

GENERAL

Sections 108 to 128 inclusive are hereby *revoked* and the following new sections 108 to 128 inclusive *substituted*:

108. Definitions

- (a) "That Act" means the Carriage of Goods Act 1979.
- (b) "The department" means the New Zealand Government Railways Department
- (c) "The General Manager" means the General Manager of Railways.
- (d) "Officered station" means any station where a Stationmaster is in charge.
- (e) "Flag station" means any station where no Stationmaster is in charge.
- (f) "Goods" means goods, baggage, and chattels of any description and includes animals and plants; and also includes money, documents, and all other things of value.
- (g) "Person" includes a corporation sole and also a body of persons where incorporated or not.

109. Inspection of Goods

1. The department reserves the right to inspect any goods before receiving the same or while the same are in its custody, and for this purpose to call upon the owner to open any package for inspection at the expense of the owner.
2. Failure to inspect any goods or the acceptance of any goods improperly or insufficiently packed shall not impose upon the department any liability for loss or damage arising from such failure or such improper or insufficient packing or otherwise, or in any way affect any warranty given in respect of such goods.

110. Kinds of Carriage: Liability of Carrier

1. All goods shall be carried in accordance with the Act, section 8 whereof provides as follows:

"8. Kinds of contract of carriage—(1) For the purpose of determining upon whom liability for the loss of or damage to any goods is to fall, every contract of carriage shall be one of the following kinds:

 - (a) A contract for carriage "at owner's risk", under which the carrier shall not be liable for the loss of or damage to any goods, except where the loss or damage is intentionally caused by the carrier:
 - (b) A contract for carriage "at limited carrier's risk", under which the carrier shall be liable for the loss of or damage to any goods in accordance with sections 9, 14, and 15 of this Act:
 - (c) A contract for carriage "at declared value risk", under which the carrier shall be liable for the loss of or damage to any goods up to an amount specified in the contract and otherwise in accordance with sections 9, 14, and 15 of this Act:
 - (d) A contract for carriage "on declared terms", under which the carrier shall be liable for the loss of or damage to any goods in accordance with the specific terms of the contract.

(2) Subject to the succeeding provisions of this section, where in any contract of carriage the term "at owner's risk" or the term "at limited carrier's risk" or the term "at declared value risk" or the term "on declared terms" is used, the contract shall be deemed for the purposes of this Act to be one to which paragraph (a) or paragraph (b) or paragraph (c) or paragraph (d) (as the case may require) of subsection (1) of this section applies.

(3) Subject to the succeeding provisions of this section, the kind of contract of carriage to be entered into in a particular case is a matter for agreement between the parties.

(4) Where the contract does not purport to be of a particular kind, it shall be deemed for the purposes of this Act to be a contract for carriage "at limited carrier's risk".

(5) No contract of carriage purporting to be a contract for carriage "at owner's risk" shall have effect as such (but instead shall have effect as a contract for carriage "at limited carrier's risk") unless—

 - (a) The contract is—
 - (i) In writing; and
 - (ii) Expressed to be "at owner's risk"; and
 - (iii) Signed by the parties or their agents; or
 - (b) Before, or at the time when, the goods are accepted for carriage, the contracting party or his agent signs a statement in the following terms:

"These goods are to be carried at 'owner's risk'. This means that the carrier will pay no compensation if the goods are lost or damaged, unless he intentionally loses or damages them."

For the purposes of this paragraph, that statement may be included in the consignment note or any other document relating to the carriage, but in that case the statement shall be conspicuous and shall be separately signed by the contracting party or his agent.
 - (6) No contract of carriage purporting to be a contract "at declared value risk" shall have effect as such (but instead shall have effect as a contract for carriage "at limited carrier's risk") unless the contract is in writing.
 - (7) No contract of carriage purporting to be a contract for carriage "on declared terms" shall have effect as such (but instead shall have effect as a contract for carriage "at limited carrier's risk") unless the contract is—
 - (a) Freely negotiated between the parties; and
 - (b) In writing; and
 - (c) Signed by the parties or their agents.
 - (8) Where, in any proceeding, the question of whether any contract of carriage was or was not freely negotiated is in issue, the Court in determining that question shall have regard to the following matters:
 - (a) The respective bargaining strengths of the parties;
 - (b) The course of dealing between the parties in respect of the particular transaction in question, and any other transactions between them;
 - (c) The value of the transaction;
 - (d) Any extraordinary features of the goods to be carried or the route over which they are to be carried;
 - (e) Any other matters that the Court considers may properly be taken into account,—and either party may adduce evidence relating to any such matter."