



Transport Law in Australia 3rd edn
John Livermore

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pp 236, £62

John Livermore's succinct monograph provides a useful overview of Australian transport law, as of July 2017. Almost half the book is devoted to maritime and shipping law in the first two chapters, but given the importance of international sea trade to an island nation this is as unsurprising as it is important. The introduction sets out the constitutional and legal order applying in Australia. Australia is a common law jurisdiction whose principal sources of law are Acts of the Commonwealth Parliament, Acts passed by the State and Territory together with regulations, rules and orders made under those Acts, as well as some common law or statute law of England still applicable to Australia. The importance of common law has a two-way effect with decisions of Australian courts having an influence on English transport law, such as the development of the 'Himalaya Clause' through the Privy Council decision in *The New York Star* [1979] 1 Lloyd's Rep 298, reversing the decision of the High Court of Australia, the highest court in the land, exercising both original and appellate jurisdiction. The introduction then outlines the regulatory framework for Australian transport law, setting out the regulatory bodies for all modes of transport.

Chapter one deals with carriage of goods by sea, reviewing the law of Australia relating to charter-parties and bills of lading. The law here is primarily English law, although there are some salient Australian authorities. Title to sue used to be dealt with under the Bills of Lading Act 1855 but the Sea Carriage Documents Act 1997, which came into force on 1 January 1998, requires the Australian States to adopt legislation based on the UK Carriage of Goods by Sea Act 1992, vesting rights of suit in the lawful holder of the bill of lading and extending vesting of rights of suit to ship's delivery orders and to sea waybills.

The Hague-Visby Rules apply in Australia through the Carriage of Goods by Sea Act 1991(Cth)(COGSA 91) and are extensively analysed. The intention at the time was for the introduction of the Hamburg Rules in 1994, a period subsequently deferred to 1997. However, in the end the Hamburg Rules were not introduced and instead there are the Carriage of Goods by Sea Regulations 1998 (COGSA 98) which introduced six changes. First, deck cargo is brought within COGSA 1991 with the carrier becoming strictly liable without limitation of liability in the event that there is a prior agreement to ship cargo under deck and cargo is carried on deck. Secondly, COGSA 98 applies to 'sea carriage documents' issued on or after





1 July 1998. 'Sea documents' include bills of lading, negotiable documents of title evidencing a contract of carriage of goods by sea, non-negotiable bills of lading and such non-negotiable documents as sea waybills, electronic bills of lading, but not charterparties. Thirdly, the carrier's period of responsibility is port to port, rather than tackle to tackle. Fourthly, clauses providing for arbitration in Australia are valid although foreign jurisdiction and arbitration clauses remain null and void. Fifth, the carrier is liable for delay in delivery of the goods unless it can show that the delay was reasonable, with the application of the Hamburg limitation of liability for delay. Sixth, COGSA 1998 applies by force of law to outward shipments from Australia, as well as to shipments between two or more Australian States, but not to intrastate carriage. It also applies to *inward* shipments to Australia unless one of the recognised international conventions – Hague Rules, the Hague-Visby Rules and the Hamburg Rules – or national law at the port of shipment giving effect thereto applies either by statute or by contract.

The chapter then analyses the statutory provisions which regulate overseas liner shipping in the Commonwealth, such as Part X of the Competition and Consumer Act (2010)(Cth) which restricts the use of anti-competitive agreements between ocean carriers.

Chapter two analyses 'wet' shipping law in Australia, which again is principally derived from English common law. Collisions, salvage and marine pollution are all considered as well as the Shipping Registration Act 1981(Cth) on the right of shipowners, managers, operators and salvors to limit liability. Jurisdiction in Admiralty proceedings falls under the Admiralty Act 1988(Cth) and is succinctly summarised.

Chapter three shifts the focus to road carriage which is regulated by standard form contracts and by Federal legislation. Freedom of contract in road carriage contracts has been curtailed as regards consumers by the Competition and Consumer Act 2010(Cth). Unlike the position in Europe, there is no international dimension as Australia is not a party to the CMR. The chapter analyses the significant impact of Federal legislation on road transport. Chapter four considers the law of rail carriage and the final chapter takes into account air carriage and focusses on the provisions of the amended Warsaw Convention and the ratification of the Montreal Protocols Three and Four in the Civil Aviation (Carrier's Liability Act) 1991(Cth).

This is a readable and useful publication which provides a good summary of Australian transport law. Coming in at a mere 236 pages the commentary on the various modes of transport is inevitably somewhat compressed. Voyage and time charterparties receive

27 pages of discussion – whole books have been devoted to these topics. I look forward to the fourth edition of this work, which is currently being finalised for publication in 2020.

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