NORTHERN TERRITORY OF AUSTRALIA

SEA-CARRIAGE DOCUMENTS ACT 1998

As in force at 1 June 1998

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NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 1 June 1998. Any amendments that commence after that date are not included.

SEA-CARRIAGE DOCUMENTS ACT 1998

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

Part 1 Preliminary

1 Short title

This Act may be cited as the *Sea-Carriage Documents Act 1998*.

2 Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3 Application

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

4 Repeal

The *Bills of Lading Act, 1859* (No. 25 of 1859) of South Australia, in its application to the Territory as a law of the Territory, is repealed.

5 Definitions

In this Act, unless the contrary intention appears:

bill of lading means a bill of lading (including a received for shipment bill of lading) that 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:

(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.

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.

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

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;

(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) 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.

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;

(b) is a receipt for the goods;

(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 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.

6 Electronic and computerised sea-carriage documents

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

(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.

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

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

signed includes authenticated in any manner that 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 section 12, nothing in this Act precludes its operation in relation to a sea-carriage document where the goods:

(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).

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;

(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

(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 the 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 respect of the goods to which the order relates.

(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 the person under subsection (1) unless the person becomes the lawful holder of the bill:

(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.

(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

(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 that 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 that derives from the previous operation of that section;

(b) in the case of a sea waybill, the transfer is without prejudice to any rights that 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:

(a) before those rights are transferred, the person demands or takes delivery from the carrier of any of the goods;

(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.

(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, 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.

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.

Part 4 Evidence

12 Shipment under bills of lading

(1) This section applies in relation 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 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 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.

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = *Gazette*
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

Sea-Carriage Documents Act 1998 (Act No. 15, 1998)

Assent date	30 March 1998
Commenced	1 June 1998 (*Gaz* G18, 13 May 1998, p 2)