

## SALE OF GOODS (AMENDMENT) BILL 1988

NEW SOUTH WALES



### EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Sale of Goods Act 1923 to give effect to the recommendations of the New South Wales Law Reform Commission in its report entitled "Sale of Goods Second Report" (LRC 51 1987). Those recommendations generally seek to reform and clarify aspects of the law relating to the rescission of contracts of sale of goods on the ground of misrepresentation, the enforceability of certain unwritten contracts and the acceptance of goods.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the proposed Act to commence on a proclaimed day.

**Clause 3** is a formal provision that gives effect to the Schedule of amendments.

**Clause 4** deals with the manner in which the amendments are to operate. It provides that the amendments made by the proposed Act are, with two exceptions, to apply only to contracts made after the commencement of the proposed Act. The exceptions are the amendments concerning intermediate stipulations and the amendment repealing the requirement of writing. These amendments will generally apply to contracts whenever made.

### SCHEDULE 1—AMENDMENTS

The amendments will give effect to the Commission's recommendations, as summarised in its report, as follows:

#### **Innocent misrepresentation**

1. The rules of equity relating to rescission for misrepresentation should be expressly preserved for sale of goods contracts. (Schedule 1 (1) (a)—proposed section 4 (2A)).

2. Rescission of a sale of goods contract for misrepresentation should not necessarily be precluded by the fact that the contract has been performed. (Schedule 1 (1) (a)—proposed section 4 (2A)).

*Sale of Goods (Amendment) 1988*

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3. Rescission of a sale of goods contract for misrepresentation should not necessarily be precluded by the fact that the misrepresentation has become a term of the contract. (Schedule 1 (1) (a)—proposed section 4 (2A)).

4. Acceptance should not bar rescission for misrepresentation unless there are words or conduct which would amount to affirmation under the general law. (Schedule 1 (4) (b)—proposed section 38 (2)).

**Intermediate stipulation**

5. The Sale of Goods Act 1923 should be amended to make it clear that it does not exclude the right to treat a contract of sale as repudiated for a sufficiently serious breach of an intermediate stipulation. (Schedule 1 (1) (b)—proposed section 4 (5)).

The report (paragraph 3.3) defines an intermediate stipulation as follows: "An intermediate term, frequently described as an 'innominate term', is a contractual term the importance of which lies somewhere between a condition and a warranty. Every breach of such a term gives rise to a right to claim damages, but only a serious breach gives rise to a right to terminate the performance of the contract. The seriousness of the breach depends on its consequences (both actual and foreseeable) for the promisee."

**Requirement of writing**

6. Section 9 of the Sale of Goods Act 1923 should be repealed. (Schedule 1 (2)).

That section provides that a contract for the sale of goods of the value of \$20 or more is not enforceable unless the buyer accepts part of the goods, gives something in earnest or makes part payment or unless there is a written note or memorandum of the contract.

**Passing of property in specific goods**

7. The passing of property in specific goods should no longer of itself bar rejection of the goods. (Schedule 1 (3)—proposed amendment of section 16).

**Acceptance and examination of goods**

8. The description of acceptance in section 38 of the Sale of Goods Act 1923 should be subject to section 37 in the case of acceptance by an act of the buyer inconsistent with the ownership of the seller. (Schedule 1 (4) (a)—proposed amendment of section 38).

The result of this amendment is that, when goods are delivered to a buyer, the buyer is (under section 38) deemed to have accepted the goods when he or she does anything inconsistent with the ownership of the seller, except where (under section 37) acceptance is postponed until the buyer has had a reasonable opportunity of examining the goods for the purpose of ascertaining whether they conform with the contract.

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## TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Sale of Goods Act 1923 No. 1
4. Operation of amendments

SCHEDULE 1—AMENDMENTS

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# SALE OF GOODS (AMENDMENT) BILL 1988

NEW SOUTH WALES



No. , 1988

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## A BILL FOR

An Act to amend the Sale of Goods Act 1923 for the purpose of reforming and clarifying aspects of the law relating to the rescission of contracts of sale of goods on the ground of misrepresentation, the enforceability of certain unwritten contracts and the acceptance of goods; and for other purposes.

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*Sale of Goods (Amendment) 1988***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Sale of Goods (Amendment) Act 1988.

**Commencement**

2. This Act commences on a day to be appointed by proclamation.

**Amendment of Sale of Goods Act 1923 No. 1**

3. The Sale of Goods Act 1923 is amended as set out in Schedule 1.

**Operation of amendments**

4. (1) Subject to this section, the amendments made by this Act apply to contracts made after, but not before, the commencement of this Act.

(2) The amendments made by Schedule 1 (1) (b) and (2) also apply to contracts made before the commencement of this Act, but not so as to affect cases that were finally litigated or settled before that commencement.

- (3) The fact of the enactment of section 4 (2A) and section 38 (2) of the Sale of Goods Act 1923, and of this section, shall be treated as affecting neither—

- (a) the rights of the parties to a contract made before the commencement of this Act; nor  
 (b) the construction of the Sale of Goods Act 1923 in its application to such a contract.

**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

**(1) Section 4 (Savings)—**

- (a) After section 4 (2), insert:

(2A) Without affecting the generality of subsection (2), the rules of equity relating to the effect of misrepresentation apply to contracts for the sale of goods, but such a contract may be rescinded under those rules for a misrepresentation even though either or both of the following apply:

- (a) the misrepresentation has become a term of the contract;  
 (b) the contract has been performed.

- (b) After section 4 (4), insert:

(5) Nothing in this Act shall be construed as excluding a right to treat a contract of sale as repudiated for a sufficiently serious breach of a stipulation that is neither a condition nor a warranty but is an intermediate stipulation.

*Sale of Goods (Amendment) 1988*

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SCHEDULE 1—AMENDMENTS—*continued*

- (2) Section 9 (**Contract of sale for twenty dollars and upwards**)—  
Omit the section.
- (3) Section 16 (**When condition to be treated as warranty**)—  
Section 16 (3)—  
5 Omit “or where the contract is for specific goods the property in  
which has passed to the buyer,”.
- (4) Section 38 (**Acceptance**)—  
(a) Section 38—  
10 Omit “or when the goods”, insert instead “or, subject to section  
37, when the goods”.
- (b) Section 38 (2)—  
At the end of section 38, insert:  
15 (2) The buyer’s acceptance of the goods as referred to in  
subsection (1) does not preclude rescission of the contract for an  
innocent misrepresentation, unless the acts constituting acceptance  
amount to affirmation of the contract.





**SALE OF GOODS (AMENDMENT) ACT 1988 No. 78**

NEW SOUTH WALES



**Act No. 78, 1988**

An Act to amend the Sale of Goods Act 1923 for the purpose of reforming and clarifying aspects of the law relating to the rescission of contracts of sale of goods on the ground of misrepresentation, the enforceability of certain unwritten contracts and the acceptance of goods; and for other purposes. [Assented to 23 November 1988]

*Sale of Goods (Amendment) 1988***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Sale of Goods (Amendment) Act 1988.

**Commencement**

2. This Act commences on a day to be appointed by proclamation.

**Amendment of Sale of Goods Act 1923 No. 1**

3. The Sale of Goods Act 1923 is amended as set out in Schedule 1.

**Operation of amendments**

4. (1) Subject to this section, the amendments made by this Act apply to contracts made after, but not before, the commencement of this Act.

(2) The amendments made by Schedule 1 (1) (b) and (2) also apply to contracts made before the commencement of this Act, but not so as to affect cases that were finally litigated or settled before that commencement.

(3) The fact of the enactment of section 4 (2A) and section 38 (2) of the Sale of Goods Act 1923, and of this section, shall be treated as affecting neither—

- (a) the rights of the parties to a contract made before the commencement of this Act; nor
- (b) the construction of the Sale of Goods Act 1923 in its application to such a contract.

**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

**(1) Section 4 (Savings)—****(a) After section 4 (2), insert:**

(2A) Without affecting the generality of subsection (2), the rules of equity relating to the effect of misrepresentation apply to contracts for the sale of goods, but such a contract may be rescinded under those rules for a misrepresentation even though either or both of the following apply:

- (a) the misrepresentation has become a term of the contract;
- (b) the contract has been performed.

**(b) After section 4 (4), insert:**

(5) Nothing in this Act shall be construed as excluding a right to treat a contract of sale as repudiated for a sufficiently serious breach of a stipulation that is neither a condition nor a warranty but is an intermediate stipulation.

*Sale of Goods (Amendment) 1988*

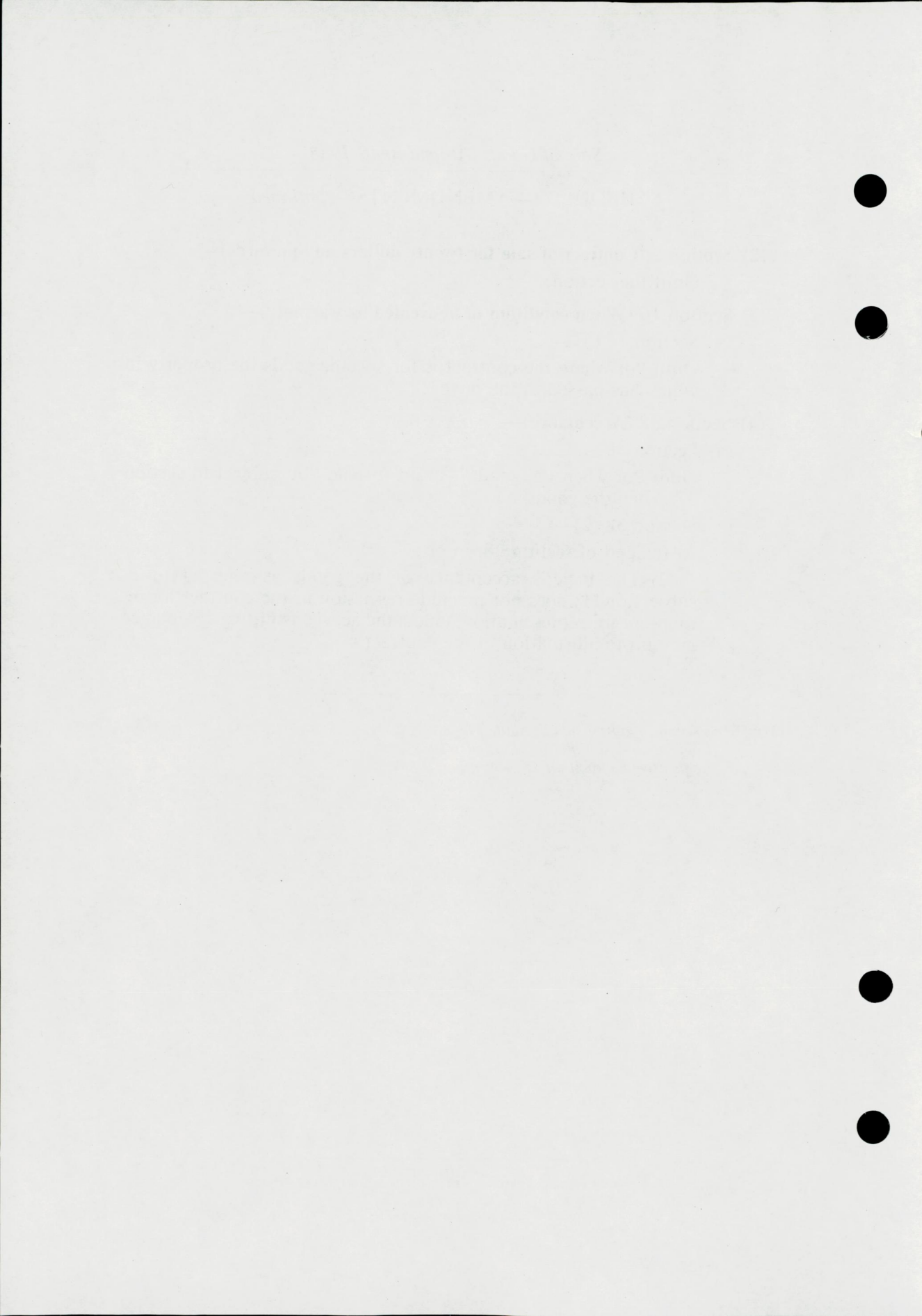
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SCHEDULE 1—AMENDMENTS—*continued*

- (2) Section 9 (**Contract of sale for twenty dollars and upwards**)—  
Omit the section.
- (3) Section 16 (**When condition to be treated as warranty**)—  
Section 16 (3)—  
Omit “or where the contract is for specific goods the property in which has passed to the buyer.”.
- (4) Section 38 (**Acceptance**)—  
(a) Section 38—  
Omit “or when the goods”, insert instead “or, subject to section 37, when the goods”.
- (b) Section 38 (2)—  
At the end of section 38, insert:  
(2) The buyer’s acceptance of the goods as referred to in subsection (1) does not preclude rescission of the contract for an innocent misrepresentation, unless the acts constituting acceptance amount to affirmation of the contract.

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[*Minister’s second reading speech made in—  
Legislative Assembly on 31 August 1988  
Legislative Council on 15 November 1988*]



# SALE OF GOODS (AMENDMENT) ACT 1988 No. 78

NEW SOUTH WALES



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### SCHEDULE 1—AMENDMENTS

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