill of lading is a document signed and delivered by the master of a ship to the shippers (or consignors of goods) on goods being shipped. It is a receipt for the goods shipped, evidence of the terms of a contract of carriage between the shipper and the carrier and a document of title to the goods shipped.

At common law, a buyer of shipped goods (being the consignee or endorsee of a bill of lading) is in general unable to sue the carrier for breach of contract if the goods were lost or damaged in the course of shipment because the buyer is not a party to the contract of carriage between the carrier and the shipper of the goods. However, under Part 5A of the *Sale of Goods Act 1923* the consignee of goods named in a bill of lading and every endorsee of a bill of lading to whom the property passes upon or by reason of consignment or endorsement has the same rights of action and is subject to the same liabilities in respect of the goods as if the contract had been made with the consignee or endorsee.

The proposed Act will allow the transfer of contractual rights from the shipper to the lawful holder of a bill of lading and for such a transfer to occur irrespective of whether property has passed upon or by reason of consignment or endorsement of the bill of lading. It will extend the contractual rights to persons to whom delivery of goods is made under a sea waybill or ship's delivery order, which are commonly used instead of bills of lading in the carriage of goods by sea.

The proposed Act repeals Part 5A of the *Sale of Goods Act 1923*, which contains the current law relating to rights of action under bills of lading, and replaces it with new provisions for the purposes described above.

The Bill is based on provisions of the *Carriage of Goods by Sea Act 1992* (UK) and is uniform with legislation that has been prepared for enactment throughout Australia.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 provides for the proposed Act to apply only in relation to sea-carriage documents coming into existence on or after the commencement of the proposed section.

Clause 4 repeals Part 5A of the *Sale of Goods Act 1923*.

Clause 5 defines certain expressions used in the proposed Act, including *bill of lading*, *lawful holder*, *sea waybill*, *ship's delivery order* and *data message*. A *data message* means information generated, stored or communicated by electronic, optical or analogous means including, but not limited to, electronic data interchange, electronic mail, telegram, telex and telecopy.

Clause 6 applies the provisions of the proposed Act to sea-carriage documents in the form of data messages and to communications in the form of data messages. The proposed Act is to apply with necessary changes and in accordance with procedures agreed between the parties to the contract of carriage.

Clause 7 makes it clear that rights of action in relation to a sea-carriage document can exist in respect of goods that are not ascertained or have ceased to exist (for example, when goods form part of a larger bulk or have been destroyed in transit).

Part 2 Rights under contracts of carriage

Clause 8 allows the lawful holder of a bill of lading, the consignee identified in a seaway bill and the person entitled to delivery in accordance with a ship's delivery order to assert contractual rights of action against the carrier of the goods to which the sea-carriage document relates (subclauses (1)–(3)). A person who acquires a bill of lading after delivery of the goods will have a right of action if the person obtains the document under arrangements made before the delivery (subclause (4) (a)) or becomes the holder of the sea-carriage document as a result of reindorsement of the bill of lading following rejection of the goods or documents (subclause (4) (b)). A person who has a right of action will be able to exercise that right on behalf of another person who suffers loss or damage but does not have a right of action (subclause (5)).

Clause 9 provides for the extinguishment of former rights of action following transfer of rights under clause 8.

Part 3 Liabilities under contracts of carriage

Clause 10 provides for the assumption of contractual liabilities (such as liability for freight and demurrage) by a person (for example, a bank holding a bill of lading as security) obtaining contractual rights by virtue of clause 8 if the person takes or demands delivery or otherwise makes a contractual claim against the carrier.

Clause 11 makes it clear that the imposition of liability under clause 10 does not prejudice the liability of any original party to the contract of carriage.

Part 4 Evidence

Clause 12 disposes of the rule in *Grant v Norway* (1851) 10 CB 665, which is authority for the proposition that a ship's master has no authority to sign bills of lading for goods not put on board (subclauses (1) and (3)). It provides that a bill of lading, representing goods to have been shipped or received for shipment on board a vessel and in the hands of the lawful holder, is

conclusive evidence against the carrier of the shipment or receipt. It also provides (subclause (2)) that a bill of lading to which the clause applies is prima facie evidence against the carrier in favour of the shipper that the goods have been shipped, or in the case of a received for shipment bill of lading, that they have been received for shipment.

Part 5 Miscellaneous

Clause 13 empowers the Governor to make regulations.

Clause 14 provides for a review of the operation of the proposed Act to be conducted by the Minister after 5 years from the date of assent.