

New South Wales

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

Explanatory note

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

Overview of Bill

This Bill arises from the financial collapse of Creasy Grain Enterprises, a grain trading company that has gone first into receivership and then into liquidation. Various grain growers who have stored grain with that company have been under threat of losing their rights to the grain as a consequence of the company's collapse.

The storage of goods in bulk has certain legal consequences, particularly in the context of contracts of sale (where a vendor sells to purchasers from a single bulk store) and in the context of warehousing (where goods belonging to a number of owners are deposited in a single bulk store). Grains and other agricultural commodities are typical examples of commodities that, because they are commonly stored in bulk, are affected by these consequences.

In relation to contracts of sale, section 21 of the *Sale of Goods Act 1923* provides that property in "unascertained" goods does not pass under a contract of sale until the goods are "ascertained". In this context, goods are "ascertained" when they are separated out from bulk as, for example, when they are loaded on a truck for delivery.

In relation to warehousing, the goods of one person commonly become intermingled with those of another, rendering it impossible for the same goods to be returned to the person by whom they were deposited. Storage contracts in this situation can

therefore only oblige the warehouseman to return an equivalent quantity of the same kind of goods. The High Court, in *Chapman Bros v Verco Bros & Co Ltd* [1933] 49 CLR 306, decided that, in these circumstances, property in the goods passes to the warehouseman when the goods are deposited.

The objects of this Bill are:

- (a) to amend the *Sale of Goods Act 1923* so as to provide that a purchaser of goods to be delivered from bulk storage can, by paying for them, obtain a proprietary right to those goods before they are separated out from the bulk, and
- (b) to amend the *Warehousemen's Liens Act 1935* so as to ensure that an owner of goods delivered into bulk storage retains a proprietary right to those goods after they have become part of the bulk.

Outline of provisions

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 the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the *Sale of Goods Act 1923* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Warehousemen's Liens Act 1935* set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act on the day after it commences. Once the amendments have commenced the proposed Act will be spent. Section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Sale of Goods Act 1923

Schedule 1 [2] inserts a new section 25A into the *Sale of Goods Act 1923*. The proposed section generally follows the provisions of sections 20A and 20B of the *Sale of Goods Act 1979* of the United Kingdom (other relevant provisions of that Act being substantially the same as those of the *Sale of Goods Act 1923*).

The effect of the proposed section is that, as soon as the bulk from which goods are purchased is identified and the goods paid for, the purchaser becomes an owner in common of the whole of the bulk with an undivided share equivalent to the quantity of goods that have been paid for and are due for delivery. This provision is subject to any contrary agreement by the parties.

Other provisions of the proposed section deal with part payments (part payment is payment for a corresponding part of the goods), circumstances in which the bulk is of insufficient size to allow all purchasers to receive full deliveries (the purchasers' shares in the bulk are reduced proportionately) and the relationship between co-owners of the bulk (each co-owner is taken to have given consent to deliveries and dealings in relation to other co-owners).

The proposed section will not apply to contracts of sale entered into before the commencement of the proposed Act.

Schedule 1 [1] makes a consequential amendment to section 21 of the *Sale of Goods Act 1923*.

Schedule 2 Amendment of Warehousemen's Liens Act 1935

Schedule 2 [2] inserts a new section 9A into the *Warehousemen's Liens Act 1935*. The proposed section reflects the approach taken in Schedule 1 in relation to the *Sale of Goods Act 1923*.

The effect of the proposed section is that the owner of goods that are deposited in a warehouse and become intermingled with other goods becomes an owner in common of the bulk with an undivided share equivalent to the quantity of goods that he or she has deposited. The obligations that the owner and warehouseman would have had if the goods had not become intermingled continue in relation to the owner's undivided share, so that the warehouseman's obligation to deliver back the owner's goods becomes an obligation to deliver back an equivalent quantity of goods from the bulk. This provision is subject to any contrary agreement by the parties.

Other provisions of the proposed section deal with circumstances in which the bulk is of insufficient size to allow all owners to receive full deliveries (the owners' shares in the bulk are reduced proportionately) and the relationship between co-owners of the bulk (each co-owner is taken to have given consent to deliveries and dealings in relation to other co-owners).

The proposed section will not apply to goods deposited with a warehouseman before the commencement of the proposed Act.

Schedule 2 [1] makes a consequential amendment to the long title of the *Warehousemen's Liens Act 1935*.

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

Explanatory note

New South Wales

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

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Sale of Goods Act 1923 No 1	2
4 Amendment of Warehousemen's Liens Act 1935 No 19	2
5 Repeal of Act	2
Schedule 1 Amendment of Sale of Goods Act 1923	3
Schedule 2 Amendment of Warehousemen's Liens Act 1935	5

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

Contents

Page

Contents page 2

New South Wales

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

No. , 2006

A Bill for

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.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Sale of Goods and Warehousemen's Liens Amendment (Bulk Goods) Act 2006</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6
3 Amendment of Sale of Goods Act 1923 No 1	7
The <i>Sale of Goods Act 1923</i> is amended as set out in Schedule 1.	8
4 Amendment of Warehousemen's Liens Act 1935 No 19	9
The <i>Warehousemen's Liens Act 1935</i> is amended as set out in Schedule 2.	10 11
5 Repeal of Act	12
(1) This Act is repealed on the day following the day on which this Act commences.	13 14
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	15 16

Schedule 1	Amendment of Sale of Goods Act 1923	1
	(Section 3)	2
[1] Section 21 Goods must be ascertained		3
	Omit "Where". Insert instead "Subject to section 25A, where".	4
[2] Section 25A		5
	Insert after section 25:	6
25A Contracts of sale for goods forming part of bulk quantity	(cf <i>Sale of Goods Act 1979</i> of the United Kingdom, sections 20A and 20B)	7 8
(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 (<i>the bulk</i>) if:	9 10 11
(a)	the bulk is identified, either in the contract or by subsequent agreement between the parties, and	12 13
(b)	the buyer has paid for some or all of the goods that form part of the bulk.	14 15
(2)	Unless the parties agree otherwise:	16
(a)	property in an undivided share in the bulk is transferred to the buyer, and	17 18
(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.	19 20 21
(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.	22 23 24 25
(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.	26 27 28
(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.	29 30 31
(6)	Part payment for any goods is taken to be payment for a corresponding part of the goods.	32 33
(7)	A person who becomes an owner in common of the bulk is taken to consent to:	34 35

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

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 1
2
3
 - (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. 4
5
6
7
- (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. 8
9
10
- (9) Nothing in this section: 11
 - (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 12
13
14
15
 - (b) affects any contract or other arrangement between buyers of goods out of the bulk for adjustments between themselves, or 16
17
18
 - (c) affects the rights of any buyer under a contract to which this section applies. 19
20
- (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*. 21
22
23

Schedule 2	Amendment of Warehousemen's Liens Act 1935	1
		2
	(Section 4)	3
[1] Long title		4
	Insert “; and for other purposes” after “liens”.	5
[2] Section 9A		6
	Insert after section 9:	7
9A Intermingled goods		8
(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 (<i>the bulk</i>).	9 10 11 12 13
(2)	Unless the parties otherwise agree:	14
(a)	the owner's property in the goods becomes property in an undivided share in the bulk, and	15 16
(b)	the owner becomes an owner in common of the bulk, and	17
(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	18 19 20 21 22
(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,	23 24 25 26
	as from the time the goods become part of the bulk.	27
(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.	28 29 30 31
(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.	32 33 34
(5)	A person who becomes an owner in common of the bulk is taken to consent to:	35 36

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

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 | 1
2
3 |
| (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. | 4
5
6
7 |
| (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. | 8
9
10 |
| (7) | This section does not apply to goods deposited with a warehouseman before the commencement of the <i>Sale of Goods and Warehousemen's Liens Amendment (Bulk Goods) Act 2006</i> . | 11
12
13 |