



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.



New South Wales

Sea-Carriage Documents Bill 1997

Contents

	Page
Part 1 Preliminary	
1 Name of Act	2
2 Commencement	2
3 Application	2
4 Repeal of Part 5A of Sale of Goods Act 1923	2
5 Definitions	2
6 Electronic and computerised sea-carriage documents	4
7 Application where goods have ceased to exist, or cannot be identified	5
Part 2 Rights under contracts of carriage	
8 Transfer of rights	6
9 Extinguishment of previous rights	7

Sea-Carriage Documents Bill 1997

Contents

	Page
Part 3 Liabilities under contracts of carriage	
10 Transfer of liabilities	8
11 Liability of original parties	8
Part 4 Evidence	
12 Shipment under bills of lading	9
Part 5 Miscellaneous	
13 Regulations	10
14 Review of Act	10



New South Wales

Sea-Carriage Documents Bill 1997

No , 1997

A Bill for

An Act to reform the law relating to bills of lading, sea waybills and ship's delivery orders; and for other purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Sea-Carriage Documents Act 1997*.

2 Commencement

5

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

3 Application

This Act applies only in relation to sea-carriage documents coming into existence on or after the commencement of this section. 10

4 Repeal of Part 5A of Sale of Goods Act 1923

Part 5A of the *Sale of Goods Act 1923* is repealed.

5 Definitions

In this Act: 15

bill of lading means a bill of lading (including a received for shipment bill of lading) which is capable of transfer:

- (a) by endorsement, or
- (b) as a bearer bill, by delivery without endorsement.

contract of carriage, in relation to a sea-carriage document, means: 20

- (a) in the case of a bill of lading or a sea waybill—the contract of carriage contained in, or evidenced by, the document, or
- (b) in the case of a ship's delivery order—the contract of carriage in association with which the order is given. 25

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.

goods, in relation to a sea-carriage document, means the goods to which the document relates. 5

identification, in relation to the identification of a person in a sea-carriage document, includes the identification of the person by a description which allows for the person's identity to be varied, in accordance with the document, after its issue. 10

lawful holder, in relation to a bill of lading, means a person who:

- (a) has come into possession of the bill, in good faith, as the consignee of the goods, by virtue of being identified in the bill, or
- (b) has come into possession of the bill, in good faith, as a result of the completion, by delivery of the bill: 15
 - (i) of any endorsement of the bill, or
 - (ii) in the case of a bearer bill—of any other transfer of the bill, or
- (c) would be the lawful holder of the bill under paragraph (a) or (b) had not the person come into possession of the bill as the result of a transaction effected at a time when possession of the bill no longer gave a right (as against the carrier) to possession of the goods. 20

sea-carriage document means a bill of lading, a sea waybill or a ship's delivery order. 25

sea waybill means a document other than a bill of lading which:

- (a) is issued by the carrier of the goods, and
- (b) is a receipt for the goods, and
- (c) contains or evidences a contract for the carriage of the goods by sea, and 30
- (d) identifies the person to whom delivery of the goods is to be made by the carrier in accordance with the contract.

ship's delivery order means a document other than a bill of lading or a sea waybill which:

- (a) is given in association with a contract for the carriage of goods by sea including those to which the document relates, and
- (b) contains an undertaking by the carrier to deliver the goods to which the document relates to a person identified in the document.

5

6 Electronic and computerised sea-carriage documents

- (1) Subject to this section, this Act applies: 10

- (a) in relation to a sea-carriage document in the form of a data message—in the same way as it applies in relation to a written sea-carriage document, and
- (b) in relation to the communication of a sea-carriage document by means of a data message—in the same way as it applies in relation to the communication of a sea-carriage document by other means. 15

- (2) This Act applies under subsection (1) with necessary changes and in accordance with procedures agreed between the parties to the contract of carriage. 20

- (3) Without limiting the generality of subsection (2), in this Act, in the application of the following terms to a sea-carriage document in the form of a data message, or to the communication of a sea-carriage document by means of a data message:

delivery includes any form of communication which constitutes delivery under the terms of the contract of carriage. 25

endorsement includes any form of authorisation which constitutes endorsement under the terms of the contract of carriage.

possession, in relation to the document, includes being in receipt of the document in any manner which constitutes possession under the terms of the contract of carriage. 30

signed includes authentication in any manner which constitutes signing under the terms of the contract of carriage.

7 Application where goods have ceased to exist, or cannot be identified

Without prejudice to the operation of section 8 (4) or 12, nothing in this Act precludes its operation in relation to a sea-carriage document where the goods:

5

- (a) cease to exist after the issue of the document, or
- (b) cannot be identified (whether because they are mixed with other goods, or for any other reason).

10

Part 2 Rights under contracts of carriage

8 Transfer of rights

- (1) All rights under the contract of carriage in relation to which a sea-carriage document is given are transferred to:
 - (a) in the case of a bill of lading—each successive lawful holder of the bill, or 5
 - (b) in the case of a sea waybill—the person (not being an original party to the contract) to whom delivery of the goods is to be made by the carrier in accordance with the contract, or 10
 - (c) in the case of a ship's delivery order—the person to whom delivery of the goods is to be made in accordance with the order.
- (2) Rights in a contract of carriage transferred to a person under subsection (1) vest in that person as if the person had been an original party to the contract. 15
- (3) Rights in a contract of carriage in relation to which a ship's delivery order is given are transferred under subsection (1):
 - (a) subject to the terms of the order, and
 - (b) only in respect of the goods to which the order relates. 20
- (4) Where a person becomes the lawful holder of a bill of lading when possession of the bill no longer gives a right (as against the carrier) to possession of the goods, no rights are transferred to that person under subsection (1) unless the person becomes the lawful holder of the bill: 25
 - (a) by virtue of a transaction effected under any contractual or other arrangement made before the possession of the bill ceased to give such a right to possession, or
 - (b) as a result of the re-endorsement of the bill following rejection to that person by another person of goods or documents delivered to the other person under any contractual or other arrangement made before the possession of the bill ceased to give such a right to possession. 30

-
- (5) Where, in relation to a sea-carriage document:
- (a) a person with any interest or right in relation to the goods sustains loss or damage in consequence of a breach of the contract of carriage, and
 - (b) subsection (1) operates to transfer the rights in that contract to another person,
- the person to whom the rights in the contract are transferred is entitled to exercise those rights for the benefit of the person who sustained the loss or damage to the same extent that they would be able to be exercised if they were vested in that person.
- (6) In this section, a reference to a *contract of carriage*, in relation to the transfer of rights under the contract, is to be taken to be a reference to the contract as varied by any variation of which the transferee has notice at the time of the transfer.

9 Extinguishment of previous rights 15

- (1) Where section 8 operates in relation to a bill of lading to transfer rights under the contract of carriage, the transfer extinguishes any entitlement to those rights which derives from:
- (a) a person's having been an original party to the contract of carriage, or
 - (b) the previous operation of that section.
- (2) Where section 8 operates in relation to a sea waybill or ship's delivery order to transfer rights under the relevant contract of carriage:
- (a) the transfer extinguishes any entitlement to those rights which derives from the previous operation of that section, and
 - (b) in the case of a sea waybill—the transfer is without prejudice to any rights which derive from a person's having been an original party to the contract, and
 - (c) in the case of a ship's delivery order—the transfer is without prejudice to any rights under the contract other than rights derived from the previous operation of that section.

Part 3 Liabilities under contracts of carriage

10 Transfer of liabilities

- (1) This section applies to a person where rights in the contract of carriage in relation to a sea-carriage document are transferred to the person under section 8 and: 5
 - (a) before those rights are transferred, the person demands or takes delivery from the carrier of any of the goods, or
 - (b) after those rights are transferred, the person demands or takes delivery from the carrier of any of the goods, or
 - (c) the person makes a claim under the contract against the carrier in respect of any of the goods. 10
- (2) A person to whom this section applies is subject to the liabilities under the contract as if the person had been an original party to the contract.
- (3) A person to whom subsection (1) (a) applies becomes subject to the liabilities under the contract under subsection (2) at the time the rights in the contract are transferred to the person. 15
- (4) In this section, a reference to a *contract of carriage*, in relation to a person who becomes subject to a liability under the contract by virtue of this section, is to be taken to be a reference to the contract as varied by any variation of which the person has notice at the time of becoming subject to the liability. 20

11 Liability of original parties

- Section 10 does not operate so as to prejudice the liability under a contract of carriage of any original party to the contract. 25

Part 4 Evidence

12 Shipment under bills of lading

- (1) This section applies in relation to a bill of lading which:
 - (a) represents goods to have been shipped, or received for shipment, on board a vessel, and 5
 - (b) is signed:
 - (i) by the master of the vessel, or
 - (ii) by another person with the express, implied or apparent authority of the carrier to sign bills of lading. 10
- (2) A bill of lading to which this section applies is prima facie evidence as against the carrier, in favour of the shipper, of the shipment of the goods or, in the case of a received for shipment bill of lading, of their receipt for shipment.
- (3) A bill of lading to which this section applies is conclusive 15 evidence as against the carrier, in favour of a lawful holder of the bill, of the shipment of the goods or, in the case of a received for shipment bill of lading, of their receipt of shipment.

Part 5 Miscellaneous

13 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 5

14 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. 10
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years. 15