

SALE OF GOODS (AMENDMENT) ACT 1988 No. 78

NEW SOUTH WALES



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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equity relating to the effect of misrepresentation apply to contracts for the sale of goods, but such a contract may be rescinded under those rules for a misrepresentation even though either or both of the following apply: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

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.

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