

Passed by both Houses



New South Wales

Sale of Goods and Warehousemen's Liens Amendment (Bulk Goods) Bill 2006

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2006*



New South Wales

Sale of Goods and Warehousemen's Liens Amendment (Bulk Goods) Bill 2006

Act No , 2006

An Act to amend the *Sale of Goods Act 1923* and the *Warehousemen's Liens Act 1935* in relation to the sale and storage of bulk goods.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Sale of Goods and Warehousemen's Liens Amendment (Bulk Goods) Act 2006*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Amendment of Sale of Goods Act 1923 No 1

The *Sale of Goods Act 1923* is amended as set out in Schedule 1.

4 Amendment of Warehousemen's Liens Act 1935 No 19

The *Warehousemen's Liens Act 1935* is amended as set out in Schedule 2.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which this Act commences.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Sale of Goods Act 1923

(Section 3)

[1] Section 21 Goods must be ascertained

Omit "Where". Insert instead "Subject to section 25A, where".

[2] Section 25A

Insert after section 25:

25A Contracts of sale for goods forming part of bulk quantity (cf *Sale of Goods Act 1979* of the United Kingdom, sections 20A and 20B)

- (1) This section applies to a contract of sale for a specified quantity of unascertained goods of which some or all form part of a single bulk quantity of goods of the same kind (*the bulk*) if:
 - (a) the bulk is identified, either in the contract or by subsequent agreement between the parties, and
 - (b) the buyer has paid for some or all of the goods that form part of the bulk.
- (2) Unless the parties agree otherwise:
 - (a) property in an undivided share in the bulk is transferred to the buyer, and
 - (b) the buyer becomes an owner in common of the bulk, as soon as both of the conditions referred to in subsection (1) have been met.
- (3) The buyer's undivided share in the bulk at any time is such share as, at that time, is equivalent to the quantity of goods paid for and due to the buyer out of the bulk divided by the quantity of goods in the bulk.
- (4) If at any time the aggregate of all buyers' undivided shares in the bulk exceeds the whole of the bulk, those shares are to be reduced proportionately so that their aggregate is equal to the bulk.
- (5) If a buyer has paid for some only of the goods due to the buyer out of the bulk, any delivery to the buyer out of the bulk is to be attributed to the goods for which payment has been made.
- (6) Part payment for any goods is taken to be payment for a corresponding part of the goods.
- (7) A person who becomes an owner in common of the bulk is taken to consent to:

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Schedule 1 Amendment of Sale of Goods Act 1923

- (a) any delivery of goods out of the bulk to any other owner in common of the bulk, being goods that are due to that other owner under a contract to which this section applies, and
 - (b) any dealing with, or removal, delivery or disposal of, goods in the bulk by any other owner in common of the bulk, but only to the extent of that other owner's undivided share in the bulk.
- (8) No cause of action lies against any person by reason of that person's having acted in accordance with subsection (7) (a) or (b) in reliance on the consent that exists by virtue of that subsection.
- (9) Nothing in this section:
- (a) imposes an obligation on a buyer of goods out of the bulk to compensate any other buyer of goods out of the bulk for any shortfall in the quantity of goods received by that other buyer, or
 - (b) affects any contract or other arrangement between buyers of goods out of the bulk for adjustments between themselves, or
 - (c) affects the rights of any buyer under a contract to which this section applies.
- (10) This section does not apply to a contract of sale entered into before the commencement of the *Sale of Goods and Warehousemen's Liens Amendment (Bulk Goods) Act 2006*.

Schedule 2 **Amendment of Warehousemen's Liens Act 1935**

(Section 4)

[1] Long title

Insert “; and for other purposes” after “liens”.

[2] Section 9A

Insert after section 9:

9A Intermingled goods

- (1) This section applies to goods that have been deposited with a warehouseman by their owner, or by his or her authority, and that have become intermingled with other goods of the same kind owned by, or deposited with, the warehouseman so as to form a single bulk quantity (*the bulk*).
- (2) Unless the parties otherwise agree:
 - (a) the owner's property in the goods becomes property in an undivided share in the bulk, and
 - (b) the owner becomes an owner in common of the bulk, and
 - (c) subject to paragraph (d), the owner and warehouseman each have, in relation to the owner's undivided share in the bulk, the same obligations as they would have had in relation to the goods had they not become part of the bulk, and
 - (d) the warehouseman's obligation to deliver the goods to, or to the order of, the owner becomes an obligation to deliver an equivalent quantity of goods out of the bulk to, or to the order of, the owner,
as from the time the goods become part of the bulk.
- (3) The owner's undivided share in the bulk at any time is such share as, at that time, is equivalent to the quantity of goods that have been deposited by the owner less the quantity of goods that have been delivered out of the bulk to, or to the order of, the owner.
- (4) If at any time the aggregate of all owners' undivided shares in the bulk exceeds the whole of the bulk, those shares are to be reduced proportionately so that their aggregate is equal to the bulk.
- (5) A person who becomes an owner in common of the bulk is taken to consent to:

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Schedule 2 Amendment of Warehousemen's Liens Act 1935

- (a) any delivery of goods out of the bulk to any other owner in common of the bulk, being goods to which this section applies, and
 - (b) any dealing with, or removal, delivery or disposal of, goods in the bulk by any other owner in common of the bulk, but only to the extent of that other owner's undivided share in the bulk.
- (6) No cause of action lies against any person by reason of that person's having acted in accordance with subsection (5) (a) or (b) in reliance on the consent that exists by virtue of that subsection.
- (7) This section does not apply to goods deposited with a warehouseman before the commencement of the *Sale of Goods and Warehousemen's Liens Amendment (Bulk Goods) Act 2006*.