

1990

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CARRIAGE OF GOODS BY SEA BILL 1990

EXPLANATORY MEMORANDUM

{Circulated by authority of the
Minister for Transport and Communications,
the Honourable Kim Beazley MP}



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OUTLINE

This Bill gives effect to major changes to Australia's marine cargo liability regime, announced by the Government in June 1988. The changes will bring marine cargo liability more into line with liability arrangements that exist in other modes of transport.

Currently, Australia's marine cargo liability regime is embodied in the Sea-Carriage of Goods Act 1924 which regulates the extent to which ocean carriers are liable for loss or damage to cargo which occurs while it is in their keeping. The Act is based on the Hague Rules, an international convention agreed in 1924.

The Carriage of Goods by Sea Bill 1990 will update Australia's marine cargo liability regime to take account of international developments since 1924. It will replace the Sea-Carriage of Goods Act 1924 for all contracts of carriage entered into once the Bill comes into effect. However, the Sea-Carriage of Goods Act 1924 will continue to operate in relation to contracts entered into prior to the commencement of the relevant parts of the Bill.

As a first step upon implementation of the Bill, the Sea-Carriage of Goods Act 1924 will be replaced with provisions that give effect to the Hague Rules as amended by the Visby (1968) and SDR (Special Drawing Rights) (1979) Protocols to the Hague Rules. These two international Protocols, which have gradually gained international acceptance, increase liability limits, replace the gold standard with the modern IMF currency unit and clarify the meaning of "package or unit" so that liability limits take account of containerisation. The Protocols, however, do not alter the inherent balance of liability between shippers and carriers.

The above provisions to be known as the amended Hague Rules will commence upon Royal Assent.

As a second step, the amended Hague Rules will be replaced with provisions known as the Hamburg Rules which arose from the Hamburg Convention of 1978. Under the Hamburg Rules carriers are substantially more liable for loss or damage to cargo in their charge. Carrier liability is extended to reflect the different categories of cargo now carried, new technology and loading methods, and other practical problems incurred by shippers such as losses incurred through delays in delivery. The Hamburg Rules also extend carrier liability to cover the time the cargo is on the wharf in addition to the time it is on the vessel.

The Hamburg Rules will be proclaimed at some future unspecified time to be fixed by the Government of the day. The delay in implementation of the Hamburg Rules is necessary as they have not yet received sufficient international support to make them a viable alternative marine cargo liability regime for Australia at this stage. Not only have the Hamburg Rules not yet entered into force internationally, with only 17 of the required 20 contracting States having ratified or acceded to them, none of Australia's major trading partners have become contracting States.

Delaying proclamation to a date to be fixed ensures that a future Government retains discretion to examine and to decide upon the appropriateness of implementing the Hamburg Rules, taking into account international acceptance of the Rules and domestic interests. This approach gives a signal to our major trading partners, some of which are considering the application of the Hamburg Rules, of Australia's support for the Hamburg Rules as the appropriate international marine cargo liability regime.

The Bill contains a minor consequential amendment to the International Arbitration Act 1974. This amendment will ensure that the provisions of the International Arbitration Act 1974 will not over-ride the Australian law and jurisdiction provisions of the Bill. The International Arbitration Act 1974 already contains a similar provision in relation to the Sea-Carriage of Goods Act 1924.

FINANCIAL IMPACT STATEMENT

There will be no costs, revenues or savings to the Government arising from the Bill.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short Title

1. This clause provides for the Act to be cited as the Carriage of Goods by Sea Act 1990.

Clause 2 - Commencement

2. Sub-clause 2(1) provides that, subject to sub-clause 2(2), this Act commences on the day the Act receives Royal Assent. Sub-clause 2(2) provides that Part 3 and Schedule 2 of the Act (the Hamburg Rules) shall commence on a day to be fixed by Proclamation at some time after the Hamburg Rules have come into force in respect of Australia.

Clause 3 - Object of Act

3. Sub-clause 3(1) sets out the object of the Act, which is to introduce a regime of marine cargo liability that is modern, equitable, efficient and compatible with arrangements existing in countries that are Australia's major trading partners. It also signals the Government's intention to adopt the Hamburg Convention as part of Australian law in due course and for consideration to be given to developments within the United Nations in relation to marine cargo liability arrangements.
4. Sub-clause 3(2) provides that the object of the Act will be achieved in two stages. The first stage will involve replacement of the existing Sea-Carriage of Goods Act 1924 with provisions of the amended Hague Rules. The second stage will involve replacing the amended Hague Rules with the Hamburg Rules.

Clause 4 - Definitions

5. This clause defines terms used in the Act. The more significant definitions include:

"Brussels Convention" means the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, done at Brussels in 1924, also known as the "Hague Rules"

"Visby Protocol" means the Protocol amending the Brussels Convention in 1968

"SDR Protocol" means the Protocol amending the Brussels Convention, as amended by the Visby Protocol, in 1979

"amended Hague Rules" means the Brussels Convention as amended by the Visby and SDR Protocols

"Hamburg Rules" means the rules relating to the sea carriage of goods adopted at the Hamburg Convention in 1978.

Clause 5 - Act to bind Crown

6. This clause provides that the Act is to be binding on the Crown in respect of the Commonwealth, each State, the Australian Capital Territory, the Northern Territory and Norfolk Island.

Clause 6 - Extension to external Territories

7. This clause provides that the Act is to extend to all Australia's external Territories.

PART 2 - APPLICATION OF THE AMENDED HAGUE RULES

Clause 7 - The amended Hague Rules

8. This clause provides that the provisions set out in Schedule 1 are rules relating to carriage of goods by sea contained in the Brussels Convention as amended by the Visby and SDR Protocols. The provisions contain certain textual changes in order to make the provisions more consistent with the style in which Acts of Parliament are currently drafted.

Clause 8 - Interpretation

9. This clause provides that, in this Part and in the amended Hague Rules, unless the contrary intention appears, a word or expression has the same meaning as it has in the Brussels Convention as amended by the Visby and SDR Protocols.

Clause 9 - Application of the amended Hague Rules

10. This clause states the conditions under which the amended Hague Rules are to apply to a contract of carriage of goods. The amended Hague Rules will apply to all such contracts entered into on or after the commencement of Part 2 (Application of the Amended Hague Rules) and before the commencement of Part 3 (Application of the Hamburg Rules). Contracts entered into prior to the commencement of Part 2 will continue to be governed by the provisions of the Sea-Carriage of Goods Act 1924.

11. Sub-clause 9(1) has the effect of applying the amended Hague Rules, not only to bills of lading or similar documents of title issued in Australia, but also to other forms of contracts of carriage (or bills of lading or similar documents of title not issued in Australia), if the carriage is from a port in Australia, or Australian law governs the contract. The amended Hague Rules therefore apply to interstate contracts of carriage, regardless of whether a bill of lading has been issued.
12. Sub-clause 9(2) provides that the amended Hague Rules do not apply to a contract of carriage by sea between ports in the same Australian State or Territory, ie intrastate trade.

Clause 10 - Received-for-shipment bills of lading

13. A bill of lading (ie a "received for shipment" bill of lading) is prima facie evidence of the receipt of the goods by the carrier. A "shipped" bill of lading is issued by the carrier when the goods are actually loaded onto the vessel. Clause 10 removes the distinction between the two types of bills for the purposes of the amended Hague Rules.

Clause 11 - Bulk cargoes

14. In the loading of bulk cargo, neither the carrier nor the shipper are generally able to independently verify the amount of cargo actually loaded. They have to rely on a third party (ie the port loading authority) advising them when the quantity of bulk cargo, as specified in the bill of lading or similar document of title, has been loaded. In recognition of this fact, Clause 11 provides that the bill of lading or similar document of title for bulk cargo is not prima facie evidence against the carrier or shipper for the accuracy of the weight of cargo stated in the bill of lading or similar document of title.

PART 3 - APPLICATION OF THE HAMBURG RULES

Clause 12 - The Hamburg Rules

15. This clause specifies that the provisions set out in Schedule 2 are the rules relating to the carriage of goods by sea contained in the Hamburg Convention. There have been certain textual changes to make the provisions more consistent with the style in which Acts of Parliament are currently drafted.

Clause 13 - Interpretation

16. This clause provides that, in this Part and in the Hamburg Rules, unless a contrary intention appears, a

word or expression has the same meaning as it has in the Hamburg Convention.

Clause 14 - Application of the Hamburg Rules

17. This clause states the conditions under which the Hamburg Rules are to apply to a contract of carriage by sea. Contracts entered into on or after the commencement of Part 3 (Application of the Hamburg Rules) will be governed by the Hamburg Rules while those entered into prior to that date will be covered either by the amended Hague Rules or the Sea-Carriage of Goods Act 1924 depending on the date they were entered into.
18. Whereas the Hamburg Convention is only applicable to international contracts of carriage by sea, Sub-clause 14(1) ensures that interstate contracts of carriage by sea are also subject to the Hamburg Rules.
19. Sub-clause 14(2) provides that the Hamburg Rules do not apply to a contract of carriage by sea between ports in the same Australian State or Territory, ie intrastate trade.

PART 4 - MISCELLANEOUS

Clause 15 - Construction and Jurisdiction

20. Sub-clause 15(1) provides that the bill of lading or other document evidencing a contract of carriage of goods by sea, covered by the Act, is subject to Australian law and the jurisdiction of an Australian court.
21. Sub-clause 15(2) provides for any agreement which purports to preclude or limit the operation of Sub-clause 15(1) to have no effect to that extent.

Clause 16 - Amendment of the International Arbitration Act 1974

22. This clause ensures that the provisions of the International Arbitration Act 1974 do not over-ride the provision for Australian law and jurisdiction contained in Section 9 of the Sea-Carriage of Goods Act 1924 and in Clause 15 of the Bill.

Clause 17 - Amendment of the Sea-Carriage of Goods Act 1924

23. This clause provides that the Sea-Carriage of Goods Act 1924 will not apply after the commencement of Part 2 (Application of the Amended Hague Rules) of the Bill. That Act will remain operative in relation to contracts entered into after its commencement and prior to the commencement of Part 2 of the Bill.

SCHEDULE 1 - THE AMENDED HAGUE RULES

24. The provisions set out in Schedule 1 are rules relating to the carriage of goods by sea contained in the Hague Rules as amended by the Visby and SDR Protocols.

SCHEDULE 2 - THE HAMBURG RULES

25. The provisions set out in Schedule 2 are rules relating to the carriage of goods by sea contained in the Hamburg Rules.