



**ROAD TRANSPORT FORUM NEW ZEALAND INC
SUBMISSION TO
THE COMMERCE COMMITTEE
ON THE
CONSUMER LAW REFORM BILL**

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1.0 ROAD TRANSPORT FORUM NEW ZEALAND

1.1 Road Transport Forum New Zealand (RTFNZ) is a nationwide organisation of voluntary members drawn from the road transport industry and includes owner-drivers, fleet operators and providers of services to freight transport operators. The Forum provides services and public policy advocacy for its members.

1.2 The Forum's Constituent Associations include:

National Road Carriers (Inc)

Road Transport Association NZ Region 2 (Inc)

Central Area Road Transport Association (Inc)

Road Transport Association NZ Region 4 (Inc)

Combined Owner Drivers Association (S.I.) Inc (*Trading as NZ Trucking Association*)

Road Transport Association NZ Region 5 (Inc)

1.3 The Forum's Associations have approximately 4,000 members and associate members who operate in excess of 17,000 trucks and truck combinations over 3,500 kg or 80% of the hire and reward truck fleet in New Zealand. The road transport industry turns over approximately \$6 billion a year transporting more than 80% of New Zealand's land-based freight. Some 23,000 people or about 1.5% of the workforce are directly employed in road freight.

2.0 SUMMARY

2.1 We support the majority of the amendments that the consumer law reform Bill proposes as consumers are entitled to trouble free service when buying and selling goods.

2.2 We do not support the Bill's proposals to amend the Carriage of Goods Act. The Bill suggests that this Act's provisions are limiting consumer capacity to expect trouble free service from carriers. We contend that the existing Carriage of Goods Act does not limit

consumer's rights. Our observation is that the proposed amendments are solutions looking for problems to solve.

- 2.3 Amending the Act will not reduce the need for consumers to adequately manage risk. Instead the proposed changes will perpetuate consumer apathy towards effective risk management.

3.0 THE CARRIAGE OF GOODS ACT

Clause (8) of the Carriage of Goods Act provides four kinds of carriage contracts.

- (A) Owner's risk
- (B) Limited carriers risk
- (C) Declared value risk
- (D) Declared terms

Clause 8(4):

*"Where the contract does not purport to be of a particular kind it shall be deemed for the purposes of the Act to be a contract for carriage at **Limited Carriers Risk.**"*

Clause 8(5) further provides:

"No contract or carriage purporting to be a contract for carriage at owners risk shall have effect as such (but instead shall have effect as a contract for carriage at Limited Carriers Risk) unless:

- (a) The contract is:*
 - (i) in writing*
 - (ii) expressed to be at owners risk*
 - (iii) signed by the parties or their agents*

Clause 15 – Limitation of amount of carriers liability:

15(1)(d)

"The liability of the contracting carrier to the contracting party is limited in amount in each case to the sum of \$1,500 for each unit

of goods lost or damaged or in the case of a contract at declared value risk, the amount specified in the contract.”

4.0 THE CONSUMER LAW REFORM BILL

The Bill proposes the insertion of a new clause 8A stating that:

“Carrier must offer contract at Limited Carriers Risk or declared value risk.”

8A (1) A carrier must in relation to every contract for carriage offer to enter into a contract for:

(a) Carriage at Limited Carriers Risk (if the value of the goods to be carried is not more than \$2,000 or;

(b) Carriage at declared value risk (if the value of the goods to be carried exceeds \$2,000 and the value to be declared in the contract is the value of the goods.

5.0 COMMENT AND ISSUES

- There is no need to amend the Carriage of Goods Act.
- Why restrict the contract options that are available?
- A satisfactory default position already exists where no written contract is struck.
- Interested parties should be free to self insure if that is their wish.
- Section 8A (i) and (ii) of the Bill refers to “value of goods” but section 15 (1) of the Carriage of Goods Act refers to a sum for each unit of goods lost or damaged. There is a serious anomaly here.
- Officials have stated that the reason for the proposed changes to the Carriage of Goods Act is problems associated with “Trade me” sales and the like. However Part 5 of the Consumers Guarantees Act specifically excludes goods supplied by auction or competitive tender.

6.0 LACK OF COST BENEFIT ANALYSIS

- 6.1 No analysis of the loss allegedly suffered by consumers has accompanied consumer law reform documentation. The Ministry of Consumer Affairs confirms that *"they have conducted no surveys to gauge the level of alleged suffering caused by the Carriage of Goods Act and further admit that the proposed amendments are the result of scans of complaints to consumer watchdogs, (including Consumer NZ and Fair Go)"*.
- 6.2 The lack of rigorous research is concerning. Of greater concern is that government policy is being guided by officials focussing on issues that have been chosen by the media taken out of context and blown out of proportion.
- 6.3 In 2010 officials indicated that they were compiling a dossier of consumer complaints in support of their claims that consumers are suffering as a result of limitations in the Carriage of Goods Act. No such evidence has been forthcoming. Similarly, the media's provision of solid evidence has been minimal.
- 6.4 Normal practice when addressing an issue is to firstly accurately identify the problem then develop countermeasures to address it and monitor the solution's result. The scope of the alleged problems have not been accurately assessed.

7.0 REASONS FOR AMENDING THE ACT

The following have been given as the main reasons for suggesting the Act's amendment:

1. Consignees who are consumers are particularly vulnerable because they are not parties to the contract of carriage.
2. Carriers may contract out of their responsibilities to the detriment of their customers.
3. The \$1,500 limit that applies to Limited Liability contracts should be increased in line with inflation.

8.0 CONSIGNEES NOT PARTY TO CONTRACT OF CARRIAGE

8.1 The Bill's writers suggest that "*consignees who are consumers are particularly vulnerable when having goods transported because they are not party to the contract of carriage, and the consignor and the carrier have the opportunity to effectively contract away the consignee's legal rights under the Carriage of Goods Act*".

8.2 This is not the case. The root cause for concern is that essential processes are not being completed between consignors and consignees prior to goods being transported.

Contract definition

8.3 Legislation referenced within the Bill provides no definition of what a "*contract*" is. The Act defines *contracting carrier*, *contracting party*, and *contract of carriage* but none of these definitions provide a definitive example of a contract's function. A *contract* by definition is "to enter into an agreement with (a person, company, etc) to deliver (goods or services) or to do (something) on mutually agreed terms."

8.4 The Contracts (Privity) Act 1982 defines a contract thus: "*a contract includes a contract made by deed or in writing, or orally, or partly in writing and partly orally or implied by law.*"

Two separate and unrelated contracts

8.5 When a good is sold and is to be delivered to its purchaser two separate and unrelated contracts are entered into.

8.6 The first, and most important contract should be formed between consignors and consignees regarding (among other things) payment and the good's carriage details. Once these details have been agreed to a second contract is then subsequently entered into between consignors and carriers which relates to the goods' transport.

8.7 In making this second contract consignors are responsible for relaying to carriers the details of the goods' transport as per earlier agreements with consignees.

8.8 To state as in paragraph 8.1 that a "*consignee is particularly vulnerable when having goods transported because they are not party to the contract of carriage*" is therefore not correct.

8.9 If a consignor reneges on their arrangements with a consignee it is absurd to transfer that responsibility to the carrier.

9.0 CARRIERS MAY CONTRACT OUT OF THEIR RESPONSIBILITIES TO THE DETRIMENT OF THEIR CUSTOMERS

9.1 The suggestion is that "*the consignor and the carrier have the opportunity to effectively contract away the consignee's legal rights under the Carriage of Goods Act*". In reality transport arrangements are entirely at a consignor's discretion.

9.2 Consignors, as discussed earlier, through their mutually agreed arrangements with consignees are responsible for ensuring that goods are transported as arranged. Carriers are not privy to these agreements. Nor should they be.

9.3 Consignee rights can only be contracted away by consignors. Carriers should not be held accountable when consignors break contracts with consignees over transport arrangements.

10.0 THE \$1,500 LIMIT THAT APPLIES TO LIMITED LIABILITY CONTRACTS SHOULD BE INCREASED IN LINE WITH INFLATION

10.1 The liability cap is invoked following the loss or damage of goods that have not been transported under contract. As such, the liability cap is related to goods that are transported under Limited Carrier's Risk contracts.

10.2 The Bill proposes to increase the limited liability cap to \$2,000. This is a pointless exercise as increasing the liability cap will not induce consumers to adequately manage their risk. Consumers will still be able to under insure goods even if the liability threshold is raised to \$2,000¹.

Limited carrier's risk

10.3 The proposed increase fails to recognise the simplicity of Limited Carrier's Risk contracts. Under these contracts consigners are reasonably catered for in respect to compensation through simple compensation provisions.

10.4 The liability cap's (currently \$1,500) ceiling is supposedly representative of the replacement value of common disposable commodities which consigners would transport uninsured. The liability cap is already excessive for most consumer deliveries. As we understand it, the average claim value on a New Zealand courier's consignment is approximately \$200.

10.5 In the majority of cases consignors are having goods transported for a fraction of their value. Therefore, per unit good carrier returns are marginal. The cost to carriers for losing or damaging freight which they make marginal profit on provides sufficient incentive to avoid damage or loss.

10.6 It is irresponsible to increase the liability cap when the general value of goods being transported are much less than the liability cap's ceiling or the goods value.

10.7 The Insurance Council of New Zealand² suggests that carriers might expect a 2/3 increase on their insurance premiums if the proposed amendments are enacted.

10.8 These costs will be passed on to consumers and are likely to be significant.

11.0 POSTAL SERVICES ACT AND SECTION 14 D OF THE ACT

Postal services Act

11.1 Section 45 of the Postal Services Act stipulates that *"No person is entitled to compensation, and no liability is imposed on the Crown or any postal operator, for any loss or damage suffered by any person because of any loss, default, delay, or omission in the receipt, transmission, or delivery of any letter"*.

11.2 Carriers covered by section 45 of the Postal Services Act would not have to comply with the amendments proposed in the bill. This creates inconsistencies and distortions between freight operators.

Section 14 D of the Carriage of Goods Act

11.3 Section 14(d) of the Act absolves carriers from loss liability if losses occur *"while saving or attempting to save life or property in peril"*. An example of this situation could be a carrier swerving to avoid collision with another road user and damaging goods in the process.

11.4 In cases where Section 14(d) applies carriers are not obliged to compensate consignors for their losses. Regardless of the Bill's provisions it would be necessary for consignors to manage this risk through self insurance.

CONCLUSION

- The vast majority of contracts under the Carriage of Goods Act are business to business.
- The proposed changes to the Carriage of Goods Act are driven by a perceived problem for consumers that has not been identified or proven.
- The proposed changes fail to correct the unproven problem that is perceived by officials.

- The proposed changes to the Carriage of Goods Act are unnecessary and will increase costs while also reducing choice.
- The RTF wishes to be heard in support of this submission.

¹ As proposed within the Bill.

² Regulatory Impact Statement 2011, p.38.