

Factors (Mercantile Agents) Act 1923 No 2

[1923-2]



New South Wales

Status Information

Currency of version

Current version for 15 June 1995 to date (accessed 19 May 2024 at 1:08)

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Responsible Minister

- Attorney General

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

Authorisation

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Factors (Mercantile Agents) Act 1923 No 2



New South Wales

An Act to amend and consolidate the law relating to factors; to repeal the [Factors Act 1899](#) and certain other Acts; and for purposes consequent thereon or incidental thereto.

1 Name of Act and commencement

- (1) This Act may be cited as the [Factors \(Mercantile Agents\) Act 1923](#).
- (2) This Act shall come into operation on the thirty-first day of December, one thousand nine hundred and twenty-three.

2 Repeal

- (1) The enactments mentioned in the Schedule to this Act are, to the extent therein expressed, hereby repealed.
- (2) This repeal shall not affect anything done or suffered or any right title or interest acquired or accrued or liability incurred before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing right title interest or liability.

3 Definitions

In this Act, unless the context or subject-matter otherwise requires:

Advance includes a payment of money and the delivery of a bill of exchange or other negotiable security.

Document of title includes any bill of lading, dock warrant, warehouse-keeper's certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

Goods includes wares and merchandise.

Mercantile agent means a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods.

Pledge includes any contract pledging or giving a lien or security on goods, whether in consideration of an original advance or of any further or continuing advance or of any pecuniary liability.

4 Consignor and consignee

- (1) Where the owner of goods has given possession of the goods to another person for the purpose of consignment or sale, or has shipped the goods in the name of another person, and the consignee of the goods has not had notice that such person is not the owner of the goods, the consignee shall, in respect of advances made to or for the use of such person, have the same lien on the goods as if such person were the owner of the goods, and may transfer the lien to another person.
- (2) The person in whose name any goods have been shipped shall, for the purposes of this section, be taken to have been given possession of the goods for the purpose of consignment or sale unless the contrary is shown.
- (3) Nothing in this section shall limit or affect the validity of any sale pledge or disposition by a mercantile agent.

5 Powers of mercantile agent

- (1) Where a mercantile agent is entrusted as such with the possession of any goods or the documents of title to goods, any sale pledge or other disposition of the goods made by the agent in the ordinary course of business of a mercantile agent shall, subject to the provisions of this Act, be as valid as if the agent were expressly authorised by the owner of the goods to make the same:

Provided that the person taking under the disposition acts in good faith, and has not at the time of the disposition notice that the person making the disposition has not authority to make the same.

- (2) Where a mercantile agent so entrusted continues in possession of goods or of the documents of title to goods, any sale pledge or other disposition, which would have been valid if the entrusting had continued, shall be valid notwithstanding the determination thereof, provided that the person taking under the disposition has not at the time thereof notice of such determination.

6 Presumptions

For the purposes of this Act:

- (1) a mercantile agent in possession of goods or of the documents of title to goods shall be deemed to have been entrusted with the goods or documents as such agent until the contrary is shown,
- (2) a mercantile agent entrusted as such agent and possessed of the documents of title to goods whether derived immediately from the owner of the goods or obtained by

reason of the agent having been entrusted with the possession of the goods or of any other document of title thereto shall be deemed to be entrusted with the possession of the goods represented by the documents,

- (3) an agent shall be deemed to be possessed of goods or documents of title to goods whether the same are in the agent's actual custody or control or are held by any other person subject to the agent's control or for the agent or on the agent's behalf,
- (4) any contract whether made directly with an agent or with any clerk or other person on the agent's behalf shall be deemed to be a contract with the agent,
- (5) a pledge of the documents of title to goods shall be deemed to be a pledge of the goods represented by the documents,
- (6) where any advance is bona fide made to a mercantile agent entrusted as such agent on the faith of an agreement in writing to consign deposit transfer or deliver goods or documents of title to goods, and the goods or documents are actually received by the person making the advance without notice that the agent was not authorised to make the pledge, the advance shall be deemed to be an advance on the security of the goods or documents within the meaning of this Act, although the goods or documents are not actually received by the person making the advance until after the advance is made,
- (7) the transfer of a document of title to goods may be by indorsement, or where the document is by custom or by its express terms transferable by delivery, or makes the goods deliverable to bearer, then by delivery.

7 Pledge by way of exchange

Where a mercantile agent pledges goods in consideration of the delivery or transfer of any other goods or documents of title to goods or negotiable securities upon which the person delivering or transferring the same had at the time a valid and available lien and security for or in respect of a previous advance by virtue of an agreement made with the agent, the pledge, if the pledgee acts in good faith and without notice that the agent had not authority to make the same, shall be deemed to be in consideration of an advance within the meaning of this Act as if there had been a present advance of money, but the pledgee shall acquire no right or interest in excess of the value of the goods documents or negotiable securities when so delivered or transferred.

8 Pledge for antecedent debt

Where a mercantile agent pledges goods as security for a debt or liability due from the pledgor to the pledgee before the time of the pledge, the pledgee shall acquire no further right to the goods than could have been enforced by the pledgor at the time of the pledge.

9 Saving for rights of true owner

(1) Nothing in this Act:

- (a) shall authorise an agent to exceed or depart from the agent's authority as between the agent and the agent's principal or exempt the agent from any liability, civil or criminal, for so doing,
- (b) shall prevent the owner of goods from recovering the goods from an agent or the agent's official assignee or trustee in bankruptcy at any time before the sale or pledge thereof,
- (c) shall prevent the owner of goods sold by an agent from recovering from the buyer the price agreed to be paid for the same, or any part of that price, subject to any right of set-off on the part of the buyer against the agent,
- (d) shall prevent the owner of goods pledged by an agent from having the right to redeem the goods at any time before the sale thereof, on satisfying the claim for which the goods were pledged, and paying to the agent, if required by the agent, any money in respect of which the agent would by law be entitled to retain the goods or the documents of title thereto, or any of them, by way of lien as against the owner, or from recovering from any person with whom the goods have been pledged any balance of money remaining in the person's hands as the produce of the sale of the goods after deducting the amount of the lien.

(2) In case of the bankruptcy of any such agent the owner of the goods so redeemed shall, in respect of any sum paid by the owner on account of the agent for redemption, be held to have paid such sum for the use of the agent before bankruptcy, and shall be held pro tanto to have discharged any debt due by the owner to the agent; or in the case there has been no such redemption the owner shall be deemed to be a creditor of the bankrupt for the value of the goods so pledged at the time of the pledge, and shall, if the owner thinks fit, be entitled in either of such cases to prove for or set off the sum so paid or the value of the goods, as the case may be.

10 Saving for Common Law powers of agent

The provisions of this Act shall be construed in amplification and not in derogation of the powers exercisable by an agent independently of this Act.

Schedule Enactments repealed

(Section 2)

Reference to Acts	Title	Extent of repeal
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4 Geo IV, c 83 (as declared to be in force in New South Wales)	An Act for the better protection of the property of merchants and others who may hereafter enter into contracts or agreements in relation to goods, wares, or merchandises entrusted to factors or agents.	The whole Act.
6 Geo IV, c 94 (as declared to be in force in New South Wales).	An Act to alter and amend an Act for the better protection of the property of merchants and others who may hereafter enter into contracts or agreements in relation to goods, wares, or merchandise entrusted to factors or agents.	The whole Act.
Act No 28 of 1899.	<i>Factors Act 1899</i>	The whole Act.