

The Sale of Goods Act 1895

Terms of Reference

The *Sale of Goods Act 1895* (WA) ("the Act") was referred to the Commission for general review in 1989.

Background of Reference

The reference arose out of recognition of the need for reform following similar developments in other Australian jurisdictions, Britain and Canada. At the time of the reference the Act was virtually identical to the English *Sale of Goods Act 1893* (UK) which was copied in virtually all common law jurisdictions in the last years of the 19th century.

The Commission engaged Aviva Freilich and Louis Proksch, both of the University of Western Australia, to produce discussion papers on the subject. These papers were circulated to interested parties in August and October 1995. The first discussion paper dealt with implied terms in ss 12–15 of the Act together with a number of general issues such as the relationship between the Act and the *Trade Practices Act 1974* (Cth) and the distinction between conditions and warranties. The second discussion paper was confined to the issue whether s 59(2)¹ could validly be interpreted as including principles of equity in a sale of goods context with particular reference to misrepresentation, duress, mistake, fraud and equitable interests and remedies.

Nature and Extent of Consultation

The Commission had the benefit of detailed responses to the discussion papers from experts in the area, including, Professor John Carter of Sydney University, Professor Anthony Duggan of Monash University, Professor Michael Bridge of Nottingham University and Professor Ralph Simmonds of Murdoch University. The final report containing the Commission's recommendations was delivered in June 1998.²

Recommendations

After extensive consideration of the issues the Commission concluded that it should recommend only minimal reforms to the Act. These reforms were of an uncontroversial nature and reflected similar reforms in other Australian jurisdictions. In summary, the Commission recommended that:

- The formal requirements in s 4 be abolished.
- The market overt exception to the rule that no one can give better title than he possesses (s 22) be abolished.
- The provisions in s 11 dealing with the passing of property in specific goods be repealed, because the interaction between this provision and the rules in s 18 dealing with when the property in such goods passes produces an unfair result for the buyer.
- The provisions of s 35, dealing with acceptance be amended to give the buyer a realistic right of examination before he is deemed to have accepted the goods.
- Further provisions be inserted in ss 59 and 35 to make it clear that equitable principles, as well as those derived from common law, have a part to play in contracts for the sale of goods.

A comprehensive list of recommendations, including full drafting instructions may be found at pages 43–44 of the final report.

¹ Section 59(2) provides that '[t]he rules of common law, including the law merchant, save in so far as they are inconsistent with the express provisions of the Act ... shall continue to apply to contracts for the sale of goods'.

² Law Reform Commission of Western Australia, *The Sale of Goods Act 1895*, Project No 89 (1998).

Legislative or Other Action Undertaken

Confirmation of receipt of the final report was acknowledged by the Attorney-General during Parliamentary proceedings on 8 September 1998.³ There has been no action to implement the Commission's recommendations.

Currency of Recommendations

The recommendations remain current and crucial to achieving a degree of uniformity with similar legislation in other Australian jurisdictions.

Action Required

Amendments to the current Act should be drafted to reflect the above recommendations. Due to the uncontroversial and modest nature of the reforms it is envisaged that the recommended amendments may be fast-tracked through Parliament.

Priority – High

This assessment is based upon the desirability of updating the legislation to achieve uniformity with other jurisdictions and remove archaic language and references. The ease of implementation of the recommended reforms was a further consideration in making this assessment.

³ Western Australia, *Parliamentary Debates*, Legislative Assembly, 8 September 1998, 759 (Mr P Foss, Attorney-General).