

Carriage of Goods Act 1979

Form MN049 11/09



Lumley General Insurance (N.Z.) Limited, Head Office, Lumley Centre, 88 Shortland Street, PO Box 2426, Auckland 1140, New Zealand, Tel 308 1100, Fax 09 308 1114

Frequently asked questions

What does the Act apply to?

The Carriage of Goods Act 1979 applies to all carriage of goods in New Zealand. It is not possible to avoid its effects. 'Carriage' includes the transportation of goods, as well as to any service which is intended to facilitate transportation, such as consolidation, packing and warehousing in the course of transit. 'Goods' can be just about anything, and includes all baggage, chattels, animals, plants, money and documents.

What is the purpose of the Act?

The purpose of the Act is to allocate the financial risk involved with the carriage of goods. Carriers are made liable for the loss of or damage to goods in virtually all circumstances, but the amount of the liability is normally limited to \$1500 for each unit of goods carried. The risk of any loss over that amount falls on the owner of the goods.

What parties are subject to the Act?

All parties involved in any carriage of goods are subject to the Act. Some of these are obvious – the owner of the goods, for example, as well as all the carriers involved in transporting the goods. However, those who consolidate, pack or otherwise handle the goods to facilitate the transit are also subject to the Act.

I have heard of 'contracting carriers' and 'actual carriers'. What are they?

The Act provides for two types of carrier – the contracting carrier, and actual carriers. The contracting carrier is the carrier who enters into the contract with the owner of the goods, for the carriage of those goods. The 'actual carriers' are the carriers who physically perform the carriage. So, for example, Carrier A may contract with the goods owner to carry the goods from Auckland to Wellington, then subcontract Carrier B to actually do the job. Carrier B is an 'actual carrier' and so is any other carrier that Carrier B may further subcontract to.

How does the liability regime work?

In general terms, the contracting carrier is liable to the owner of the goods for any loss of or damage to the goods which occurs after the time the goods are uplifted for carriage until they are delivered. This is irrespective of whether the contracting carrier caused the loss or damage. So, whether the loss or damage was caused by an actual carrier, or even by an unrelated third party, the contracting carrier is still liable to the owner and is the party who should deal with the owner to resolve the claim.

This is not as unfair as it sounds. Where there is one actual carrier (other than the contracting carrier), and the damage occurred while that actual carrier had the care of the goods, the actual carrier is liable to the contracting carrier for the loss – whether the actual carrier caused it, or not.

Where there is more than one actual carrier, they are jointly and severally liable to the contracting carrier if the damage occurs while the goods were in their care. Only an actual carrier who can prove that the damage occurred other than while he or she had the separate responsibility for the goods can escape liability.

How does the \$1500 limit of liability work?

The \$1500 limit of liability applies in all cases of contracts for carriage at 'limited carrier's risk'. In practice this is virtually all contracts, including those where there is nothing in writing.

When goods are lost or damaged, the contracting carrier is liable for \$1500 per unit of goods. The unit of goods is worked out by looking at what the first actual carrier received. If the first actual carrier received 14 boxes which were on a shrink-wrapped pallet, it will be considered that there is one unit – the pallet. On the other hand, if the first actual carrier received the 14 boxes as loose items, there will be fourteen units.

The unit of goods, for liability purposes, does not change throughout the transit, regardless of how the goods are treated on the way. For example, if the first actual carrier receives 14 boxes and then puts them onto a pallet to hand over to the second actual carrier, that will still be treated as fourteen units.

In relation to bulk goods – say, ten tonnes of loose wheat, the unit is whatever is used to calculate the freight. If, for example, the carrier charges freight 'per tonne', then each tonne will be a separate unit. If the freight is charged 'per truck load', then each load will be one unit.

Can liability be reduced by changing the way the freight is recorded on the consignment note?

No. Because the unit is determined by what the first actual carrier receives, and that is question of fact, the description on the consignment note doesn't affect the outcome and is largely irrelevant to this issue.

Are there cases in which the \$1500 limit of liability will not apply?

Yes. The Act allows the parties to a contract of carriage to specify what type of liability regime they want to apply. However, if the parties want something other than limited carrier's risk they need to comply with some formal requirements that are set out in the Act. If those requirements are not complied with the contract will 'default' to being one at limited carrier's risk, regardless of what the parties' intentions may have been. It is recommended that the Act be checked carefully to avoid this outcome and it may be preferable to obtain legal advice.

It is also important to remember that a carrier who contracts to be liable for more than the \$1500 limit may subcontract to actual carriers who are not bound by that arrangement. This can lead to the contracting carrier being liable for, say, the full value of any loss but only being able to recover \$1500 per unit from any actual carrier. The difference is something that needs to be covered by adequate insurance.

Even with a limited carrier's risk contract the limit of liability will not apply where the loss or damage has been caused intentionally, where the claim is for damages other than for loss or damage or where there is a claim for consequential loss.

What are the time limitation provisions that apply?

The Act says that the contracting carrier must be given notice of loss or damage within thirty days after the day on which the contracting carrier's responsibility ceases (usually on delivery); and the contracting carrier must give notice to the actual carrier within ten days of having himself received notice. The exception is where the carrier clearly knows, or should know, of the damage; and no notice period is prescribed in the case of a total loss.

Beware though: The Act allows parties to contract out of this provision. It is therefore quite likely that carriers will have alternative contractual terms that require notice within much shorter periods.

Similarly, the Act requires court proceedings to be commenced within twelve months but again, the parties can contract for a shorter period.