



Carriage of Goods by Sea Amendment Act 1997

No. 123, 1997



Carriage of Goods by Sea Amendment Act 1997

No. 123, 1997

**An Act to amend the *Carriage of Goods by Sea Act
1991***

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	2

Schedule 1—Amendment of the Carriage of Goods by Sea Act 1991	3
--	----------



Carriage of Goods by Sea Amendment Act 1997

No. 123, 1997

An Act to amend the *Carriage of Goods by Sea Act 1991*

[Assented to 15 September 1997]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Carriage of Goods by Sea Amendment Act 1997*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Carriage of Goods by Sea Act 1991

1 Subsections 2(2), (3), (4), (5) and (6)

Repeal the subsections, substitute:

- (2) Subject to subsection (3), Part 3 and Schedule 2 commence as provided in section 2A.
- (3) If, within 10 years of the commencement of this section, the Minister has not tabled a statement in accordance with subsection 2A(4) setting out a decision that the amended Hague Rules should be replaced by the Hamburg Rules, Part 3 and Schedule 2, and section 2A, are repealed on the first day after the end of that 10 years.

2 After section 2

Insert:

2A When Part 3 and Schedule 2 may commence

- (1) The Minister must, from time to time while Part 3 and Schedule 2 have not commenced, review the question of whether the amended Hague Rules should be replaced by the Hamburg Rules.
- (2) The first review must be completed within 5 years of the commencement of this section. Subsequent reviews must be completed within 5 years of the previous review. For this purpose, a review is *completed* when the tabling requirement in subsection (4) has been complied with.
- (3) In conducting a review, the Minister must:
 - (a) consider the extent to which the Hamburg Rules have been adopted internationally, in particular by Australia's major trading partners; and
 - (b) consult with representatives of shippers, ship owners, carriers, cargo owners, marine insurers and maritime law associations on the question whether the amended Hague Rules should be replaced by the Hamburg Rules.

The Minister must then go on to decide in writing if the amended Hague Rules should be so replaced.

- (4) A statement setting out the Minister's decision on a review, and explaining the reasons for that decision, is to be tabled in each House of the Parliament within 15 sitting days of that House after the making of the decision.
- (5) If the Minister tables a statement in each House of the Parliament in accordance with subsection (4) setting out a decision that the amended Hague Rules should be replaced by the Hamburg Rules, the Governor-General may, by Proclamation, fix a day (subject to subsection (6)) for the commencement of Part 3 and Schedule 2. That Part and Schedule then commence on that day.
- (6) The day fixed under subsection (5) must be at least 6 months after the tabling requirement in subsection (4) has been complied with.
- (7) If:
 - (a) The Minister's decision on a review is that the amended Hague Rules should be replaced by the Hamburg Rules; and
 - (b) Part 3 and Schedule 2 do not commence under subsection (5) within 12 months of the tabling requirement in subsection (4) being complied with;Part 3 and Schedule 2 commence on the first day after the end of that period.

3 Paragraph 3(2)(a)

After "SDR Protocol", insert " and as modified in accordance with regulations under section 7".

4 Paragraph 3(2)(b)

Repeal the paragraph, substitute:

- (b) as a second step—replacing those provisions with provisions that give effect to the Hamburg Convention, if the Minister decides, after conducting a review, that those provisions should be so replaced.

5 Subsection 4(1)

Insert:

marine insurers means insurers who provide marine insurance, whether or not they also provide other kinds of insurance, and includes Australian representatives of member Associations of the International Group of Protection and Indemnity Associations.

6 Subsection 4(1)

Insert:

maritime law associations means law associations with an interest in maritime law, whether or not they are also interested in other areas of law.

7 Section 7

Repeal the section, substitute:

7 The amended Hague Rules

- (1) The *amended Hague Rules* consists of the text set out in Schedule 1, as modified in accordance with the Schedule of modifications referred to in subsection (2). The text set out in Schedule 1 (in its unmodified form) is the English translation of Articles 1 to 10 of the Brussels Convention, as amended by Articles 1 to 5 of the Visby Protocol and Article II of the SDR Protocol.
- (2) The regulations may amend this Act to add a Schedule (the *Schedule of modifications*) that modifies the text set out in Schedule 1 for the following purposes:
 - (a) to provide for the coverage of a wider range of sea carriage documents (including documents in electronic form);
 - (b) to provide for the coverage of contracts for the carriage of goods by sea from places in countries outside Australia to places in Australia in situations where the contracts do not incorporate, or do not otherwise have effect subject to, a relevant international convention (see subsection (6));
 - (c) to provide for increased coverage of deck cargo;
 - (d) to extend the period during which carriers may incur liability;
 - (e) to provide for carriers to be liable for loss due to delay in circumstances identified as being inexcusable.

The modifications do not actually amend the text set out in Schedule 1, however the text has effect for the purposes of this Act as if it were modified in accordance with the Schedule of modifications.

- (3) The regulations may:
- (a) amend the Schedule of modifications, but only in connection with the purposes set out in subsection (2); and
 - (b) amend the provisions of this Part to the extent necessary or appropriate, having regard to the modifications set out in the Schedule of modifications as in force from time to time.

Note: For example, regulations extending the range of sea carriage documents to be covered by the text in Schedule 1 may create a need for associated amendments of sections 10 and 11.

- (4) Before regulations are made for the purposes of this section, the Minister must consult with representatives of shippers, ship owners, carriers, cargo owners, marine insurers and maritime law associations about the regulations that are proposed to be made.
- (5) For the purposes of the *Amendments Incorporation Act 1905*, amendments made by regulations for the purposes of this section are to be treated as if they had been made by an Act.

Note: This subsection ensures that the amendments can be incorporated in a reprint of the Act.

- (6) In this section:

relevant international convention means:

- (a) the Brussels Convention; or
- (b) the Brussels Convention as amended by either or both of the Visby Protocol and the SDR Protocol; or
- (c) the Hamburg Convention.

8 At the end of section 11

Add:

- (3) An agreement, or a provision of an agreement, that provides for the resolution of a dispute by arbitration is not made ineffective by subsection (2) (despite the fact that it may preclude or limit the jurisdiction of a court) if, under the agreement or provision, the arbitration must be conducted in Australia.

9 After section 21

Insert:

22 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

10 Schedule 1 (heading)

Repeal the heading, substitute:

**Schedule 1—The amended Hague Rules
(unmodified text)**

Note: See section 7. This text may be modified in accordance with subsection 7(2).

*[Ministers' second reading speech made in—
House of Representatives on 18 June 1997
Senate on 25 June 1997]*

(79/97)