Submission in Response to a discussion paper on section 11 of the Carriage of Goods by Sea Act 1991

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31 October 2022

Introduction

1. I welcome the opportunity to comment on the discussion paper on section 11 of the Australian Carriage of Goods by Sea Act 1991 (Cth).

2. I agree entirely that s. 11 "lacks clarity and certainty". Indeed, as an academic who has presented to undergraduate, postgraduate and practitioner audiences on COGSA 1991, I would go further and say that the jurisdictional and application provisions in the COGSA 1991 are in places almost incomprehensible. This legislation has been heavily amended, is overlaid by international conventions and presents inconsistencies that make it difficult to advise on such basic issues as which legal rules will apply—even before one considers the system of dispute resolution.

3. The operative provisions of COGSA 1991 are potentially so wide[1] that it is difficult to know whether the Hague Rules 1924, Hague-Visby Rules 1968 or the "Australian Rules"[2] will apply, whether by force of law or by contract, or in whole or in part.[3] I address more general issues arising from this uncertainty in paras 40-44, below, but will first address the three particular questions posed by the Consultation.

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[1] See M Davies, A Dickey *Shipping Law* (Thomson Reuters, 4th ed, 2016), at pp 215-217, where the authors summarise the variety of choices to be considered.

[2] The internal terminology of the Act is confusing by its reference to "amended Hague Rules" in Sch 1 and Sch 1A, which is inconsistent with international practice, ie to refer to the Hague Rules or Hague-Visby Rules. In *Poralu Marine Australia Pty Ltd v MV Dijksgracht* [2022] FCA 1038 (6 September 2022) Stewart J preferred at para 20 to refer to Sch 1A as the "Australian Hague Rules", although the Full Federal Court has now preferred the "Australian Rules": see *Carmichael Rail Network v the BBC Chartering Carriers GmbH & Co. KG (The BBC Nile)* [2022] FCAFC 171 (12 October 2022). If any amendment to COGSA 1991 is contemplated, I think it would be wise to change the reference in Sch 1A from the "amended Hague Rules" to one of the above judicial suggestions, or even the "Australian Hague-Visby Rules"!

[3] Some of the uncertainties can be seen in the two 2022 cases cited in fn 2 above, in which the courts have had to range far and wide in trying to untangle the intent of the Australian legislation and complex 'clauses paramount'.

Consultation Concern 1: Whether 'sea carriage document' needs to be better defined

4. The Consultation referred to the concerns of a "small number of stakeholders" and it is important to identify more broadly what is in the national interest. Here there may be competing norms or wishes, not all of which are compatible. Before considering the rather general question of defining "sea carriage document", it is necessary to identify what the potential practical problems are, and what mischiefs are intended to be covered when producing any new definition.

5. The underlying issue in cases such as *The Blooming Orchard [No 2]*[4] *Jebsens International (Australia) Pty Ltd* and *Anor v Interfert Australia Pty Ltd and Ors*[5] and *Dampskibsselskabet Norden A/S v Gladstone Civil Pty Ltd*[6] (*Norden*) was whether the Australian carriage by sea legislation (now COGSA 1991 s 11) should, in effect, preclude foreign arbitration clauses in charterparties (in addition to bills of lading).

6. The *Norden* case has apparently settled the issue by deciding that the legislative protection is not intended to preclude a foreign arbitration clause in a charterparty, unless a bill of lading is issued *under* a charterparty. I say "apparently", because it is presumably open to the High Court in s subsequent case to reverse the decision, eg by upholding the dissenting judgment of Buchanan J. To that limited extent, a legislative clarification of the decision (eg with a reversal or confirmation of it) could save the legal costs of refighting the decision in the High Court.

7. I assume that the discontented "stakeholders" may want to reverse the effect of *Norden*, (although that is not entirely clear from the Consultation) but here it is necessary to separate out two issues: (i) whether the *Norden* decision was correct, (ii) whether, in any event, it is in Australia's best interests for the effect of the decision to be reversed.

8. In a detailed article in the Lloyd's Maritime and Commercial Law Quarterly,[7] I have argued that the majority decision in *Norden* was fully justifiable on grounds of legislative history and practice—although recognising that the dissenting interpretation was not unreasonable. As a matter of history, it is necessary to investigate the aims of s. 6 of the Sea-Carriage of Goods Act 1904 which was where the original provisions were introduced to protect Australian exporters (eg of Tasmanian fruit). My examination of the Parliamentary proceedings showed no indication that the mischief included foreign jurisdiction (or arbitration) clauses in *charterparties*, as opposed to bills of lading. A more intensive study of Parliamentary archive material relating to merchant complaints (if it existed) would be needed to resolve this historical issue. However, in my view, this would be a rather pointless exercise now that the decision in *Norden* has been put in issue for possible legislative change (or clarification).

9. The second question then arises as to whether it is in Australia's best interests for any

[4] (1990) 22 NSWLR 273.
[5] [2012] SASC 50.
[6] [2013] FCAFC 107 (Federal Court of Australia, Full Court).
[7] N Gaskell, "Australian Recognition and Enforcement of Foreign Charterparty Arbitration Clauses" [2014] LMCLQ 174.

redefinition of "sea carriage document" to include charterparties so that foreign charterparty arbitration clauses could be nullified. This is not strictly a *legal* question, but raises wider economic and policy issues, eg:

(a) whether there is a present need to protect Australian exporters and importers from the cost and inconvenience of foreign charterparty arbitration;

(b) whether there is support for any change within the exporting and importing community (not simply from those concerned in dispute resolution);

(c) whether the main driver for a change should be the desire to set up Australia, like Singapore, as a major maritime dispute resolution centre;

(d) how far any change would be seen internationally as an unreasonable protectionist measure, contrary to the spirit of international arbitration law and free trade generally.

10. In the absence of information relating to (a) and (b) above (in particular) I do not feel able to comment in detail as to the appropriate balance to be struck between these four economic and policy issues (amongst others). However, as a lawyer I can naturally see advantages to boosting Australia as a dispute resolution centre.[8]

11. I note that the latest version of BIMCO's most widely used voyage charterparty for dry and general cargo, GENCON 2022, was published on 26 October 2022 and cl 37 provides a default choice of English law and arbitration—although allowing parties expressly to adopt other arbitration systems (which could already include Australia). Similar clauses are now standard in most standard form charterparties; ie there is freedom of choice, but in the absence of such express choice London will be the default position (eg under LMAA terms).

12. The assumption internationally has generally been that charterers (as opposed to shippers exporting or importing small parcels of cargo) are usually not in need of protection in a free market. That is one reason why the substantive sea carriage rules under the Hague Rules 1924, Hague-Visby Rules 1968 Art 1(b) and Art 5,[9] are not applied to charterparties, but only to "bills of lading or any similar document of title" issued under them. The change in COGSA 1991 in the 'Australian Rules' to the term "sea carriage document" seems mainly to have been designed to cover modern post 1968 documentation, such as waybills,[10] and to deal with ambiguities about the meaning of "similar document of title".

13. London will probably continue to be a main venue for charterparty arbitration (along with Singapore and New York), but there is scope for Australia to become one of those other systems attractive to commercial parties. This may need positive encouragement for Australian arbitration to be favoured by major Australian coal, gas and iron ore

[8] I should declare that I do not currently operate as an arbitrator and am qualified to practise only as a barrister at Quadrant Chambers in London (where I am an "Academic Associate").
[9] The Hamburg Rules 1978 and Rotterdam Rules 2008 similarly exclude charterparties.
[10] Although the Australian Rules Art 5 refers only to *negotiable* sea carriage documents", for reasons that are not immediately apparent.

exporters—many of whom have run their chartering activities out of London or Singapore and have previously seemed reluctant to elect for Australian arbitration.[11] In addition, procedural reforms may be needed to make Australia a more attractive venue, eg through providing greater assimilation between the maritime arbitration rules offered by the Australian Maritime and Transport Arbitration Commission (AMTAC) and the Maritime Law Association of Australia and New Zealand (MLAANZ). Neither the encouragement nor assimilation mentioned in this paragraph require legislation but would benefit from Government support.

Consultation Concern 1: Question (1) What concerns do you have with regard to the lack of a definition for the term 'sea carriage document' in COGSA?

14. There is clearly a technical drafting problem, referred to in the recent 2022 cases,[12] in that s. 11 refers to a "sea carriage document", but the only definition is in Sch 1A. No doubt this can easily be cured, eg in s. 4, or more particularly in s. 11 itself. For the avoidance of doubt, a s. 11 reference might be the best way to *clarify* or *change* the *Norden* decision.

15. It is not clear to me if the "stakeholders" have identified any definitional problem with the expression "sea carriage document" in Sch 1A issue *other* than the charterparty one that I have discussed.

16. There is some international uncertainty about the status of "booking notes" in maritime law. These are not expressly mentioned in the definition of "sea carriage document" in Sch 1A, Art 1(1)(g). Standard form booking notes were originally designed as the initial contract for carriage that would later be subject to the issue of a bill of lading after shipment.[13] It is apparent that booking notes are also widely used as a form of charterparty, and as such are not sea carriage documents under COGSA (and *Norden*). This certainly can cause confusion, but I am not convinced that *legislative* definition is further needed. As with the case law on slot charters, this is a definitional matter that is best resolved by case law, as in the decision of Stewart J in *Poralu Marine Australia Pty Ltd v MV Dijksgracht* [14] If the result the Consultation is to reverse the effect of *Norden*, booking notes that are interpreted as charterparties would then also be caught by an expanded definition of "sea carriage document". In that context, some consideration ought to be given to making an express reference to a "booking note", perhaps by expanding the reference to "consignment note" in Sch 1A Art 1(1)(g)(iv) to include a "booking note"; eg "…consignment *or booking* note…".

17. I note that COGSA 1991 was in advance of its time internationally by its attempt to deal with electronic carriage documentation, ie in the 'Australian Rules' Art 1(ba), 1(h) and 1A. I am not aware of any reported issue with these provisions or whether they have been of any use in practice. It appears, though, that they do not deal with legal issues

[11] However, this does not address the issue about whether s. 11 needs to be changed to reverse the effect of *Norden*.
[12] See fn 2, above.
[13] See N Gaskell et al, *Bills of Lading: Law and Contracts*, (LLP, 2000), 64-74.
[14] [2022] FCA 1038, paras 245-248.

other than the application of substantive carriage rules, eg to an "electronic bill of lading". In particular, neither the 'Australian Rules' nor the State Sea-Carriage Acts deal with the issue of 'possession' of an electronic bill of lading and its transferability. I refer to that issue, and recent international developments, below in paras 43-44.

Consultation Concern 1: Question (2) What amendments, if any, do you believe need to be made to provide clarity as to the definition of a 'sea carriage document?

18. See para 14, above. The answer more generally depends on whether the intent is to *clarify* or *change* the *Norden* decision. It may only be necessary to add a new s. 11(4) to state eg that "for the avoidance of doubt, a "sea carriage document" in s. 11 does not include a charterparty"; alternatively, "a "sea carriage document" in s. 11 includes a charterparty".

19. More generally, however, the drafting of s. 11 is at best opaque, in particular through the linkage between the three subsections. Section 11(1) is reasonably clear in the mandatory application of [Australian laws] to export shipments. Section 11(2) is also relatively clear as preventing an ouster of Australian court jurisdiction, although it is not entirely clear to me that a foreign arbitration clause would always "prevent or limit" such jurisdiction.[15] Section 11(3) is difficult to read because it is phrased negatively, so the reader has to try to see how it works in relation to s. 11(2). I would prefer a general rewording of s. 11(3) in which the effectiveness of arbitration clauses is stated positively, making clear also whether any restriction is applied both to outward and inward shipments.

Consultation Concern 1: Question (3) What activities should the term 'sea carriage documents' be capturing? Noting that ship chartering and cargo carriage via a bill of lading are quite different activities being used by different clientele.

20. See the discussion in paras 4-13, above. The restrictions dating back to 1904 were designed as an early form of consumer protection. As noted above, it may well be that major coal, gas and iron ore exporters do not feel the need for consumer protection, but it is for them to respond to the Consultation. My concern would be whether there are smaller operators who do charter ships and might need protection.

21. It may be that the protection given to bills of lading holders, for instance, can relate to very large amounts and values of cargoes shipped in containers where the bills of lading holders are major international companies. By contrast, the existence of slot charters, space charters and 'booking note charters'[16] might be more likely to involve relatively small parcels of cargo, eg yachts shipped on deck. Here the 'charterers' might be small

[15] Given that an Australian court could have jurisdiction to hear a case before deciding whether to recognise a foreign arbitration clause (that was not also allied with a foreign jurisdiction clause). However, I have not had time to check all the case law on this issue, but *Hi-Fert Pty Ltd v Kiukiang Maritime Carriers Inc (No 5)* (1998) 90 FCR 1, appears to support the proposition that a foreign arbitration clause would preclude or limit the jurisdiction of an Australian Court, although the clause in that case chose London arbitration *and* English law to govern the arbitration. The decision relied on *Compagnie Des Messageries Maritimes v Wilson* [1954] HCA 62; (1954) 94 CLR 577, but that was a case involving a foreign jurisdiction clause, not an arbitration clause.

[16] See *Poralu Marine Australia Pty Ltd v MV Dijksgracht* [2022] FCA 1038 and para 16 above.

or medium enterprises that might be less experienced in international trade, or at least may not have the resources or experience of companies such as BHP or Rio Tinto.

22. If it was felt that there was a case for reversing *Norden* on the basis that it was difficult to draw a clear line between many bill of lading (or waybill) shipments and those under small space charters, then would this prejudice the large companies that preferred to resolve their charter disputes in eg London or Singapore?

23. I may be wrong, but it seems to me that there is nothing that would prevent such large charterers from voluntarily agreeing to the foreign arbitration and waiving any right to take a jurisdictional point under an amended s. 11. If they did so the question might arise whether they might later refuse to pay an adverse arbitration award and resist New York Convention enforcement on the grounds that s. 11 rendered the foreign arbitration unenforceable in Australia. I have not been able to consider all the implications, but an express provision in COGSA or the arbitration legislation might give legal effect to such an express waiver.

Consultation Concern 1: Question (4) If charterparties were to be considered 'sea carriage documents', what impact would this have on your business operations and contractual negotiations? What costs and benefits would be generated?

24. See para 10, above. Other than that, no comment.

Consultation Concern 2: If interstate voyages should also be protected from foreign arbitration clauses;

25. The decision in *Carmichael Rail Network v the BBC Chartering Carriers GmbH & Co. KG (The BBC Nile)*[17] has now confirmed that s. 11 of COGSA does not strike down foreign arbitration and exclusive jurisdiction clauses in sea carriage documents covering the interstate carriage of goods by sea around Australia. The decision of the Full Court (like that in *Norden*) is perfectly understandable and arises from the failure of the legislature to consider interstate transport in the drafting process. The result was that the court felt unable itself to imply wording to cover interstate transport, as this would be impermissible judicial legislation. The High Court could decide otherwise (in an appeal in the instant case or in a later decision). As with the *Norden* discussion, in para 8 above, I do not consider that there is much use in debating the merits of the case, now that the issue has been raised in the Consultation. I can see that this ought to be a matter for the legislature to rectify.

Consultation Concern 2: Question (5) Why do you support/not support expanding the scope of section 11 of COGSA to apply to the carriage of goods on interstate voyages?

26. There is no doubt that the court in *The BBC Nile* recognised a gap in the legislation. Indeed, quite simply it seems illogical for a lesser degree of protection to be given to interstate transport than to international transport.

[17] [2022] FCAFC 171.

Consultation Concern 2: Question (6) What impact would the expanded scope of section 11 of COGSA to include interstate voyages have on your business operations and contractual negotiations?

27. As a lawyer, I have no comment about "my business", but from my general knowledge of carriage of goods, I would strongly doubt whether there would be sufficiently serious cost changes that would deter the provision of domestic carriage.

Consultation Concern 2: Question (7) Without amending section 11 of COGSA, how else could Australia protect Australian shippers moving goods by sea interstate?

28. I am not aware of any obvious alternative to a simple change in the legislation.

Consultation Concern 3: Whether the location and seat of arbitration should be in Australia.

29. My impression is that in the last 30 years the international law of arbitration has developed considerably and the distinction between the location and seat of arbitration has become more apparent. If s. 11(3) of COGSA was being drafted again today I have little doubt that both location and seat would have been expressly covered. It seems to me that the failure to require both location and seat to be in Australia is a weakening of the protection envisaged by s. 11(3).

30. The main argument against the proposal would be that it undermined the freedom of the parties to agree the system of arbitration that they prefer. However, that argument already applies in relation to the existing mandatory location requirement. The freedom of contract argument perhaps applies with a little more force if it is decided to reverse the *Norden* decision, as discussed under 'Concern 1', questions 1-4 above. It may be that large commercial exporters of bulk cargo (such as coal, iron ore and gas) prefer to choose a system with which they are familiar, eg in London, and where the LMAA procedures for charterparty arbitration meet their needs. That is why it is important to consider their views as identified by me in issues (a) and (b) that I listed in para 9, above. I also repeat my limited personal view expressed in para 10, above.

Consultation Concern 3: Question (8) Why does your organisation support/not support requiring the seat and location of arbitration to be in Australia?

31. I respond as an *individual* maritime law academic, not on behalf of the University of Queensland. For the reasons given in the para 26, above, I would support the location and seat of arbitration to be in Australia.

Consultation Concern 3: Question (9) Does your organisation support the current requirement that the location of arbitration be in Australia?

32. As in paras 27 and 31, above, I respond as an individual. If there is no agreement to require the location and seat to be in Australia, then I would support at least maintaining the location here. But for the reasons in para 29, above, I support both location and seat being in Australia.

Consultation Concern 3: Question (10) What about the Australian arbitration system is attractive to your organisation?

33. As an individual I have no comment about attractiveness.[18] In general, the system is likely to be attractive because of the firm foundation of the rule of law in Australia and the degree of uniformity achieved by being party both to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 and the UNCITRAL Model Law on International Commercial Arbitration 1985. It should also be noted that the Federal Court has developed considerable expertise in maritime law (and procedure) and that its jurisdiction should also be considered as part of the dispute resolution system available in Australia.

Consultation Concern 3: Question (11) How would fixing the seat and location of arbitration in Australia support and encourage the settlement of contractual disagreements generally?

34. No comment, other than to say that it seems more efficient to have location and seat in the same place.

Consultation Concern 3: Question (12) What conflicts are you aware of that may be created by requiring the seat and location of an arbitration to be in Australia? For example, conflicts with current arbitration legislation, practices or recommendations.

35. I can see the possibility of conflicts where there is an express choice of foreign arbitration (perhaps with a similar choice of law clause), eg in London. An English court is likely to recognise the choice of English arbitration and is unlikely to stay the claim in favour of Australia's mandatory rules requiring Australian arbitration. This may well cause difficulties when reciprocal enforcement under the New York Convention is sought of each potentially conflicting award.[19] Each State might then seek to rely on its own public policy to deny enforcement. To some extent, this appears to be a risk with the current system that would outlaw foreign arbitration of bill of lading disputes.

36. It seems highly unlikely that shipowners, shipowner organisations (eg ICS) and the International Group of P&I Clubs would support the removal of freedom of choice in respect of charterparty dispute resolution. Australia, though, is a cargo exporter and importer rather than a shipowning State, so its interests may not coincide with shipowning interests. No doubt shipowners and insurers would point to unspecified increases in costs in requiring arbitration in Australia, as opposed to venues of their choice, such as London, but such assertions would need to be justified.

[18] See also the comments in para 13 about assimilation of AMTAC and MLAANZ Australian maritime arbitration rules.

[19] Cf *Jebsens International (Australia) Pty Ltd & Anor v Interfert Australia Pty Ltd & Ors* [2012] SASC 50; (2011) 112 SASR 297.

Consultation Concern 3: Question (13) What benefits are there in retaining the flexibility for parties to a commercial agreement to choose exclusive jurisdiction agreements?

37. I am not quite clear if this is a question about arbitration, or court "jurisdiction", as it is the latter that is normally under consideration in the context of "exclusive jurisdiction agreements", eg under s. 11(2)(b of COGSA 1991. Both issues raise the question of the importance of freedom of choice in trade, as previously discussed in paras 11 and 30.

38. In the time available, I have not been able to check if there are studies about the number of States that restrict the validity of foreign exclusive jurisdiction agreements, but suspect that such restrictions are relatively rare.[20] As a matter of principle, the certainty given by such clauses is often important in saving costs incurred in procedural disputes about where and how disputes are to be resolved. Where the choice is to a system that does not apply the normal rule of law then reciprocal enforcement of awards and judgements can be resisted on the grounds of public policy. A State such as Australia is entitled, though, to use legislation such as s. 11 to protect its citizens and companies from being forced to litigate or arbitrate disputes abroad, but other States could no doubt adopt the same approach. In the interests of free international trade restrictions should perhaps be on the basis of proven need and as far as possible limited in scope (eg to particular disputes with a close connection to that State).

39. I note that Art 75 of the Rotterdam Rules 2008 would give a wide choice of where an arbitration can take place,[21] at the option of the *claimant*,[22] including the place of loading or delivery.[23] To that extent, there is international precedent for States applying mandatory law in respect of cargo claims, eg under a bill of lading (like s. 11). However, like the Hague and Hague-Visby Rules, the Rotterdam Rules do not apply to charterparties.

Wider overhaul of COGSA 1991

40. The present consultation is focussed on s. 11, and I note that on p 2 of the Consultation the Department will not consider amendments to COGSA beyond s. 11 "at this time". Nevertheless, with some hesitation, I suggest to the Department that a more fundamental review is needed of the underlying substantive rules of carriage of goods by sea—especially in the light of the declared aim of improving the attractiveness of maritime dispute resolution in Australia (whether by arbitration or in the Federal Court). There are two reasons for this.

[20] Note that the Rotterdam Rules 2008 Arts 66-67 recognise the effectiveness in carriage of goods by sea contracts (but not charterparties) of exclusive jurisdiction clauses in respect of courts in Contracting States. The Hamburg Rules 1978 Art 21 is to like effect.
[21] Except in the case of long term 'volume' contracts, as defined in Art 1(2) and see Art 80.
[22] Not the carrier.
[23] To like effect is Art 22 of the Hamburg Rules 1978. The existence of the wide claimant choices given in Arts 21-22 of the Hamburg Rules, and the potential resulting restrictions on dispute resolution in the UK, are one reason why the latter were opposed by the UK.

Reconsider denouncing Hague-Visby Rules 1968 and updating 'Australian Rules'

41. First, the 1991 Act (as later amended) effects a compromise about the underlying substantive rules at a time of uncertainty about which international regime was most likely to produce uniformity. The eventual Australian solution was to be party to the Hague-Visby Rules 1968, but to apply some enhanced liability provisions (mostly derived from the Hamburg Rules 1978) in the "Australian Rules" when to do so would not be in breach of Hague-Visby international obligations. Since 1991, there had been a further attempt at international reform, namely UNCITRAL's Rotterdam Rules 2008,[24] although these have so far attracted relatively little support, despite their many obvious merits.[25]

42. In the absence of international uniformity, and given the period that has passed since 1968 (especially in relation to limitation of liability),[26] it is time to reconsider whether to denounce the Hague-Visby Rules 1968, to update the "Australian Rules" (eg with all or some 'Rotterdam' provisions)[27] and to apply them simply and consistently to all inward and outward shipments from Australia (as well as to interstate transport within Australia). Such a decision would greatly simplify COGSA 1991, by having only one set of Rules and would place Australia in the forefront of international jurisdictions in adopting modern sea carriage laws. It would also be without prejudice to ratifying the Rotterdam Rules, if and when they received more widespread support internationally.

Electronic transferable documents

43. Secondly, the underlying carriage regime in Australia is inadequate to deal with the replacement of traditional paper bills of lading by the introduction of electronic transferable documents (eg using blockchain or other systems of transfer). The Rotterdam Rules 2008 produced one possible solution to this replacement and UNCITRAL's Model Law on Electronic Transferable Records (MLETR) 2017 provides another. Seven jurisdictions, including Singapore (in 2021), have adopted legislation influenced by the Model Law; Singapore is, of course, likely to be a major regional competitor for Australia for maritime arbitration.

44. Moreover, on Wednesday 12th October, an "Electronic Trade Documents Bill" was presented before the UK Parliament would allow for the legal recognition of electronic versions of trade documents, such as bills of lading (and bills of exchange). This Bill is largely based on a 2022 Law Commission Report, *Electronic Trade documents: Report and Bill*.[28] It will be necessary for Australia to consider its response to such electronic

[24] Benin, Cameroon, Congo, Spain and Togo are the only Contracting States.
[25] There is a degree of inertia as States have waited to see what the USA and China will do. For differing reasons, both have not so far acted. There is little secret that major support for the Rotterdam Rules in the US came from lawyers who were dissatisfied with the *Sky Reefer* decision in the Supreme Court and its refusal to invalidate foreign jurisdiction clauses in bills of lading: see *Vimar Seguros y Reaseguros SA v M/V Sky Reefer* 515 U.S. 528 (1995); [1995] AMC 1817.
[26] In *Poralu Marine* Stewart J held that the carriage of 23 pontoons ("breakwater units") imported into Australia from Ireland were subject to a £100 sterling limit per unit.
[27] Eg those on liability and limitation.
[28] Report No 405, 15 March 2022.

trade developments (not limited to maritime documents such as bills of lading or waybills). It may well be that Australian discussions about the MLETR are already underway, although it may also be that legislation is needed in State and Territory lawin the same way, for instance,[29] that the Sea-Carriage Documents Act (Qld) 1996 was needed to deal with the right (or 'title') to sue under carriage by sea contracts. It is noticeable that such State legislation was closely modelled on the UK COGSA 1992, so it may be that the current UK Bill will be influential in Australian debates. In any event, in the context of encouraging Australian arbitration, there is a need for national coordination of Australia's response to the use of electronic trade documents, with the minimum of delay.

[29] See also the UN Convention on the Use of Electronic Communications in International Contracts 2005 that needed State and Territory legislation.