

Queensland



SEA-CARRIAGE DOCUMENTS ACT 1996

Act No. 73 of 1996

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Sea-Carriage Documents Act 1996

Act No. 73 of 1996

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

[Assented to 9 December 1996]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Sea-Carriage Documents Act 1996*.

Application

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

Definitions

3. In this Act—

“bill of lading” means a bill of lading (including a received for shipment bill of lading) 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—

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

“data message” means information generated, stored or communicated by electronic, optical or analogous means, including 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.

“identification”, of a person in a sea-carriage document, includes identification of the person by a description that allows the person’s

identity to be varied, in accordance with the document, after its issue.

“lawful holder”, of 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, because the person is 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—
 - (i) of any endorsement of the bill; or
 - (ii) for 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.

“sea-carriage document” means a bill of lading, a sea waybill or a ship’s delivery order.

“sea waybill” means a document, other than a bill of lading, that—

- (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
- (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, that—

- (a) is given in association with a contract for the carriage of goods by sea, including goods 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.

Electronic and computerised sea-carriage documents

4.(1) This Act applies, with necessary changes, to a sea-carriage document in the form of a data message in the same way as it applies to a written sea-carriage document.

(2) This Act applies, with necessary changes, to the communication of a sea-carriage document by means of a data message in the same way as it applies to the communication of a sea-carriage document by other means.

(3) This Act applies, with necessary changes—

- (a) to a sea-carriage document in the form of a data message; or
- (b) to the communication of a sea-carriage document by means of a data message;

in accordance with procedures agreed between the parties to the contract of carriage.

(4) Without limiting subsection (3), in this Act, for a sea-carriage document in the form of a data message, or the communication of a sea-carriage document by means of a data message—

“delivery” includes any form of communication that constitutes delivery under the terms of the contract of carriage.

“endorsement” includes any form of authorisation that constitutes endorsement under the terms of the contract of carriage.

“possession”, of the document, includes being in receipt of the document in any way that constitutes possession under the terms of the contract of carriage.

“signed” includes authenticated in any way that constitutes signing under the terms of the contract of carriage.

Application if goods have ceased to exist, or can not be identified

5. Without limiting section 6(4) or 10, nothing in this Act prevents the Act applying to a sea-carriage document if the goods—

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

PART 2—RIGHTS UNDER CONTRACTS OF CARRIAGE

Transfer of rights

6.(1) All rights under the contract of carriage in relation to which a sea-carriage document is given are transferred to—

- (a) for a bill of lading—each successive lawful holder of the bill; or
- (b) for a sea waybill—the person (other than 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
- (c) for 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.

(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 relation to the goods to which the order relates.

(4) If 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—

- (a) because of a transaction effected under any contractual or other arrangement made before the possession of the bill ceased to give that right to possession; or
- (b) because 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 that right to possession.

(5) If, 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—

“**contract of carriage**”, in relation to the transfer of rights under the contract, means the contract as varied by any variation of which the transferee has notice at the time of the transfer.

Extinguishment of previous rights

7.(1) If section 6 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 section 6.

(2) If section 6 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 that derives from the previous operation of section 6; and
- (b) for a sea waybill—the transfer does not affect any rights that derive from a person’s having been an original party to the contract; and
- (c) for a ship’s delivery order—the transfer does not affect any rights under the contract other than rights derived from the previous operation of section 6.

PART 3—LIABILITIES UNDER CONTRACTS OF CARRIAGE

Transfer of liabilities

8.(1) This section applies to a person if rights in the contract of carriage in relation to a sea-carriage document are transferred to the person under section 6 and—

- (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 relation to any of the goods.

(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.

(4) In this section—

“contract of carriage”, for a person who becomes subject to a liability under the contract because of this section, means the contract of carriage as varied by any variation of which the person has notice at the time of becoming subject to the liability.

Liability of original parties

9. Section 8 does not affect the liability under a contract of carriage of any original party to the contract.

PART 4—EVIDENCE

Shipment under bills of lading

10.(1) This section applies to a bill of lading that—

- (a) represents goods to have been shipped, or received for shipment, on board a vessel; and
- (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.

(2) A bill of lading to which this section applies is 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 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 for shipment.

PART 5—MINOR AMENDMENTS

Acts amended

11. The schedule amends the Acts it mentions.

SCHEDULE**MINOR AMENDMENTS**

section 11

MERCANTILE ACT 1867**1. Sections 5 to 7 and heading before section 5—***omit.***2. Sections 53 to 68 and heading before section 53—***omit.***PARTNERSHIP (LIMITED LIABILITY) ACT 1988****1. Section 5—***omit.*