

Registration of Interests in Goods Amendment Bill 1999

Explanatory note

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

Overview of Bill

The *Registration of Interests in Goods Act 1986* provides for the registration of interests in goods (currently limited to motor vehicles and boats) and for the extinguishment of interests when goods affected by such an interest are purchased by a private buyer in good faith and for value without notice from a private seller, or by a private buyer in good faith and for value with or without notice from a dealer.

The objects of this Bill are:

- (a) to provide that an interest that is registrable under the Act is not extinguished by the sale of the goods concerned to a purchaser who then leases, hires or sells the goods to a person who does not act in good faith and has notice of the interest when the purchase price is paid (Schedule 1 [8], section 9 (6A)), and
- (b) to provide for the ranking in priority of registrable interests by providing that:
 - (i) registered interests have priority over unregistered interests, and
 - (ii) registered interests rank in priority in the order in which they are registered, and
 - (iii) when a creditor with an interest takes possession of goods (whether or not the interest is registered) that creditor's interest has priority over any interest registered subsequently (Schedule 1 [9]), and
- (c) to provide that a repairer's lien (whether or not registered) has priority over any registrable interest, whether or not registered (Schedule 1 [4], section 3B), and
- (d) to change the basis for the determination of the maximum amount of compensation payable under the Act (when an interest is extinguished by a purchase) from the purchase price of the goods to the value of the goods at the time of the purchase, with it being presumed in the absence of evidence to the contrary that the purchase price is the value of the goods (Schedule 1 [11] and [12]), and
- (e) to provide that the extinguishment of interest provisions of the Act apply only when the goods concerned are in NSW at the time of the purchase that extinguishes the interest (Schedule 1 [7]), and
- (f) to extend the concept of "notice" of a registrable interest by providing that a person is considered to have notice of a registrable interest when the person has been put upon inquiry as to its existence and has deliberately abstained from inquiry or further inquiry about it (Schedule 1 [4], section 3A), and
- (g) to shift the onus of proving that a purchase has extinguished a registrable interest so that the onus will lie on the person who alleges that the interest has been extinguished, and to provide that the standard of proof is proof on the balance of probabilities except when the purchase involves parties who are not at arms length (in which case the standard of proof will be proof beyond a reasonable doubt) (Schedule 1 [8], section 9 (5) and (6)), and

- (h) to provide protection from liability in respect of the giving of certain information to the Director-General for entry on the Register (such as information about stolen vehicles) (Schedule 1 [6]), and
- (i) to provide for the payment of amounts from the Registration of Interests in Goods Account in payment of costs and expenses incurred by the Department of Fair Trading (such as costs incurred in the administration of the Act) (Schedule 1 [10]), and
- (j) to update references to the Corporations Law (Schedule 1 [5] and [13]), and
- (k) to make minor amendments (Schedule 1 [1], [2], [3] and [15]), and
- (l) to enact consequential savings and transitional provisions (Schedule 1 [14] and [15]).

Outline of provisions

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 is a formal provision that gives effect to the amendments described above set out in Schedule 1.