First print

New South Wales

Security Interests in Goods Bill 2005

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The *Bills of Sale Act 1898* currently requires the registration of certain bills of sale within a specified time after their execution. Bills of sale generally fall into 2 broad categories. Firstly, they include documents that assign a legal or equitable interest in personal goods as a security for a debt. The assignment may be either conditional or absolute, provided that the grantor retains possession of the goods. Secondly, they include documents that confer powers or authorities to take possession of personal goods as a security for a debt.

The *Bills of Sale Act 1898* distinguishes between bills of sale given by traders (***trader's bills of sale***) and other bills of sale (***ordinary bills of sale***). Unregistered trader's bills of sale are absolutely void and confer no security on grantees over the goods to which they relate. However, unregistered ordinary bills of sale are valid as between grantor and grantee, but void against certain judgment creditors and other third parties.

The mischief to which the *Bills of Sale Act 1898* was principally directed was to prevent third parties from being misled into believing that the goods to which the bill related were unencumbered because the grantor retained possession of them.

The *Liens on Crops and Wool and Stock Mortgages Act 1898* currently provides for the following matters:

(a) a landholder may grant a preferable lien over crops to be grown on the land to a person who advances money or goods to the landholder as a security for the advance,

(b) an owner of sheep may grant a preferable lien over the wool of the sheep to a person who advances money or goods to the owner as a security for the advance,

(c) an owner of sheep, cattle or horses may grant a stock mortgage over such stock.

The *Liens on Crops and Wool and Stock Mortgages Act 1898* sought to overcome doubts at common law about the efficacy of securities granted over goods that were still in the course of production, namely, crops before harvest and wool before it is shorn. It also sought to clarify the rights of the holders of stock mortgages.

The objects of this Bill are:

(a) to repeal the *Bills of Sale Act 1898* and the regulations made under that Act and to enact instead provisions that modify the existing law as follows:

  (i) the outdated distinction between trader's bills of sale and ordinary bills of sale is dispensed with and the concept of a security interest in goods is used instead,

  (ii) the registration of certain instruments relating to the creation of security interests in goods (including interests created by bills of sale) will be optional rather than mandatory,

  (iii) the period of registration will not be limited to the current period of 5 years,

  (iv) the registration of a security interest in goods will generally confer priority over unregistered interests and subsequently registered interests over the same goods, but a failure to register an otherwise valid interest will not affect its validity, and

(b) to repeal the *Liens on Crops and Wool and Stock Mortgages Act 1898* and the regulations made under that Act and to enact instead provisions that modify the existing law as follows:

  (i) the registration of certain kinds of instruments will create mortgages over existing and future crops and wool instead of liens over such goods,

  (ii) the kinds of animals over which a stock mortgage may be granted under the proposed Act is extended beyond sheep, cattle and horses,

  (iii) the owners of fish that are cultivated or kept for the purposes of aquaculture will be permitted to grant a mortgage under the proposed Act over such fish, and

(c) to make consequential amendments to certain Acts and Regulations, and

(d) to enact provisions of a savings and transitional nature.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain terms and expressions used in the proposed Act. In particular, the following terms are defined:

An ***agriculture goods mortgage*** is defined to mean any of the following:

(a) a crop mortgage granted under proposed section 7,

(b) a stock mortgage (including a wool mortgage) granted under proposed section 12,

(c) an aquaculture fish mortgage granted under proposed section 15.

The term ***goods*** is defined to mean any chattels personal, fixtures or other things capable of complete transfer by delivery (whether immediately or at any future time), but is defined not to include any of the following:

(a) title deeds, negotiable instruments, choses in action or chattel interests in real estate,

(b) shares or interests in the stock, funds or securities of any of the following:

  (i) a Government (whether of this State or otherwise),

  (ii) the Crown or a body representing the Crown (whether in right of this State or otherwise),

(c) shares or interests in the capital or property of a body corporate (wherever constituted),

(d) access licences in respect of water granted under the *Water Management Act 2000*,

(e) any other thing prescribed by the regulations for the purposes of the definition.

The term ***security instrument*** is defined to mean any instrument (including an instrument granting an agricultural goods mortgage) by or under which a security interest is reserved or created, or otherwise arises, in respect of goods (whether existing or future).

The term ***security interest***, in relation to goods (whether existing or future), is defined to mean an interest or power:

(a) reserved in or over an interest in the goods, or

(b) created or otherwise arising in or over an interest in the goods under a bill of sale, mortgage, charge, trust or power,

by way of security for the payment of a debt or other pecuniary obligation or the performance of any other obligation, but is defined not to include an interest or a power reserved or created, or otherwise arising, by or under any of the following:

(c) a letting of goods with an option to purchase the goods,

(d) an agreement for the purchase of goods by instalments (whether described as rent or hire or otherwise) not being an agreement by which the property in the goods being purchased passes at the time of the agreement or on, or at any time before, delivery of the goods,

(e) any other contract for the hiring of goods,

(f) any other agreement, arrangement, instrument or circumstance of a kind prescribed by the regulations.

Clause 4 specifies the circumstances in which an instrument will be treated as being duly executed for the purposes of the proposed Act.

Clause 5 explains the inter-relationship between the proposed Act and other Acts and laws. In particular, the proposed section makes it clear that the proposed Act will not:

(a) affect any rule or principle of the common law or equity in relation to security interests in goods except to the extent that the proposed Act provides otherwise (whether expressly or by necessary implication), or

(b) prevent any person from granting a mortgage or other security interest over agricultural goods under another law (for example, at common law) instead of in accordance with the provisions of Part 2 of the proposed Act, or

(c) apply to or affect any security interest in prescribed goods within the meaning of the *Registration of Interests in Goods Act 1986*, except to the extent provided by certain regulations made under that Act.

The proposed section also makes it clear that the proposed Act is not intended to limit or affect the operation of Chapter 2K or any other provisions of the *Corporations Act 2001* of the Commonwealth. Chapter 2K of that Act provides for the registration of charges over certain property of companies and the order of priority of such charges.

Clause 6 provides that the proposed Act binds the Crown in all of its capacities.

Part 2 Agricultural goods mortgages

Division 1 Crop mortgages

Clause 7 enables a person to grant a mortgage under the proposed section over crops (a ***crop mortgage***) that grow or are grown on land by way of security for payment of a debt or other pecuniary obligation if the person:

(a) owns the land, or

(b) has exclusive possession of the land and a right to harvest crops that grow or are grown on the land, or

(c) holds a lease over the land granted under the *Western Lands Act 1901* (whether or not the lease confers exclusive possession of the land) and has a right to harvest crops that grow or are grown on the land, or

(d) is entitled under a sharefarming agreement with the owner or lessee of the land to crops (or a share of the crops) that grow or are grown on the land and has obtained the written consent of the owner or lessee to grant the mortgage.

A crop mortgage granted under the proposed section must be in the prescribed form (as specified in proposed section 17 (1)) and comply with certain other formal requirements. In particular, it must be registered within the period of 45 days after it is executed and only has effect when it is registered. The period during which a crop lien under the *Liens on Crops and Wool and Stock Mortgages Act 1898* must be registered is 30 days after its execution.

Under the *Liens on Crops and Wool and Stock Mortgages Act 1898*, a crop lien may only be granted over agricultural or horticultural crops that have already been sown. However, a crop mortgage may extend to existing or future crops on the land concerned and also to crops that will be produced on the land in the ordinary course of nature.

The maximum period for the duration of a crop mortgage is 5 years (including any renewals). The maximum period for a crop lien under the *Liens on Crops and Wool and Stock Mortgages Act 1898* is only one year.

Clause 8 confers the following rights on a mortgagee under a crop mortgage if the mortgagor fails or refuses to pay the debt or other pecuniary obligation secured by the mortgage:

(a) the right to take possession of any crops to which the mortgage applies,

(b) the right to cut, gather, harvest, sell or otherwise deal with the crops,

(c) the right to enter the land on which the crops are growing, or grew, for the purpose of exercising any such power,

(d) the right to require the mortgagor to pay to the mortgagee the proceeds of any sale of the crops if the mortgagor has already harvested and sold the crops.

The rights conferred by the proposed section are subject to any contrary provision made by the parties in the crop mortgage. They are also subject to the requirements imposed by or under other legislation that circumscribe dealings with the kinds of crops to which the mortgage applies.

Clause 9 requires a mortgagee under a crop mortgage in respect of land that is mortgaged to another person (the ***land mortgagee***) to pay the land mortgagee a certain amount of interest due under the land mortgage before exercising a power of sale over the crops.

The proposed section is based on section 7 of the *Liens on Crops and Wool and Stock Mortgages Act 1898*, which imposes a similar obligation on a lienee under a crop lien.

Clause 10 requires a mortgagee under a crop mortgage in respect of land over which the mortgagor has a lease to pay the lessor a certain amount of rent due under the lease before exercising a power of sale over the crops.

The proposed section is based on section 6 of the *Liens on Crops and Wool and Stock Mortgages Act 1898*, which imposes a similar obligation on a lienee under a crop lien.

Clause 11 provides that a right or other entitlement of a sharefarmer under a sharefarming agreement over crops that are the subject of a crop mortgage has priority over the security interest of the mortgagee under the crop mortgage unless the sharefarmer is a party to the mortgage.

A ***sharefarming agreement*** is defined in proposed section 3 (1) to mean an agreement between the owner or lessee of land and another person under which the other person undertakes:

(a) to cultivate or otherwise utilise the land, and

(b) to share with the owner or lessee in agreed proportions any crops or other produce, or profits derived from crops or other produce, grown on or derived from the land.

Division 2 Stock mortgages and wool mortgages

Clause 12 enables a person to grant a mortgage under the proposed section (a ***stock mortgage***) by way of security for payment of a debt or other pecuniary obligation over either or both of the following:

(a) stock owned by the person,

(b) wool produced by stock owned by the person.

A stock mortgage granted under the proposed section must be in the prescribed form (as specified in proposed section 17 (2)) and comply with certain other formal requirements. In particular, it must be registered within the period of 45 days after it is executed and only has effect when it is registered.

A stock mortgage granted under the proposed section differs from wool liens and stock mortgages granted under the *Liens on Crops and Wool and Stock Mortgages Act 1898* in the following respects:

(a) Both wool from stock and the stock can be the subject of a single stock mortgage under the proposed section. Under the *Liens on Crops and Wool and Stock Mortgages Act 1898*, it would be necessary to execute both a wool lien and stock mortgage.

(b) A wool lien granted under the *Liens on Crops and Wool and Stock Mortgages Act 1898* may only be granted over the wool of sheep. However, under the proposed Act, ***wool*** is defined in proposed section 3 (1) to mean the natural fibre from the fleece of sheep, goats, alpacas, llamas or any other kind of stock that produces fleece that can be shorn. Accordingly, a stock mortgage over wool under the proposed section extends beyond the wool of sheep.

(c) A stock mortgage under the proposed section can be granted over any stock. The term ***stock*** is defined widely in proposed section 3 (1) to include any sheep, goats, cattle, horses, swine, poultry, alpacas, llamas, ostriches or other animals (except fish). However, stock mortgages may be granted under the *Liens on Crops and Wool and Stock Mortgages Act 1898* only in respect of sheep, cattle or horses.

Clause 13 provides that a stock mortgage that relates only to wool may be referred to as a ***wool mortgage*** for the purposes of the proposed Act.

Clause 14 confers the following rights on a mortgagee under a stock mortgage if the mortgagor fails or refuses to pay the debt or other pecuniary obligation secured by the mortgage:

(a) if the mortgage applies to or includes the wool of stock—the right to do any or all of the following:

  (i) take possession of the wool wherever it is located,

  (ii) shear the wool from the stock,

  (iii) sell or otherwise deal with the wool,

  (iv) enter the land on which the stock is located for the purpose of exercising any such power,

(b) if the mortgage applies to or includes stock—the right to do any or all of the following:

  (i) take possession of the stock wherever it is located,

  (ii) slaughter, sell or otherwise deal with the stock,

  (iii) enter the land on which the stock is located for the purpose of exercising any such power.

The proposed section also confers the right to recover certain expenses consequent on taking possession of the stock because of a refusal or failure to shear or deliver wool under the mortgage.

The rights conferred by the proposed section are subject to any contrary provision made by the parties in the stock mortgage. They are also subject to the requirements imposed by or under other legislation that circumscribe dealings with the kinds of stock or wool to which the mortgage applies.

Division 3 Aquaculture fish mortgages

Clause 15 enables a person to grant a mortgage under the proposed section (an ***aquaculture fish mortgage***) over any fish owned by the person that are cultivated or kept for the purposes of aquaculture by way of security for payment of a debt or other pecuniary obligation. The terms ***aquaculture*** and ***fish*** are defined in proposed section 3 (1) to have the same meanings as they have in the *Fisheries Management Act 1994*. In this regard, it should be noted that section 144 of the *Fisheries*

Management Act 1994 prohibits a person from undertaking aquaculture except under the authority of an aquaculture permit issued under that Act even if the person owns the fish concerned.

An aquaculture fish mortgage granted under the proposed section must be in the prescribed form (as specified in proposed section 17 (3)) and comply with certain other formal requirements. In particular, it must be registered within the period of 45 days after it is executed and only has effect when it is registered.

Clause 16 confers the following rights on a mortgagee under an aquaculture fish mortgage if the mortgagor fails or refuses to pay the debt or other pecuniary obligation secured by the mortgage:

(a) the right to take the fish to which the mortgage applies wherever it is located,

(b) the right to sell or otherwise deal with the fish,

(c) the right to enter the land or water source on or in which the fish is located for the purpose of exercising any such power.

The rights conferred by the proposed section are subject to any contrary provision made by the parties in the aquaculture fish mortgage. They are also subject to the requirements imposed by or under other legislation that circumscribe dealings with the kinds of fish to which the mortgage applies. In this regard, the provisions of the *Fisheries Management Act 1994* (particularly those in Part 6 of that Act dealing with aquaculture management) are of particular relevance.

Division 4 Prescribed forms for agricultural goods mortgages

Clause 17 sets out the circumstances in which an agricultural goods mortgage is in the prescribed form for the purposes of the proposed Act. Basically, a mortgage will be in the prescribed form if the instrument that creates the mortgage:

(a) is in or to the effect of the relevant Form for the kind of mortgage concerned set out in Schedule 1 (Form for crop mortgage), 2 (Form for stock mortgage or wool mortgage) or 3 (Form for aquaculture fish mortgage), or

(b) is not in or to the effect of the relevant Form, but nevertheless specifies or describes certain matters (including that it is granted under the proposed Act) set out in the proposed section.

Clause 18 enables the Governor to make regulations that replace or amend Schedule 1, 2 or 3 (or any combination of them).

Division 5 Dealings concerning agricultural goods mortgages

Clause 19 provides that an agricultural goods mortgage is not extinguished or otherwise prejudicially affected by any of the following:

(a) the death, bankruptcy or insolvency of the mortgagor,

(b) the sale of, or the creation of a mortgage or other encumbrance over, the goods or land or water sources to which the mortgage relates.

However, the proposed section makes it clear that it has effect subject to any contrary provisions of a law of the Commonwealth. In this regard, the *Bankruptcy Act 1966* and the *Corporations Act 2001* of the Commonwealth are of particular relevance in situations of bankruptcy and company insolvency.

Clause 20 enables the parties to an agricultural goods mortgage to vary the provisions of the mortgage on the registration of certain duly executed instruments.

Clause 21 enables the parties to an agricultural goods mortgage to provide for the renewal of the mortgage for a further period on the registration of a duly executed instrument of renewal.

Clause 22 enables the parties to an agricultural goods mortgage to assign the security interest created by the mortgage on the registration of certain duly executed instruments.

Clause 23 enables the parties to an agricultural goods mortgage to discharge the mortgage on the registration of certain duly executed instruments.

Part 3 Registration of security interests in goods

Division 1 General

Clause 24 specifies the matters that a security instrument must set out for it to be a ***registrable security instrument*** for the purposes of the proposed Act.

Clause 25 provides that an instrument is ***registered*** for the purposes of the proposed Act if it is recorded in the General Register of Deeds kept under the *Conveyancing Act 1919*.

Division 2 Registration of registrable security instruments

Clause 26 enables the Registrar-General to register a security instrument if satisfied that it is a registrable security instrument.

Division 3 Dealings with registered security interests

Clause 27 enables the Registrar-General to register certain instruments that vary the terms of registered security instruments.

Clause 28 enables the Registrar-General to register certain instruments that assign security interests in goods created by registered security instruments.

Clause 29 enables the Registrar-General to register certain instruments that effect or evidence the devolution of security interests in goods created by registered security instruments. The proposed section defines a ***devolution*** of such an interest to mean the passing of the interest from a deceased grantor or holder of the interest to a living heir of the grantor or holder.

Clause 30 enables the Registrar-General to register certain instruments that effect a partial or full discharge of security interests in goods created by registered security instruments.

Division 4 Effect of registration on priority of security interests

Clause 31 sets out rules governing the determination of priority between registered security interests and registered and unregistered security interests unless the holders of the interests concerned have agreed otherwise.

A registered security interest will generally rank in priority over an unregistered security interest over the same goods. However, an unregistered security interest will rank in priority over a registered security interest if the holder of the unregistered interest takes possession of the goods before the registered interest is registered.

An earlier registered security interest ranks in priority over a later registered security interest over the same goods.

Part 4 Miscellaneous

Clause 32 makes it an offence for a mortgagor under an agricultural goods mortgage (or an employee, contractor or agent of the mortgagor) to do certain acts or things that defeat, destroy or prejudice the security interest created by the mortgage unless the mortgagor or person has a reasonable excuse for doing it.

The maximum penalty for the offence will be 100 penalty units (currently, $11,000) or imprisonment for 2 years, or both.

Clause 33 provides that if a corporation contravenes any provision of the proposed Act or the regulations, each director or other person concerned in the management of the corporation is also taken to have contravened the provision if the director or person knowingly authorised or permitted the contravention.

Clause 34 provides that an offence under the proposed Act may be dealt with summarily before a Local Court.

Clause 35 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 36 repeals the following Acts and Regulations:

(a) the *Bills of Sale Act 1898*,

(b) the *Liens on Crops and Wool and Stock Mortgages Act 1898*,

(c) any regulation made under an Act referred to in paragraph (a) or (b).

Clause 37 gives effect to Schedule 4 containing savings, transitional and other provisions.

Clause 38 gives effect to consequential amendments made to certain Acts and Regulations set out in Schedule 5.

Clause 39 provides for a review of the operation of the proposed Act to be undertaken after 5 years from the date of assent to the proposed Act.

Schedule 1 Form for crop mortgage

Schedule 1 contains a Form for a crop mortgage granted under Part 2 of the proposed Act.

Schedule 2 Form for stock mortgage or wool mortgage

Schedule 2 contains a Form for a stock mortgage or a wool mortgage (or both) granted under Part 2 of the proposed Act.

Schedule 3 Form for aquaculture fish mortgage

Schedule 3 contains a Form for an aquaculture fish mortgage granted under Part 2 of the proposed Act.

Schedule 4 Savings, transitional and other provisions

Schedule 4 contains provisions enabling the Governor to make regulations of a savings or transitional nature. It also provides that the *Bills of Sale Act 1898*, the *Liens on Crops and Wool and Stock Mortgages Act 1898* and the regulations made under those Acts continue to apply to bills of sales, liens and mortgages executed (or purportedly executed) before the repeal of those Acts and regulations.

Schedule 5 Amendment of other Acts and Regulations

Schedule 5 makes amendments to certain Acts and Regulations that are consequential on the enactment of the proposed Act.

In particular, Schedule 5.5 amends the *Registration of Interests in Goods Act 1986*:

(a) to make it clear that it does not apply to or affect security interests in agricultural goods, and

(b) to enable savings and transitional regulations to be made if goods to which the proposed Act applies become prescribed goods under the *Registration of Interests in Goods Act 1986*.

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New South Wales

Security Interests in Goods Bill 2005

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New South Wales

Security Interests in Goods Bill 2005

No , 2005

A Bill for

An Act with respect to security interests in goods; and for other purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Security Interests in Goods Act 2005*.

2 Commencement

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

3 Definitions

(1) In this Act:

agricultural goods means any of the following:

(a) crops,

(b) fish,

(c) stock,

(d) wool.

agricultural goods mortgage means any of the following:

(a) an aquaculture fish mortgage,

(b) a crop mortgage,

(c) a stock mortgage (including a wool mortgage).

aquaculture has the same meaning as in section 142 of the *Fisheries Management Act 1994*.

aquaculture fish mortgage means a mortgage over fish that is granted as provided by section 15.

aquaculture fish mortgagee means the holder of an aquaculture fish mortgage.

aquaculture fish mortgagor means the grantor of an aquaculture fish mortgage.

assignment includes transfer.

crop includes the following:

(a) wheat, maize, canola, sorghum, barley, oats, lucerne, grass (whether for hay or grain), cotton, tobacco, rice, sugar-cane and any other kind of agricultural produce,

(b) oranges, grapes (whether as fruit or for wine or spirit) and any other kind of fruit or horticultural produce.

crop mortgage means a mortgage over crops that is granted as provided by section 7.

crop mortgagee means the holder of a crop mortgage.

crop mortgagor means the grantor of a crop mortgage.

cultivate, in relation to fish, includes propagate, hatch, breed, rear and farm.

duly executed—see section 4.

exercise a function includes perform a duty.

fish has the same meaning as in section 5 of the *Fisheries Management Act 1994*.

Note. Under section 5 of the *Fisheries Management Act 1994*, ***fish*** means marine, estuarine or freshwater fish or other aquatic animal life at any stage of their life history (whether alive or dead), including oysters and other aquatic molluscs, crustaceans, echinoderms, beachworms and other aquatic polychaetes.

function includes a power, authority or duty.

goods means any chattels personal, fixtures or other things capable of complete transfer by delivery (whether immediately or at any future time), but does not include any of the following:

(a) title deeds, negotiable instruments, choses in action or chattel interests in real estate,

(b) shares or interests in the stock, funds or securities of any of the following:

(i) a Government (whether of this State or otherwise),

(ii) the Crown or a body representing the Crown (whether in right of this State or otherwise),

(c) shares or interests in the capital or property of a body corporate (wherever constituted),

(d) access licences in respect of water granted under the *Water Management Act 2000*,

(e) any other thing prescribed by the regulations for the purposes of this definition.

grantor, in relation to a security interest, means:

(a) the person who grants, confers or creates the security interest, or

(b) the legal personal representative of the person referred to in paragraph (a), or

(c) if the person referred to in paragraph (a) is a body corporate—its successors in title and permitted assigns.

holder, in relation to a security interest, means:

(a) the person who holds the security interest (whether for the person's own benefit or the benefit of another person), or

(b) the legal personal representative of the person referred to in paragraph (a), or

(c) if the person referred to in paragraph (a) is a body corporate—its successors in title and permitted assigns.

mortgagee, in relation to an agricultural goods mortgage, means the holder of the mortgage.

mortgagor, in relation to an agricultural goods mortgage, means the grantor of the mortgage.

partial discharge of a registered security interest means:

(a) a discharge of a grantor of the interest from a stated part of the debt or pecuniary obligation, or the performance of any other obligation, that has been secured, or

(b) if the security interest relates to a number of goods—a discharge of the security interest in relation to some (but not all) of the goods.

prescribed form for an agricultural goods mortgage—see Division 4 of Part 2.

registered—see section 25.

registered security interest means a security interest reserved, created or arising by or under a security instrument that is registered.

registrable security instrument—see section 24.

security instrument means any instrument (including an instrument granting an agricultural goods mortgage) by or under which a security interest is reserved or created, or otherwise arises, in respect of goods (whether existing or future).

security interest, in relation to goods (whether existing or future), means an interest or power:

(a) reserved in or over an interest in the goods, or

(b) created or otherwise arising in or over an interest in the goods under a bill of sale, mortgage, charge, trust or power,

by way of security for the payment of a debt or other pecuniary obligation or the performance of any other obligation, but does not include an interest or a power reserved or created, or otherwise arising, by or under any of the following:

(c) a letting of goods with an option to purchase the goods,

(d) an agreement for the purchase of goods by instalments (whether described as rent or hire or otherwise) not being an agreement by

which the property in the goods being purchased passes at the time of the agreement or on, or at any time before, delivery of the goods,

(e) any other contract for the hiring of goods,

(f) any other agreement, arrangement, instrument or circumstance of a kind prescribed by the regulations.

sharefarmer means a party to a sharefarming agreement.

sharefarming agreement means an agreement between the owner or lessee of land and another person under which the other person undertakes:

(a) to cultivate or otherwise utilise the land, and

(b) to share with the owner or lessee in agreed proportions any crops or other produce, or profits derived from crops or other produce, grown on or derived from the land.

stock includes any sheep, goats, cattle, horses, swine, poultry, alpacas, llamas, ostriches or other animals (except fish).

stock mortgage means a mortgage over stock or wool (or both) that is granted as provided by section 12.

stock mortgagee means the holder of a stock mortgage.

stock mortgagor means the grantor of a stock mortgage.

take fish includes:

(a) catch or kill fish, or

(b) gather or collect fish, or

(c) remove fish from any rock or other matter.

unregistered security interest means a security interest reserved, created or arising by or under a security instrument that is not registered.

water source means:

(a) a river, lake, creek, pond or any other land that is submerged by water (whether permanently or intermittently or whether naturally or artificially), or

(b) any part of such a river, lake, creek, pond or submerged land.

wool means the natural fibre from the fleece of sheep, goats, alpacas, llamas or any other kind of stock that produce fleece that can be shorn.

wool mortgage means a stock mortgage that relates only to wool.

(2) Notes included in this Act (other than in Schedule 1, 2 or 3) do not form part of this Act.

4 Due execution of instruments

(1) Subject to subsection (2), if a provision of this Act provides for an instrument to be duly executed:

(a) the instrument must be signed by the person or persons specified by the provision, and

(b) the signing of the instrument must be attested by at least one witness (being a person who is not a party to the instrument).

(2) A receipt of the kind referred to in section 23 (1) (a) does not need to be attested as provided by subsection (1) (b) in order for it to be duly executed.

(3) A person is not excluded from being a witness for the purposes of subsection (1) (b) merely because the person is an employee of a party to the instrument acting in the ordinary course of business.

(4) No particular form of words is required for an attestation by a witness.

(5) For the purposes of this section, section 38 (1A) and (1B) of the *Conveyancing Act 1919* extend to the execution and attestation of an instrument of the kind referred to in subsection (1) even if the instrument is not a deed.

Note. Section 38 (1A) and (1B) of the *Conveyancing Act 1919* make provision for when deeds are taken to have been sufficiently signed.

(6) Nothing in this section affects the operation of Part 3 of the *Conveyancing Act 1919* in its application to the execution of deeds.

5 Relationship of this Act with general law and other Acts

(1) **Operation of general law**

This Act does not affect any principle or rule of the common law or equity in relation to security interests in goods except to the extent that this Act provides otherwise (whether expressly or by necessary implication).

Note. Section 31 affects the priority of security interests by reference to the date of registration of the security instrument by or under which the security is reserved, created, conferred or arises. Generally, the registration of a security instrument does not of itself perfect a security interest that is not valid under the general law. However, agricultural goods mortgages granted as provided by this Act require registration under this Act before they can have effect.

(2) **Mortgages and other security interests over agricultural goods**

Without limiting subsection (1), nothing in this Act prevents a person from granting a mortgage or other security interest over agricultural goods under another law (whether written or unwritten) instead of in accordance with the provisions of Part 2.

(3) **Relationship with Registration of Interests in Goods Act 1986**

Nothing in this Act applies to or affects any security interest in prescribed goods within the meaning of the *Registration of Interests in Goods Act 1986*, except to the extent provided by regulations made for the purposes of section 3C of that Act.

Note. The *Registration of Interests in Goods Act 1986* provides for the registration of security interests in prescribed goods within the meaning of that Act. The Act makes provision for the priority of both registered and unregistered security interests in such goods.

The term ***prescribed goods*** is defined in section 3 (1) of the *Registration of Interests in Goods Act 1986* to mean a motor vehicle or any other goods prescribed by the regulations, whether situated in the State or elsewhere.

Section 3C of the *Registration of Interests in Goods Act 1986* enables savings and transitional regulations to be made in the event that goods to which this Act applies become prescribed goods under the former Act.

(4) **Relationship with Corporations Act 2001 of the Commonwealth**

Nothing in this Act is intended to limit or otherwise affect the operation of Chapter 2K or any other provision of the *Corporations Act 2001* of the Commonwealth.

Note. Chapter 2K of the *Corporations Act 2001* of the Commonwealth provides for the registration of charges over certain property of companies and the order of priority of such charges.

6 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

Part 2 Agricultural goods mortgages

Division 1 Crop mortgages

7 Creation of crop mortgages

(1) A person may grant a mortgage as provided by this section (a ***crop mortgage***) over any crops that grow or are grown on land by way of security for payment of a debt or other pecuniary obligation in circumstances where the person:

(a) owns the land, or

(b) has exclusive possession of the land and a right to harvest crops that grow or are grown on the land, or

(c) holds a lease over the land granted under the *Western Lands Act 1901* (whether or not the lease confers exclusive possession of the land) and has a right to harvest crops that grow or are grown on the land, or

(d) is entitled under a sharefarming agreement with the owner or lessee of the land to crops (or a share of the crops) that grow or are grown on the land and has obtained the written consent of the owner or lessee to grant the mortgage.

(2) A crop mortgage may extend to any or all of the following:

(a) crops that are growing on the land concerned during the period of the mortgage,

(b) crops to be sown or planted on the land concerned by the mortgagor during the period of the mortgage,

(c) crops that grow on the land concerned in the ordinary course of nature during the period of the mortgage.

(3) A crop mortgage must:

(a) be in the prescribed form, and

(b) be duly executed by the mortgagor, and

(c) describe or otherwise identify the crops to which the mortgage is to apply, and

(d) describe or otherwise identify the land on which the crops concerned are growing or will grow, and

(e) specify a period for its duration in accordance with subsection (5), and

(f) be registered within the period of 45 days after its execution.

Note. Division 4 makes provision for the prescribed form for a crop mortgage.

(4) The crops to which a crop mortgage relates are sufficiently described or identified for the purposes of subsection (3) if the crops are described or identified:

(a) by reference to the species of crops, or

(b) in another way that reasonably allows the crops to be identified.

(5) The period specified for the duration of a crop mortgage must not exceed a total period of 5 years commencing from the time it is first registered.

(6) A crop mortgage has effect on and from the time at which it is registered.

(7) Subject to this Part and the provisions of any other Act or law, a crop mortgage may make such provision with respect to the respective rights, liabilities and obligations of the parties to the mortgage as the parties may agree from time to time.

8 Rights of crop mortgagee

(1) If a crop mortgagor refuses or fails to pay the debt or other pecuniary obligation secured by the crop mortgage in accordance with the provisions of the mortgage, the crop mortgagee may do any or all of the following:

(a) take possession of any crops to which the mortgage applies,

(b) cut, gather, harvest, sell or otherwise deal with the crops,

(c) enter the land on which the crops are growing, or grew, for the purpose of exercising any such power,

(d) require the mortgagor to pay to the mortgagee the proceeds of any sale of the crops if the mortgagor has already harvested and sold the crops.

(2) Subsection (1) has effect subject to any contrary provision made by a crop mortgage with respect to the rights, liabilities or obligations of the crop mortgagee.

(3) Nothing in this section authorises a crop mortgagee to deal with crops to which a crop mortgage applies in a manner that would contravene a provision of another Act or an instrument made under another Act.

Note. For example, the *Plant Diseases Act 1924* makes provision with respect to dealings with diseased plants within New South Wales.

9 Exercise of power of sale under crop mortgage in respect of mortgaged land

(1) This section applies to the exercise of a power of sale in respect of crops under a crop mortgage if:

(a) a mortgage existed over the land on which the crops are growing or grew (the ***land mortgage***) at the time the crop mortgage was granted, and

(b) the land is occupied by the mortgagee under the land mortgage (the ***land mortgagee***) at the time the crops are harvested under the crop mortgage.

(2) A crop mortgagee must, before exercising a power of sale to which this section applies, pay to the land mortgagee such amount of interest (not exceeding an amount equal to 12 months' interest) as may be due under the land mortgage at the time of harvesting the crops.

(3) However, the crop mortgagee may retain the amount of any interest paid under subsection (2) out of the proceeds of the sale of the crops before paying over the balance (if any) under the crop mortgage to the crop mortgagor.

10 Exercise of power of sale under crop mortgage in respect of leased land

(1) If a crop mortgagor holds a lease over the land on which the crops concerned are growing or grew, the crop mortgagee must, before exercising a power of sale under the crop mortgage, pay to the lessor of the land such amount of rent (not exceeding an amount equal to 12 months' rent) as may be due under the lease of the land at the time of harvesting the crops.

(2) However, the crop mortgagee may retain the amount of any rent paid under subsection (1) out of the proceeds of the sale of the crops before paying over the balance (if any) under the crop mortgage to the crop mortgagor.

11 Effect of crop mortgages on sharefarming agreements

(1) In this section:

landholder sharefarmer, in relation to a sharefarming agreement, means a party to the agreement who is an owner or lessee of the land to which the agreement relates.

non-landholder sharefarmer, in relation to a sharefarming agreement, means a party to the agreement who is not the owner or lessee of the land to which the agreement relates.

(2) Any right or other entitlement of a landholder sharefarmer under a sharefarming agreement to a share of crops, or profits derived from crops, that grow on land has priority over any security interest of a mortgagee under a crop mortgage granted by a non-landholder sharefarmer in respect of the same crops unless the landholder sharefarmer is also a mortgagor under that crop mortgage.

(3) Any right or other entitlement of a non-landholder sharefarmer under a sharefarming agreement to a share of crops, or profits derived from crops, that grow on land has priority over any security interest of a mortgagee under a crop mortgage granted by a landholder sharefarmer in respect of the same crops unless the non-landholder sharefarmer is also a mortgagor under that crop mortgage.

Division 2 Stock mortgages and wool mortgages

12 Creation of stock mortgages

(1) A person may grant a mortgage as provided by this section (a ***stock mortgage***) by way of security for payment of a debt or other pecuniary obligation over either or both of the following:

(a) stock owned by the person,

(b) wool produced by stock owned by the person.

(2) The mortgagor under a stock mortgage over stock may not, without the written consent of the stock mortgagee, grant a stock mortgage over the wool of the stock to a third person.

(3) A stock mortgage must:

(a) be in the prescribed form, and

(b) be duly executed by the mortgagor, and

(c) describe or otherwise identify the stock to which the mortgage is to apply, and

(d) describe or otherwise identify the land on which the stock concerned is, or is to be, kept, and

(e) specify a period for its duration, and

(f) be registered within the period of 45 days after its execution.

Note. Division 4 makes provision for the prescribed form for a stock mortgage.

(4) The stock to which a stock mortgage relates is sufficiently described or identified for the purposes of subsection (3) if the stock is described or identified:

(a) by reference to the number of stock and the brand, earmark or other mark on the stock, or

(b) in another way that reasonably allows the stock to be identified.

(5) A stock mortgage over stock extends to the following unless the stock mortgage expressly provides otherwise:

(a) any progeny of the stock produced during the period of the mortgage,

(b) any sperm and embryos of the stock produced during the period of the mortgage,

(c) any stock of the kind identified in the mortgage that is acquired during the period of the mortgage.

(6) A stock mortgage over wool is limited to the next ensuing clip of wool of the owner of the stock concerned following the execution of the mortgage unless the stock mortgage expressly provides otherwise.

(7) A stock mortgage has effect on and from the time at which it is registered.

(8) Subject to this Part and the provisions of any other Act or law, a stock mortgage may make such provision with respect to the respective rights, liabilities and obligations of the parties to the mortgage as the parties may agree from time to time.

13 When stock mortgages may be referred to as wool mortgages

For the purposes of this Act, a stock mortgage that relates only to wool may be referred to as a ***wool mortgage***.

14 Rights of stock mortgagee

(1) If a stock mortgagor refuses or fails to pay the debt or other pecuniary obligation secured by the stock mortgage in accordance with the provisions of the mortgage, the stock mortgagee may do any or all of the following:

(a) if the mortgage applies to or includes the wool of stock:

(i) take possession of the wool wherever it is located,

(ii) shear the wool from the stock,

(iii) sell or otherwise deal with the wool,

(iv) enter the land on which the stock is located for the purpose of exercising any such power,

(b) if the mortgage applies to or includes stock:

(i) take possession of the stock wherever it is located,

(ii) slaughter, sell or otherwise deal with the stock,

(iii) enter the land on which the stock is located for the purpose of exercising any such power.

(2) Without limiting subsection (1), if the mortgagor under a stock mortgage over wool (or a subsequent purchaser, bailee or possessor of, or holder of a security interest over, the sheep bearing the wool) refuses or fails to shear and deliver the wool of any such stock in accordance with the provisions of the mortgage:

(a) the mortgagee may take possession of the stock for the purpose of shearing the wool from the stock (and may enter the land on which the stock is located for the purpose of exercising any such power), and

(b) all of the following expenses of the mortgagee are taken to form part of any debt or other pecuniary obligation secured by the mortgage:

(i) the expenses associated with taking possession of the stock,

(ii) the expenses associated with shearing the stock,

(iii) the expenses associated with conveying the wool to the place specified in the mortgage for the conveyance of the wool or, if no such place is specified, to the mortgagee's principal place of residence (if the mortgagee is an individual) or principal place of business (in any other case).

(3) Subsections (1) and (2) have effect subject to any contrary provision made by a stock mortgage with respect to the rights, liabilities or obligations of the stock mortgagee.

(4) Nothing in this section authorises a stock mortgagee to deal with stock or wool to which a stock mortgage applies in a manner that would contravene a provision of another Act or an instrument made under another Act.

Note. For example, the *Stock Diseases Act 1923* makes provision with respect to dealings with diseased stock within New South Wales.

Division 3 Aquaculture fish mortgages

15 Creation of aquaculture fish mortgages

(1) A person may grant a mortgage as provided by this section (an ***aquaculture fish mortgage***) over any fish owned by the person that are cultivated or kept for the purposes of aquaculture by way of security for payment of a debt or other pecuniary obligation.

Note. Section 144 of the *Fisheries Management Act 1994* prohibits a person from undertaking aquaculture except under the authority of an aquaculture permit issued under that Act.

Division 3 of Part 6 of that Act also enables aquaculture leases to be granted over public water land for the purposes of aquaculture. Public water land is land submerged by water (whether permanently or intermittently), being land that is Crown land or vested in certain trustees or public authorities. An aquaculture lease confers ownership of the fish specified in the lease on the holder of the lease. However, the lessee must also hold a permit in order to undertake aquaculture in the waters to which the lease applies.

(2) An aquaculture fish mortgage may extend to any or all of the following:

(a) fish that are being cultivated or kept on the land or in the water source concerned during the period of the mortgage,

(b) fish that are to be cultivated or kept on the land or in the water source concerned by the mortgagor during the period of the mortgage.

(3) An aquaculture fish mortgage must:

(a) be in the prescribed form, and

(b) be duly executed by the mortgagor, and

(c) describe or otherwise identify the fish to which the mortgage is to apply, and

(d) describe or otherwise identify the land or water source on or in which the fish concerned are being, or are to be, cultivated or kept, and

(e) specify a period for its duration, and

(f) be registered within the period of 45 days after its execution.

Note. Division 4 makes provision for the prescribed form for an aquaculture fish mortgage.

(4) The fish to which an aquaculture fish mortgage relates are sufficiently described or identified for the purposes of subsection (3) if the fish are described or identified:

(a) by reference to the species of fish, or

(b) in another way that reasonably allows the fish to be identified.

(5) An aquaculture fish mortgage has effect on and from the time at which it is registered.

(6) Subject to this Part and the provisions of any other Act or law, an aquaculture fish mortgage may make such provision with respect to the respective rights, liabilities and obligations of the parties to the mortgage as the parties may agree from time to time.

16 Rights of aquaculture fish mortgagee

(1) If an aquaculture fish mortgagor refuses or fails to pay the debt or other pecuniary obligation secured by the aquaculture fish mortgage in accordance with the provisions of the mortgage, the aquaculture fish mortgagee may do any or all of the following:

(a) take the fish to which the mortgage applies wherever it is located,

(b) sell or otherwise deal with the fish,

(c) enter the land or water source on or in which the fish is located for the purpose of exercising any such power.

(2) Subsection (1) has effect subject to any contrary provision made by an aquaculture fish mortgage with respect to the rights, liabilities or obligations of the aquaculture fish mortgagee.

(3) Nothing in this section authorises an aquaculture fish mortgagee to deal with fish to which an aquaculture fish mortgage applies in a manner that would contravene a provision of another Act or an instrument made under another Act.

Note. For example, the *Fisheries Management Act 1994* makes provision with respect to dealings with fish within New South Wales and, in particular, in relation to aquaculture.

Division 4 Prescribed forms for agricultural goods mortgages

17 Prescribed forms

(1) **Crop mortgages**

A crop mortgage is in the prescribed form for the purposes of this Act if the instrument by which the mortgage is granted:

(a) is in or to the effect of the Form set out in Schedule 1, or

(b) is not in or to the effect of that Form, but includes provisions that specify or describe at least each of the following matters:

(i) that it is a crop mortgage granted under this Act,

(ii) the name and address of each mortgagor,

(iii) the name of each mortgagee,

(iv) the crops to which the mortgage relates or will relate,

(v) the land on which the crops are growing or will grow,

(vi) the debt or other pecuniary obligations secured by the mortgage,

(vii) the period for the duration of the mortgage.

(2) **Stock mortgages**

A stock mortgage is in the prescribed form for the purposes of this Act if the instrument by which the mortgage is granted:

(a) is in or to the effect of the Form set out in Schedule 2, or

(b) is not in or to the effect of that Form, but includes provisions that specify or describe at least each of the following matters:

(i) that it is a stock mortgage granted under this Act,

(ii) the name and address of each mortgagor,

(iii) the name of each mortgagee,

(iv) the stock or wool (or both) to which the mortgage relates or will relate,

(v) the land on which the stock concerned is kept or is to be kept,

(vi) the debt or other pecuniary obligations secured by the mortgage,

(vii) the period for the duration of the mortgage.

(3) **Aquaculture fish mortgages**

An aquaculture fish mortgage is in the prescribed form for the purposes of this Act if the instrument by which the mortgage is granted:

(a) is in or to the effect of the Form set out in Schedule 3, or

(b) is not in or to the effect of that Form, but includes provisions that specify or describe at least each of the following matters:

(i) that it is an aquaculture fish mortgage granted under this Act,

(ii) the name and address of each mortgagor,

(iii) the name of each mortgagee,

(iv) the fish to which the mortgage relates or will relate,

(v) the land or water source on or in which the fish are being, or are to be, cultivated or kept,

(vi) the debt or other pecuniary obligations secured by the mortgage,

(vii) the period for the duration of the mortgage.

Note. Division 5 of Part 6 of the *Conveyancing Act 1919* enables the Registrar-General to register a memorandum setting out provisions that are capable of being covenants in an agricultural goods mortgage of a class specified in the memorandum. Any such covenants may then be included in an agricultural goods mortgage of that class by reference to the registered memorandum without the need to set out the covenants in full.

18 Regulations may amend Schedules 1–3

(1) The regulations may replace or amend Schedule 1, 2 or 3 (or any combination of them).

(2) The amendment or repeal of a Form set out in Schedule 1, 2 or 3 does not:

(a) confer or impose any additional functions on a mortgagee or mortgagor under an agricultural goods mortgage that was in force immediately before the day on which the amendment or repeal takes effect (an ***existing mortgage***), or

(b) remove any function conferred or imposed on a mortgagee or mortgagor under an existing mortgage, or

(c) otherwise affect the continued operation of an existing mortgage.

Division 5 Dealings concerning agricultural goods mortgages

19 Agricultural goods mortgage not affected by certain sales and other matters

(1) An agricultural goods mortgage is not extinguished or otherwise prejudicially affected by the death, bankruptcy or insolvency of the mortgagor.

(2) An agricultural goods mortgage is not extinguished or otherwise prejudicially affected by the sale of, or the creation of a mortgage or other encumbrance over, any of the following:

(a) the agricultural goods to which the mortgage relates,

(b) the land or water source on or in which the agricultural goods concerned are growing or being cultivated or kept (or will be growing, cultivated or kept).

(3) Subsections (1) and (2) have effect subject to any contrary provision of a law of the Commonwealth.

Note. The *Bankruptcy Act 1966* of the Commonwealth makes special provision to protect the security interests of secured creditors of bankrupt persons. A secured creditor is a creditor who holds a mortgage, charge or lien on the property of the debtor as a security for a debt due. Section 58 (5) of that Act provides that the vesting of the property of a bankrupt person in the Official Trustee does not affect the right of a secured creditor to realise or otherwise deal with the creditor's security. Also, section 153 (3) of that Act provides that the discharge of a person from bankruptcy does not affect the rights of a secured creditor to realise the creditor's security. There are some limited exceptions to the protection afforded to secured creditors. See, for example, section 121 (Transfers to defeat creditors).

Similar provision is made in the *Corporations Act 2001* of the Commonwealth with respect to the insolvency of companies. See, for example, section 471C and Subdivision C of Division 6 of Part 5.6 of that Act.

20 Variation of provisions of agricultural goods mortgages

(1) The parties to an agricultural goods mortgage may vary the provisions of the mortgage by:

(a) an instrument that is duly executed by the parties to the mortgage, or

(b) a memorandum of variation endorsed on or annexed to the original agricultural goods mortgage in accordance with the provisions of section 91 of the *Conveyancing Act 1919*.

Note. Section 91 of the *Conveyancing Act 1919* provides that any mortgage may be varied by a memorandum endorsed on or annexed to the mortgage, and signed by the persons to be bound by it and attested by one witness. Such a

memorandum may be in terms of certain of the short forms set out in Schedule 5 to that Act.

(2) Any such variation does not have effect until the instrument or memorandum that provides for the variation is registered.

(3) Nothing in this section permits the period for the duration of a crop mortgage to be varied if the variation would result in the total period for the duration of the mortgage exceeding 5 years commencing from the time it is first registered.

21 Renewals of agricultural goods mortgages

(1) An agricultural goods mortgage may provide for one or more renewals of the mortgage for a further period on the registration of an instrument of renewal that is duly executed by the parties to the mortgage.

(2) Any such renewal does not have effect until the instrument of renewal is registered.

(3) The Registrar-General may register an instrument of renewal.

Note. Section 202 of the *Conveyancing Act 1919* enables the Governor to make regulations with respect to the following:

(a) the manner and form of registering instruments in the General Register of Deeds under that Act or any other Act (including this Act),

(b) the fees to be paid for any such registration.

(4) An instrument of renewal may be registered even if it does not disclose any consideration for the renewal.

(5) Nothing in this section permits a crop mortgage to be renewed for a total period commencing from the time it is first registered that exceeds 5 years.

22 Assignment of security interest created by agricultural goods mortgages

(1) A mortgagee under an agricultural goods mortgage may assign the security interest created by the mortgage to another person by:

(a) an instrument that is duly executed by the mortgagee, or

(b) a memorandum of transfer endorsed on or annexed to the original agricultural goods mortgage in accordance with the provisions of section 91 of the *Conveyancing Act 1919*.

Note. Section 91 of the *Conveyancing Act 1919* provides that any mortgage may be transferred by a memorandum endorsed on or annexed to the mortgage, and signed by the persons to be bound by it and attested by one witness. Such a memorandum may be in terms of certain of the short forms set out in Schedule 5 to that Act.

(2) Any such assignment does not have effect until the instrument or memorandum that provides for the assignment is registered.

23 Discharge of agricultural goods mortgage

(1) An agricultural goods mortgage is discharged on the registration of:

(a) a receipt for the payment of all of the debt or other pecuniary obligation secured by the mortgage that is duly executed by the mortgagee, or

(b) a memorandum of discharge endorsed on or annexed to the original agricultural goods mortgage in accordance with the provisions of section 91 of the *Conveyancing Act 1919*.

Note. Section 91 of the *Conveyancing Act 1919* provides that any mortgage may be discharged by a memorandum endorsed on or annexed to the mortgage, and signed by the persons to be bound by it and attested by one witness. Such a memorandum may be in terms of certain of the short forms set out in Schedule 5 to that Act.

(2) Without limiting subsection (1), any property interest of the mortgagee under the agricultural goods mortgage reverts to the mortgagor when the mortgage is discharged.

(3) However, the discharge of an agricultural goods mortgage does not affect the validity of any lawful sale or other disposition of, or dealing with, agricultural goods under the mortgage before the discharge.

Part 3 Registration of security interests in goods

Division 1 General

24 Meaning of "registrable security instrument"

For the purposes of this Act, a security instrument is a ***registrable security instrument*** if:

(a) the instrument states the name and address of each grantor and the name of the holder of the security interest concerned, and

(b) the instrument includes a description of the goods to which the security interest relates to the extent to which the goods are ascertainable at the time of the execution of the instrument, and

(c) the instrument has been duly executed by the parties to it, and

(d) in the case of an agricultural goods mortgage—the instrument otherwise complies with the requirements of Part 2.

25 Registration to be in General Register of Deeds

(1) An instrument is ***registered*** for the purposes of this Act if it is recorded in the General Register of Deeds kept under Division 1 of Part 23 of the *Conveyancing Act 1919* in accordance with the provisions of that Act.

Note. Section 202 of the *Conveyancing Act 1919* enables the Governor to make regulations with respect to the following:

(a) the manner and form of registering instruments in the General Register of Deeds under that Act or any other Act (including this Act),

(b) the fees to be paid for any such registration.

(2) Registration of an instrument takes effect on and from the time when a distinctive reference is first allocated for the instrument under section 184E of the *Conveyancing Act 1919*.

Division 2 Registration of registrable security instruments

26 Registration of registrable security instruments

The Registrar-General may register a security instrument if satisfied that the instrument is a registrable security instrument.

Division 3 Dealings with registered security interests

27 Variation of registered security interests

The Registrar-General may register:

(a) an instrument that is duly executed by the parties to a registered security instrument, or

(b) a memorandum endorsed on or annexed to a registered security instrument in accordance with the provisions of section 91 of the *Conveyancing Act 1919*,

if the Registrar-General is satisfied that it varies the terms of the security instrument.

28 Assignment of registered security interests

(1) The Registrar-General may register:

(a) an instrument that is duly executed by each relevant party to the registered security instrument concerned, or

(b) a memorandum endorsed on or annexed to a registered security instrument in accordance with the provisions of section 91 of the *Conveyancing Act 1919*,

if the Registrar-General is satisfied that it assigns the registered security interest to another person.

(2) For the purposes of subsection (1), a party to a registered security instrument is a relevant party for the purposes of the assignment of the registered security interest reserved, created or arising under the instrument if the instrument of assignment must be executed by that party for it to have effect in law.

29 Devolution of registered security interests

(1) The Registrar-General may register an instrument if satisfied that the instrument effects or evidences the devolution of a registered security interest.

(2) In this section:

devolution of a registered security interest means the passing of the interest from a deceased grantor or holder of the interest to a living heir of the grantor or holder.

30 Discharge of registered security interests

The Registrar-General may register:

(a) an instrument that is duly executed by the parties to a registered security instrument, or

(b) a memorandum endorsed on or annexed to a registered security instrument in accordance with the provisions of section 91 of the *Conveyancing Act 1919*, or

(c) a receipt of the kind referred to in section 23 (1) (a) given in relation to an agricultural goods mortgage,

if the Registrar-General is satisfied that it partially or fully discharges the registered security interest.

Division 4 Effect of registration on priority of security interests

31 Priority of security interests

(1) A registered security interest in goods ranks in priority over any unregistered security interest in the same goods with respect to all debts and other pecuniary obligations (including contingent obligations) and all other obligations secured under the registered security interest.

(2) Registered security interests in the same goods rank in priority in the order in which they are registered with respect to all debts and other pecuniary obligations (including contingent obligations) and all other obligations respectively secured under them whenever arising.

(3) However, an unregistered security interest in goods ranks in priority over a registered security interest in the same goods if the holder of the unregistered security interest takes possession of goods before the registered security interest is registered.

(4) The order of priority of security interests established by this section is subject to any agreement between the holders of the security interests concerned.

(5) This section has effect subject to section 11 (Effect of crop mortgages on sharefarming agreements).

Part 4 Miscellaneous

32 Offences in relation to agricultural goods mortgages

(1) A mortgagor under an agricultural goods mortgage (or an employee, contractor or agent of the mortgagor) must not, without reasonable excuse:

(a) destroy, sell or otherwise dispose of any agricultural goods to which the mortgage relates without the written consent of the mortgagee, or

(b) do any other act or thing that defeats, destroys or prejudices (or that is calculated to defeat, destroy or prejudice) the security interest created by the mortgage.

Maximum penalty: 100 penalty units or imprisonment for 2 years (or both).

(2) For the purposes of subsection (1) (but without limiting that subsection), ***reasonable excuse*** includes doing an act or thing that the person is required to do under a provision of another Act or an instrument made under another Act.

33 Offences by corporations

(1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.

34 Nature of proceedings for offences

Proceedings for an offence under this Act or the regulations may be dealt with summarily before a Local Court.

35 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

36 Repeal of certain Acts and Regulations

The following Acts and Regulations are repealed:

(a) the *Bills of Sale Act 1898*,

(b) the *Liens on Crops and Wool and Stock Mortgages Act 1898*,

(c) any regulation made under an Act referred to in paragraph (a) or (b).

37 Savings, transitional and other provisions

Schedule 4 has effect.

38 Amendment of other Acts and Regulations

The Acts and Regulations specified in Schedule 5 are amended as set out in that Schedule.

39 Review of Act

(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Form for crop mortgage

(Section 17 (1))

Crop mortgage

I, [*state name of mortgagor*] of [*state address of mortgagor*], (the ***Mortgagor***) grant a mortgage as provided by the *Security Interests in Goods Act 2005* in respect of the crops described in the Schedule in favour of [*state name of mortgagee*] of [*state address of mortgagee*] (the ***Mortgagee***).

This mortgage is granted as security for the payment by the Mortgagor of the following:

1 [*state debt or other pecuniary obligations for which mortgage granted*]

2

*The provisions set out in the memorandum of covenants, registered in the General Register of Deeds as number [*specify number of memorandum*], are included as part of this mortgage subject to the following:

(a) *[*specify any alterations to or omissions from provisions*]

(b)

***Note.** Division 5 of Part 6 of the *Conveyancing Act 1919* enables the Registrar-General to register a memorandum setting out provisions that are capable of being covenants in an agricultural goods mortgage of a class specified in the memorandum. Any such covenants may then be included in an agricultural goods mortgage of that class by reference to the registered memorandum without the need to set out the covenants in full.

This mortgage has effect for the period specified in the Schedule commencing from the date of its registration.

Note. Part 2 of the *Security Interests in Goods Act 2005* makes provision for the rights and obligations of mortgagors and mortgagees under a crop mortgage granted under that Act.

Dated: [*state date of execution*]

Signed by or on behalf of the Mortgagor: .....
[*Mortgagor's or attorney's signature*]

in the presence of:

.....
[*witness's name*]

.....
[*witness's address*]

.....
[*witness's signature*]

Schedule

1 Crop to which mortgage relates

[*describe crops to which mortgage relates or will relate*]

2 Land to which mortgage relates

[*describe land on which the crops to which mortgage relates are growing or are to grow*]

3 Duration of the mortgage

[*specify period for duration of the mortgage, including any renewal rights*]

[**Cross out the options that you do not want*]

Schedule 2 Form for stock mortgage or wool mortgage

(Section 17 (2))

*Stock mortgage/*Wool mortgage

I, [*state name of mortgagor*] of [*state address of mortgagor*], (the ***Mortgagor***) grant a mortgage as provided by the *Security Interests in Goods Act 2005* in respect of the *stock/*wool/*stock and wool described in the Schedule in favour of [*state name of mortgagee*] of [*state address of mortgagee*] (the ***Mortgagee***).

This mortgage is granted as security for the payment by the Mortgagor of the following:

1 [*state debt or other pecuniary obligations for which mortgage granted*]

2

*The provisions set out in the memorandum of covenants, registered in the General Register of Deeds as number [*specify number of memorandum*], are included as part of this mortgage subject to the following:

(a) *[*specify any alterations to or omissions from provisions*]

(b)

***Note.** Division 5 of Part 6 of the *Conveyancing Act 1919* enables the Registrar-General to register a memorandum setting out provisions that are capable of being covenants in an agricultural goods mortgage of a class specified in the memorandum. Any such covenants may then be included in an agricultural goods mortgage of that class by reference to the registered memorandum without the need to set out the covenants in full.

This mortgage has effect for the period specified in the Schedule commencing from the date of its registration.

Note. Part 2 of the *Security Interests in Goods Act 2005* makes provision for the rights and obligations of mortgagors and mortgagees under a *stock mortgage/*wool mortgage granted under that Act.

*This mortgage *extends/*does not extend to [*state any limitations on or extensions on the provisions of section 12 (5) or (6) of the Security Interests in Goods Act 2005*].

Dated: [*state date of execution*]

Signed by or on behalf of the Mortgagor: .....
[*Mortgagor's or attorney's signature*]

in the presence of:

.....
[*witness's name*]

.....
[*witness's signature*]

.....
[*witness's address*]

Schedule

1 *Stock and wool/*stock/*wool to which mortgage relates

[*describe stock and/or wool to which mortgage relates or will relate*]

2 Land on which stock concerned to be kept

[*describe land on which stock concerned are being kept or are to be kept*]

3 Duration of the mortgage

[*specify period for duration of the mortgage, including any renewal rights*]

[**Cross out the options that you do not want*]

Schedule 3 Form for aquaculture fish mortgage

(Section 17 (3))

Aquaculture fish mortgage

I, [*state name of mortgagor*] of [*state address of mortgagor*], (the ***Mortgagor***) grant a mortgage as provided by the *Security Interests in Goods Act 2005* in respect of the fish described in the Schedule in favour of [*state name of mortgagee*] of [*state address of mortgagee*] (the ***Mortgagee***).

This mortgage is granted as security for the payment by the Mortgagor of the following:

1 [*state debt or other pecuniary obligations for which mortgage granted*]

2

*The provisions set out in the memorandum of covenants, registered in the General Register of Deeds as number [*specify number of memorandum*], are included as part of this mortgage subject to the following:

(a) *[*specify any alterations to or omissions from provisions*]

(b)

***Note.** Division 5 of Part 6 of the *Conveyancing Act 1919* enables the Registrar-General to register a memorandum setting out provisions that are capable of being covenants in an agricultural goods mortgage of a class specified in the memorandum. Any such covenants may then be included in an agricultural goods mortgage of that class by reference to the registered memorandum without the need to set out the covenants in full.

This mortgage has effect for the period specified in the Schedule commencing from the date of its registration.

Note. Part 2 of the *Security Interests in Goods Act 2005* makes provision for the rights and obligations of mortgagors and mortgagees under an aquaculture fish mortgage granted under that Act.

Dated: [*state date of execution*]

Signed by or on behalf of the Mortgagor: .....
[*Mortgagor's or attorney's signature*]

in the presence of:

.....
[*witness's name*]

.....
[*witness's address*]

.....
[*witness's signature*]

Schedule

1 Fish to which mortgage relates

[*describe fish to which mortgage relates or will relate*]

2 Land or water source to which mortgage relates

[*describe land or water source on or in which fish to which mortgage relates are being cultivated or are to be cultivated*]

3 Duration of the mortgage

[*specify period for duration of the mortgage, including any renewal rights*]

[**Cross out the options that you do not want*]

Schedule 4 Savings, transitional and other provisions

(Section 37)

Part 1 General

1 Regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

(4) Regulations made as referred to in subclause (1) may have effect despite the terms of any savings or transitional provisions contained in this Schedule, if the regulations so provide.

Part 2 Provisions consequent on enactment of this Act

2 Definitions

In this Part:

repeal date, in relation to legislation or a provision of legislation, means the day on which the legislation or provision is repealed by this Act.

repealed bills legislation means the following legislation as in force immediately before its repeal or amendment by this Act:

(a) the *Bills of Sale Act 1898* and the regulations made under that Act,

(b) the *Conveyancing Act 1919* and the regulations made under that Act in their application to matters arising under the *Bills of Sale Act 1898*.

repealed liens legislation means the following legislation as in force immediately before its repeal or amendment by this Act:

(a) the *Liens on Crops and Wool and Stock Mortgages Act 1898* and the regulations made under that Act,

(b) the *Conveyancing Act 1919* and the regulations made under that Act in their application to matters arising under the *Liens on Crops and Wool and Stock Mortgages Act 1898*.

3 Continued application of repealed bills legislation

The repealed bills legislation continues to apply to a bill of sale or trader's bill of sale within the meaning of the *Bills of Sale Act 1898* as if the provisions of this Act (other than this Part) had not been enacted if:

(a) the bill of sale was executed, or purportedly executed, before the repeal date of the *Bills of Sale Act 1898*, and

(b) the bill of sale was an instrument to which the *Bills of Sale Act 1898* would have applied but for its repeal.

4 Continued application of repealed liens legislation

The repealed liens legislation continues to apply to the following as if the provisions of this Act (other than this Part) had not been enacted:

(a) a lien over crops executed, or purportedly executed, before the repeal date of the *Liens on Crops and Wool and Stock Mortgages Act 1898* and to which that Act would have applied but for its repeal,

(b) a lien over wool executed, or purportedly executed, before the repeal date of the *Liens on Crops and Wool and Stock Mortgages Act 1898* and to which that Act would have applied but for its repeal,

(c) a mortgage over stock executed, or purportedly executed, before the repeal date of the *Liens on Crops and Wool and Stock Mortgages Act 1898* and to which that Act would have applied but for its repeal.

Schedule 5 Amendment of other Acts and Regulations

(Section 38)

5.1 Conveyancing Act 1919 No 6

[1] Section 184C General Register of Deeds

Insert after section 184C (2) (h):

(h1) instruments that are registered under the *Security Interests in Goods Act 2005* (including instruments granting agricultural goods mortgages),

[2] Section 184E Method of registration

Omit section 184E (1A).

5.2 Conveyancing (General) Regulation 2003

[1] Clause 4 Registration of instruments generally

Omit clause 4 (2).

[2] Schedule 1 Fees

Omit items 2–5. Insert instead:

2	For each registration of an agricultural goods mortgage or other security instrument within the meaning of the *Security Interests in Goods Act 2005*, or any other instrument relating to a registered security interest within the meaning of that Act, made under the *Security Interests in Goods Act 2005*	20.00
3	For registration under Division 5 of Part 6 of the Act of a memorandum containing provisions that are capable of being covenants that may be included in a security instrument that is registered under the *Security Interests in Goods Act 2005*	20.00

5.3 Co-operatives Regulation 1997

Clause 47 Charges required to be registered

Omit clause 47 (a). Insert instead:

(a) Part 2 (Agricultural goods mortgages) of the *Security Interests in Goods Act 2005*,

5.4 Duties Act 1997 No 123

Section 222 Exempt mortgages and supporting instruments

Insert after section 222 (2) (f):

(f1) an agricultural goods mortgage under the *Security Interests in Goods Act 2005*, and

5.5 Registration of Interests in Goods Act 1986 No 37

[1] Section 3C

Insert after section 3B:

3C Relationship of this Act with Security Interests in Goods Act 2005

(1) The *Security Interests in Goods Act 2005* provides for the following:

(a) the granting of mortgages over certain agricultural goods by means of the execution and registration under that Act of agricultural goods mortgages,

(b) the registration of certain other instruments (***security instruments***) by or under which security interests in goods are reserved, created or otherwise arise,

(c) that the registration of a security interest in goods under that Act will generally confer priority over unregistered interests and subsequently registered interests over the same goods,

(d) that nothing in that Act applies to or affects any security interest in goods that are prescribed goods under this Act.

Note. The term ***agricultural goods*** is defined in section 3 (1) of the *Security Interests in Goods Act 2005* to mean crops, fish, stock or wool.

(2) The regulations may make provision for or with respect to matters of a savings or transitional nature consequent on goods being prescribed for the purposes of paragraph (b) of the definition of ***prescribed goods*** in section 3 (1) in circumstances where:

(a) the goods are prescribed on or after the commencement of section 5 (Relationship of this Act with general law and other Acts) of the *Security Interests in Goods Act 2005*, and

(b) security instruments in respect of goods of that kind could have been registered under the *Security Interests in Goods Act 2005* immediately before the goods were so prescribed.

(3) Without limiting subsection (2), the regulations may provide for the following:

(a) that registered security interests within the meaning of the *Security Interests in Goods Act 2005* in respect of goods that have become prescribed goods are, or are not, to be treated as having been registered under this Act,

(b) that all or specified provisions of the *Security Interests in Goods Act 2005* or this Act are, or are not, to apply to any such registered security interests.

(4) However, nothing in this Act applies to or affects any security interest in agricultural goods within the meaning of the *Security Interests in Goods Act 2005*.

[2] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1A (1):

Security Interests in Goods Act 2005 (but only to the extent that it amends this Act)

5.6 Warehousemen's Liens Act 1935 No 19

[1] Section 5 Necessity of notice by warehouseman where goods deposited by person entrusted with possession

Omit section 5 (1) (b). Insert instead:

(b) to the grantee of the goods under any security instrument registered at the date of the deposit under the *Security Interests in Goods Act 2005*.

[2] Section 6 Power to sell goods

Omit section 6 (2) (c). Insert instead:

(c) to the grantee of the goods under any security instrument registered under the *Security Interests in Goods Act 2005* at the date of the deposit of the goods.

5.7 Warehousemen's Liens Regulation 2002

Clause 6 Verification of statements of account

Omit "*Bills of Sale Act 1898*" from clause 6 (2) (e).

Insert instead "*Security Interests in Goods Act 2005*".