MINISTRY OF CONSUMER AFFAIRS
MANATŪ KAIHOKOHOKO

# Consumer Law Reform Additional Paper – February 2011

# Carriage of Goods

## Introduction

1 The Ministry of Consumer Affairs released the discussion document "Consumer Law Reform" in June 2010. The discussion paper included a section which discussed the application of the Consumer Guarantees Act 1993 (CGA) to the Carriage of Goods Act 1979. The issues discussed concerned the extent to which the Carriage of Goods Act limits the rights of consumers under the CGA, and the extent to which consumers' rights that would otherwise exist under the CGA may be contracted away under the Carriage of Goods Act.

2 This paper provides further information on the application of the CGA and how it relates with the consumer-related provisions of the Carriage of Goods Act, and whether or not the Carriage of Goods Act is meeting the needs of consumers.

3 There are boundary issues between the CGA and the Carriage of Goods Act in relation to the remedies for consumers when goods are damaged or lost by a carrier. The CGA includes a guarantee that services will be provided with due care and skill. The CGA service guarantee potentially applies to consumers who contract for carriage services as consignors, and consumers who receive the benefit of carriage services as consignees (or receivers) of goods but who are not parties to a contract of carriage.[1] Generally, the guarantees in favour of consumers under the CGA cannot be contracted out.

4 The Carriage of Goods Act provides for contracts of carriage to include remedies that apply when goods are damaged or lost while being carried. It is also valid (and apparently common) for carriers to contract under the Carriage of Goods Act for the liability for the loss or damage of goods to be borne by the owner of the goods, which leaves consumers with very limited protection under the Carriage of Goods Act. Consignees who are consumers are particularly vulnerable because they are not parties to the contract of carriage, and the consignor and the carrier have the opportunity to effectively contract away the consignee's legal rights under the Carriage of Goods Act. There is an issue as to how much protection consumers who are consignors or consignees have (or should have) under the CGA in the face of the Carriage of Goods Act.

[1] Consumer Guarantees Act section 2, the definition of Supplier includes a person who, in trade, supplies services to an individual consumer or a group of consumers (whether or not the consumer is a party, or the consumers are parties, to a contract with the person). Consignees as well as consignors are supplied services under contracts of carriage, because usually the consignor contracts for the goods to be delivered, and the consignee receives the goods.

5 Trade Me Message Board also indicates that many people appear to be unaware that much of the Carriage of Goods Act can be contracted out of. This is particularly true for time periods for notification of claims of damage. The Act specifies 30 days (section 18), but this is commonly contracted out of and can be as short as 7 days.

6 The submissions to the discussion paper on the carriage of goods issue were clearly split between consumer groups which supported the proposal that the CGA should apply more expressly and comprehensively to the carriage of goods, and industry which opposed the proposal.

7 The main concerns of submitters from carrier businesses included:

- Liability might be beyond what the carrier can economically bear
- Any changes would create uncertainty over carriers' risk and liability
- No rationale was given to treat consumers any differently from businesses
- Consumers should have some responsibility to manage their risks
- Contracting out of carrier liability under the Carriage of Goods Act reduces transport costs to consumers
- There is no indication of the scale of the problem, which industry believes is small, and
- Carriers do not agree that the consignee (who receives goods) should be able to take action against the carrier as only the consignor (the sender) and the carrier have the contract.

## Does the CGA already apply?

8 The CGA includes statutory guarantees that apply on the sale of goods and services, and it is an offence for suppliers to contract out of the guarantees when goods and services are supplied to consumers.[2] Section 6 of the Carriage of Goods Act says a carrier's only liability for loss or damage to any goods carried is in accordance with a contract of carriage under the Carriage of Goods Act, or where the loss or damage has been caused wilfully.[3]

9 Section 6 therefore limits the rights of consignors and consignees (including those who are consumers), in relation to the loss or damage to goods carried, to the rights available through contracts of carriage under the Carriage of Goods Act. Carriers' liability under the CGA for such loss or damage is implicitly excluded. It is significant from a consumer point of view that section 7 of the Carriage of Goods Act then allows carriers and consignors to relieve carriers from liability, and to

[2] Consumer Guarantees Act , section 43(4) – it is an offence under section 13(i) of the Fair Trading Act 1986 to purport to contract out of a provision of the CGA.

[3] There is no legal restriction on carriers' liability for wilful loss or damage they are responsible for.

contract out of most of the statutory obligations of carriers in relation to the loss or damage of goods under the Carriage of Goods Act.[4]

10 This ability of carriers to shift the risk to consignors and the owners of the goods by contract under the Carriage of Goods Act appears to trump the rights that might otherwise exist under the CGA for consignors and consignees who are consumers. Certainly section 6 excludes carriers' liability for loss or damage to goods through negligence (see *Ports of Auckland Ltd v Southpac Trucks Ltd*)[5].

11 The only residual protection under the CGA available for consignors and consignees who are consumers is that they still have the right to make claims against carriers for breaches of the service guarantees under the CGA *other* than for loss or damage to goods (such as for delay or consequential loss) because the limitation on remedies against carriers through section 6 only applies to the loss or damage of goods.

12 In the development of the Carriage of Goods Act, all questions of consequential loss were excluded from the Act and left to the operation of common law. Since the introduction of the CGA, it seems that the CGA applies to consequential loss that is outside the "loss or damage to goods" covered by section 6 of the Carriage of Goods Act.

13 The liability of carriers for consequential and other losses under the CGA would relate specifically to the guarantees for services, because carriers are supplying a service under the CGA. Therefore, if a carrier did not perform the service with due care and, skill then the consumer could take action under the CGA – as long as the claim was not for actual loss or damage to the goods. This right to make such a claim applies to consumers who are consignors or consignees, because carriers are providing a service to consignors and consignees, and it is a right under the CGA that is not excluded by the Carriage of Goods Act, and cannot be contracted away by the parties.

14 The fact that the CGA has some application to the carriage of goods is reflected in many of the carriage contracts we have reviewed which have a statement similar to the following:

> *"Where the provisions of the Consumer Guarantees Act 1993 apply, the provisions of these Terms and Conditions will be read subject to the application of that Act, and in the case of any conflict, the provisions of that Act will apply".*

15 These types of clauses are obviously intended to protect carriers from purporting to contract out of the CGA in a way which would be an offence under the Fair Trading Act. However, the application of the CGA to the carriage of goods is in practice quite narrow, and some carriage contracts do not mention the CGA at all. There seems to be confusion about whether the CGA applies to the carriage of goods, and if so, what parts of the carrier service it applies to. It is unlikely that consumers realise the subtlety of the distinctions between loss and damage to the goods carried and other potential losses that may be covered under the CGA.

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[4] Carriers can contract out of sections 10, and 18 to 27 of the Carriage of Goods Act.

[5] [2009] NZSC 112

16 The CGA does have some provisions which help clarify the relationship between the CGA and other legislation like the Carriage of Goods Act. For example, section 40 is the "Savings" section of the CGA which deals with the relationship between the CGA and other legal rules beyond the CGA. Section 40(c) in particular says that nothing in Part IV of the CGA (which is the part dealing with service guarantees) limits or affects:

> "40(c) Any enactment which defines or restricts the rights, duties, or liabilities arising in connection with a service of any description."

17 Section 40(c) means the CGA effectively defers to section 6 of the Carriage of Goods Act because section 6 defines or restricts the liabilities of carriers in relation to the loss or damage of goods. Therefore the service guarantee in the CGA does not limit or affect section 6 of the Carriage of Goods Act. The Carriage of Goods Act options for contracts of carriage include options which restrict the carrier's liability for loss or damage to goods. Those options also exclude any liability of carriers for loss or damage to goods under the service guarantees in the CGA.

18 Section 43 of the CGA is also relevant because its general principle is that suppliers cannot contract out of the guarantees in the CGA. However suppliers can contract out if the purchaser is acquiring the goods and services for the purpose of a business. Another exception in section 43 is where a contractual alternative to the CGA guarantees imposes a *stricter* liability on the supplier, or provides a *more advantageous* remedy for the consumer (section 43(6)).

19 Section 43(6) of the CGA reflects the principle that it is acceptable for the CGA guarantees to be contracted out where consumers have a greater benefit under the contract. Consumers who are consignors or consignees would possibly have better rights against carriers than they would have under the CGA if the goods are lost or damaged and the "limited carrier's risk" option under the Carriage of Goods Act is selected for the contract of carriage. This is because the limited carrier's risk option under the Carriage of Goods Act creates a "strict liability" where the carrier is deemed to be responsible without any fault being required to be proved, while the service guarantee under the CGA requires the consumer to prove a breach of the standard of due care and skill by the supplier.[6]

20 The limited carrier's risk option is discussed in greater detail below, and having the option available under the Carriage of Goods Act may not be as advantageous for consignors and consignees in practice as it might seem. The critical problem for consumers with the options for contracts of carriage under the Carriage of Goods Act that exclude coverage for the loss or damage of goods under the CGA is of course that the strict liability carrier's risk option is only one of the options under the Carriage of Goods Act, and the other options available to carriers and consignors leave consumers with no remedy against the carrier in relation to goods that are damaged or lost through the lack of care and skill by the carrier or otherwise.

[6] Whether the limited carrier's liability option creates an advantage for consignors or consignees which are consumers would also depend on the capped liability amount for the carrier's limited liability being realistic in relation to the value of the particular goods being carried. The cap is currently $1,500 for each unit of goods (Carriage of Goods Act section 15), but see the discussion on increasing the limit below.

21 Another problem for consumers who are consignees is that it is likely they will have no rights against the supplier which is the consignor of the goods in relation to any loss or damage caused by the carrier, because the Sale of Goods Act 1908 includes a presumption that title (and risk) in the goods will have passed from the seller to the purchaser when the seller delivers the goods to the carrier.[7] Sellers could override the Sale of Goods Act presumption and retain responsibility for goods while they are being transported to the buyer, but they have no obvious incentive to do so, and consumers are unlikely to negotiate to protect themselves in this way. Sellers may have a reputational obligation to protect the interests of consumers and other consignees, but it is unlikely to be a legal obligation.

22 The overarching point is that contracts of carriage that limit consumers' CGA rights (either as consignors or consignees) in relation to the loss or damage of the goods being carried will not be in breach of the CGA (or an offence under the Fair Trading Act 1986 for contracting out of the CGA) because of section 6 of the Carriage of Goods Act and section 40(c) of the CGA. Consignors and consignees who are consumers still have rights under the CGA in relation to claims other than for the loss or damage of the goods being carried, but this is a relatively subtle point which is not widely appreciated. Contracts of carriage that are carrier's limited risk contracts may be relatively advantageous for consignors and consignees, because carriers will have stricter liabilities than as the suppliers of services under the CGA. Contracts of carriage which exclude remedies for the loss or damage of goods under the Carriage of Goods Act are likely to be inconsistent with the principle in section 43(6) of the CGA, even though they are still valid in terms of section 6 of the Carriage of Goods Act.

23 There are no policy reasons why there should not be consumer protections at least as good as the service guarantees under the CGA when carrier services are supplied to consumers. The guarantees available to consumers under the CGA should only be negated under contracts of carriage when the contract of carriage imposes a stricter liability on the carrier, or provides a more advantageous remedy to the consumer, than the CGA guarantee. That is the case with limited carrier's liability contracts of carriage, but it is not the case with owner's risk contracts.

24 Sections 40 and 43 of the CGA should therefore be amended to clarify that consumer rights under the CGA are only limited by the Carriage of Goods Act to the extent that a contract of carriage imposes stricter liability on the carrier, or provides a more advantageous remedy for the consumer, than is otherwise available under the CGA. Section 7 of the Carriage of Goods Act could also be amended to make it clear that the CGA obligations can only be contracted out under contracts of carriage in accordance with section 43 of the CGA.

25 The CGA should also be amended to clarify that carriers and consignors cannot contract away the rights of consignees who are consumers under the CGA.

## Consumers and the Carriage of Goods Act

26 The Carriage of Goods Act is written for both commercial carriage of goods and domestic carriage. It appears to work well with regard to commercial carriage, as

[7] Sale of Goods Act 1908, section 20, Rule 5(2).

the Act optimises the freedom of parties to determine their own risk and insurance arrangements and pricing. [8]

27 Consumers use carriage services both as consignors and consignees, and the question for the Consumer Law Reform process is whether the Act works fairly for consumers, or whether consumers need additional protections. While the carrier industry states that carriage to or on behalf of consumers makes up less than 1% of their business, they obviously put some importance on consumer business. At least two companies have recently diversified into providing specialist services for Trade Me transaction carriage.

28 Submissions from carrier companies considered that the discussion paper did not give a good rationale for why consumer customers should be treated differently from their business customers. There are numerous examples where the law treats consumers differently from businesses. The policy principle underpinning the CGA is that legal protections which allow consumers to have greater confidence in their transactions, and markets generally, are good for consumers, traders, and the economy as a whole.

29 There are also several practical differences between consumers and businesses that are particularly relevant to carrier services. Consumers use carrier services far less frequently than businesses. Their relationship with the carrier company, and the relationship between the consignor and consignee which may be consumers, is likely to be less established than most business to business relationships. Therefore getting redress from a carrier if a good is lost or damaged is more difficult for a consumer than it is for a business which is more likely to have an on-going contractual relationship with the carrier.

*Section 7 – Contracting out*

30 Carrier business submitters supported the current ability to contract out of many provisions of the Carriage of Goods Act. They state that contracting out of statutory rights and obligations under the Carriage of Goods Act reduces transport costs to consumers/customers.

31 The 1968 report from the first Working Group on the carriage of goods included a recommendation that contracting out of carriers' liability should continue to be possible, but only to the extent justified by the special circumstances of the case (those circumstances being confined to the nature of the goods and of the journey). The proposal was that there should be "reasonable and just" (as defined by the common law) reasons for contracting out. The mere provision of alternative rates (i.e. making owner's risk carriage cheaper) was not to be regarded as a special circumstance.

32 Limiting contracting out rights in the Carriage of Goods Act was not supported in the Report of the Working Group in 1978, which concluded that contracting out

[8] There are favourable options under the Carriage of Goods Act for businesses, including small businesses, provided they are able to negotiate these options with carriers which will usually have standard form contracts. The limitations on liability for "contract carriers' and "actual carriers" under the *Ports of Auckland* case were also controversial, with differing decisions on the effect of limited carrier's risk and incidental or independent services in the Court of Appeal and Supreme Court. These issues are outside the scope of the Consumer Law Reform process.

should be permissible in all cases where the situation is clearly brought to the attention of the customer. The Report suggested that contracting out must still be done fairly and transparently.

33 This approach of allowing carriers to contract out of liability without restriction was further supported by the Statutes Revision Committee (which was the select committee considering the Carriage of Goods Bill). The "reasonable and just" requirement for contracting out of carrier liability recommended by the 1968 Working Group was removed from the Bill at this stage, further freeing up the ability to contract out of carrier liability under the Carriage of Goods Act. The Department of Justice noted at this time that it is fair that parties should write contracts that suit their purpose but it did not want to open the way for standard form contracts excluding all the provisions of the Carriage of Goods Act and including terms that favour one party.

34 The risks of contracting out of liability to consumers and other customers were contemplated, and the 1978 Working Group and Statutes Revision Committee considered that there were two countervailing factors in favour of allowing contracting out. These were:

- That the behaviour would be observed and action taken if appropriate; and
- Contracting out of carrier liability would need to be in writing.

35 The general consensus from submitters on the Bill at the time was that a consignor which is strong enough to protect itself should be able to accept the risk itself and agree to the carrier contracting out of the Carriage of Goods Act liability. If a consignor and carrier do not contract out, then the provisions of the Act would apply.

36 It is common for carrier companies to indicate which provisions they are contracting out of in their terms and conditions. Although terms and conditions are commonly posted on the companies' websites, for some this information requires some effort to find. The sections of the Act contracted out of are usually referred to by reference to the section numbers, rather than their content. This means that a consumer would have to read the Carriage of Goods Act to see what sections are referred to. While this would be acceptable for commercial businesses, it would be difficult for consumers to be adequately aware of what was being contracted out of. The contracts also have the appearance of standard form contracts, so a consumer who is a consignor does not appear to have any real practical ability to negotiate and has limited scope to vary the terms and conditions.[9]

37 Liberalising the opportunities for carriers to contract out of their liability under the Carriage of Goods Act was mitigated by the introduction of the set options for contracts of carriage in the Act. The options include:

[9] A consignee, whose indirect rights against the carrier under the Carriage of Goods Act may be contracted away by the carrier and the consignor, is not even a party to the contract, and so is particularly vulnerable to the terms of the contract of carriage.

- Owner's risk, where the carrier has no liability for loss or damage (apart from wilful damage)

- Limited carrier's risk, where the carrier's liability for loss or damage is capped at the statutory limit (currently $1,500)

- Declared value risk, where the carrier is responsible for loss or damage to a value disclosed in the contract (which may be more or less than $1,500), and

- On declared terms.

38 These options cover a full range of arrangements for carrier liability, including the owner's risk option where the carrier has no liability. The declared value and declared terms options also effectively permit the statutory obligations under the Carriage of Goods Act to be contracted out. The Carriage of Goods Act requires contracts of carriage that provide for options other than limited carrier's risk to do so expressly, and in the absence of a written contract of carriage providing otherwise, the limited carrier's risk option applies as the "default" option.[10]

*Section 8 – Options for contracts of carriage*

39 The Department of Justice[11] noted that unless there was a specially negotiated contract, the carrier must offer to the contracting party the statutory options for carriage and the contracting party must be free to choose that which suits them; in other words the choice would be the customers'. The Statutes Revision Committee added the refinements that the norm or default position would be the limited carrier's risk unless the customer signed a conspicuous written statement to the contrary, and the difference in freight rates between limited carrier's risk and owner's risk would have to be reasonable. These options appear to be designed with small scale or infrequent consignors in mind.

40 The principle put forward by the Committee was that a loss should fall on those who can best avert it, and that they should have an incentive to do so. Industry submissions to the 2010 Consumer Law Reform discussion paper state that consumers should have some responsibility to manage their risks. The options for contracts of carriage in the Act satisfy both of these views, but the application of these options appears to be flawed in practise.

41 Several carrier contracts we have reviewed do not offer the limited carriers liability option at all. Consignors are given one or two of the options (usually "owner's risk" or "declared value"). Both of these options can require insurance to be taken out by the consignor to limit their risk. Some carrier companies limit the "declared value" goods to much less than the $1,500 limited carriers' risk amount under the Carriage of Goods Act, e.g. one company will not carry anything with a value greater than $500 under "declared value". In fact the goods carried may actually be worth more than $500, and in that case the effect of the $500 maximum declared value is to shift the risk above $500 on to the consignor (or consignee).

[10] Carriage of Goods Act, section 8(4).

[11] *Carriage of Goods: Contracting Out* Letter to the Chairman of the Statutes Revision Committee from the Department of Justice, 11 July 1979.

42 It is also clear that consumers are not able to weigh up the other options against the limited carrier's liability option, even though it was intended to be the "default" option, because it is not being offered for comparison. One of the key features of the other three options for contracts of carriage is that the freight costs for those options are expected to be significantly lower than for the limited carrier's liability option, because the carrier is not incurring the cost of the insurance. The intention is that the consumer either pays for insurance with the benefit of lower freight costs, or the carrier pays the insurance within the higher freight costs for the carrier's risk option.[12]

43 It is difficult for a consumer to see that there is a difference in freight costs if the options are not offered, and the freight costs are not transparent.

44 While the intention of the law makers was to provide the contracting party with a choice of contract, offering the limited carrier's liability option is not actually mandatory under the Carriage of Goods Act. We think the limited carrier's liability option should be required to be offered by carriers under the Carriage of Goods Act, so the costs are transparent, and consignors can make an informed decision on the cost of the protection or the risk they might choose to take.

45 It would be possible to distinguish between consignors which are businesses and those who are consumers, and to only require that the limited carrier's liability option must be offered to consumers, but the transparency principle is equally applicable to all consignors. Consignees are also affected by the terms of the contract of carriage under the Carriage of Goods Act, and business consignors often ship goods to consignees who are consumers. It would also be easier for carriers if they did not have to make a distinction between consumers and other consignors when they offer the limited carrier liability option.

*Section 20 – Consignee rights*

46 It is clear that the consignee, who is the end receiver of goods which are carried, has relatively few rights because they are not a party to the contract of carriage. This works for businesses (as consignor and consignee usually have a clear and sometimes ongoing business relationship), but consumer consignees are more vulnerable. Section 20 of the Carriage of Goods Act allows for the consignee to have rights against the carrier, but section 20 itself can be contracted out of by the carrier and the consignor. It appears that most carriers do contract out of section 20, and if they do not, some have terms and conditions that significantly limit the compensation paid to consignees, i.e. it may not cover the value of the goods.

47 The Working Group in 1978 considered that the right of action against the carrier should vest in the consignor or the consignee, according to who is at risk, notwithstanding that there is no privity of contract between the consignee and the carrier. The Department of Justice considered the proper person to sue the carrier is the owner of the goods, which is likely to be the consignee. This subsequently became the position under section 20. However, after submissions to the Select

[12] This intention is reflected in section 8(9) of the Carriage of Goods Act, which says a declared value or owner's risk contract of carriage will only have effect if the cost difference with an alternative limited carrier's risk contract is fair and reasonable in the circumstances.

Committee, there was significant liberalisation of the contracting out provisions, including in relation to section 20.

48 This situation creates difficulties for consumers and it is clear that this is a cause of debate for consignors and consignees.[13] Sellers sending goods and consumers receiving goods are unaware of what to do if the goods are damaged, and are unaware of the conditions of the contract and their rights (or lack of them). Clarity on who can take action is needed when the trading relationship is a one-off or unfamiliar.

*$1,500 Liability Limit*

49 The intention of the Carriage of Goods Act is that any carrier liability should be for a known and certain amount, so the carrier can arrange insurance cover for a quantified risk. It would be impractical for carriers to insure (or self-insure) risks of an indeterminate amount.

50 This is achieved by the Carriage of Goods Act through the declared value and limited carrier's liability options. The limited carrier's liability option is the default option under the Act, and it currently includes a statutory liability limit of $1,500 for each unit of goods.[14] The carrier and the consignor may agree another value ("declared value"), or they may agree that the carrier has no responsibility for loss or damage of the goods at all (apart from loss or damage caused intentionally by the carrier).

51 The amount of the limited carrier's liability is academic if carriers do not tend to contract on that basis because they more usually contract to shift the risk on to the owners of the goods being carried. The limited carrier's liability option will most likely apply as the default option in cases where there is no written contract of carriage. However, the amount of the limit would become more important if carriers are required to actually offer the limited carrier's liability option to consignors.

*Replacement of Liability Limit with CGA remedies*

52 Some submitters seemed concerned that there was an intention to remove the liability limit. They indicated that if the liability limit is completely removed in favour of application of the CGA, then carriers would have no clarity on the amount of the potential liability they would be required to insure. Business and the carrier industry are concerned that this would increase the cost of insurance significantly and that costs would not be economically viable.

53 We did not explore the removal of the liability limit, or its potential effect on the strict liability basis for carrier's liability under the limited carrier's liability option. Removal of the liability limit would have wider implications on business than the proposals we have considered, and was therefore outside the scope of our review.

54 The CGA guarantees have no set value, and the liability under the guarantees can also include consequential loss. The amount of the liability of a carrier would be

[13] See Trade Me Message Board

[14] Carriage of Goods Act, section 15(1)

unknown in advance if a carrier damages or loses a good. Business submitters claim that applying the CGA service guarantees to the loss or damage of goods by carriers would result in uncertainty over liability and risk. This is no different from any other business which is subject to the CGA. One feature that would make a carrier different from other businesses covered by the CGA is that they usually do not know what is in the packages they carry. Therefore, a prescribed liability limit makes insurance easier to arrange.

*Increase in Liability Limit in line with Inflation*

55 In the development of the Carriage of Goods Bill, the Department of Justice noted that the level of liability was supposed to change with inflation. It was originally able to be changed by an Order in Council, as while considered important, it did not raise any question of principle. However, this was changed in favour of it being Parliament's responsibility with the intention that it would be regularly reviewed to keep it relevant. Unfortunately, this has not been done.

56 The last increase to the liability limit was in 1989, when it was set to $1,500 per unit. An inflation-adjusted value would be of the order of $2,500[15]. There would be insurance implications if such a value became the liability limit, and businesses, while supportive of an inflation-adjusted figure, are concerned about whether carriers could bear this increase.

57 The advice we have received from the Insurance Council of New Zealand is that they would expect an insurance premium increase of a factor of approximately two-thirds on existing small operators' premiums if the liability limit was increased from $1,500 to $2,500. The example they provided was for the insurance premium for a single operator, local urban/suburban owner-driver to increase from $450-500 pa to $750-850 pa.

58 The implication for large inter-city line haul operations where large trucks carry a lot of different freight units would present the greatest step-change if the current liability limit was increased to $2,500, but there are a range of other commercial pressures and underwriting practices that would come into play in that market. The Insurance Council expects the two-thirds increase would be the upper limit for premium increases in the market for larger carriers.

59 In general, the increase will provide greater protection for consumers, although it will not provide an advantage if consumers have goods to be carried that are worth more than $2,500. If a consumer has a higher valued good, and their contract is a limited carrier's risk, then they may also rely on the CGA care and skill guarantee. The trade-off with this is that they will need to prove that the carrier did not meet the reasonable care and skill guarantee, while carriers have strict liability under limited carrier's liability contracts.

*Further Issues*

60 One of the difficulties with the choice of carriage contracts is that consumers, particularly consignees who are not parties to the contact, are not aware of the

[15] Calculated on the Reserve bank Inflation Calculator – $1,500 in Q2 1989 to Q3 2010.

limited liability limit. This can lead to under-insuring goods and a potential loss for the consignee if loss or damage was to occur. Information on this to the public must be made available, but it is unlikely this can be legislated for. However, the Ministry of Consumer Affairs can help publicise the limit.

## Recommendations

We conclude that the analysis supports recommendations that,

a Service guarantees at least as good as these under the CGA should apply for the benefit of consumers when they are supplied carrier services in the same way as the service guarantees apply when other services are provided to consumers.

b The carrier's liability for loss or damage to goods through the CGA service guarantee should not be restricted by a contract of carriage under the Carriage of Goods Act unless the contract of carriage imposes a stricter liability on the carrier, or provides a more advantageous remedy to the consumer than is otherwise available under the CGA.

In other words, section 7 of the Carriage of Goods Act should specifically not allow for the contracting out of the CGA's obligations except as provided for in section 43 of the CGA.

c The rights under the CGA of consignees who own the goods being carried and who are consumers should not be affected by contracts of carriage between carriers and consignors under the Carriage of Goods Act.

d Carriers should be required to offer the limited liability carrier's liability option under the Carriage of Goods Act when they offer carriage services to any consignor.

e The amount of the carriers' liability under the Carriage of Goods Act should be increased in line with inflation from $1,500 to $2,500, and future increases should be able to be made by Order in Council.

f The Ministry of Consumer Affairs should publicise the value and intention of the limited carrier's liability to provide as much information as possible for consumers, particularly consignees.