

FIRST PRINT

REGISTRATION OF INTERESTS IN GOODS BILL 1986

NEW SOUTH WALES



EXPLANATORY NOTE

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

The following Bills are cognate with this Bill:

Bills of Sale (Amendment) Bill 1986;
Sale of Goods (Registrable Interests) Amendment Bill 1986;
Credit (Regulated Mortgages) Amendment Bill 1986.

The objects of this Bill are—

- (a) to provide for the maintenance of a register of the interests in certain classes of goods (commencing with motor vehicles) of mortgagees, lessors and owners under hire-purchase agreements;
- (b) to provide for the recording in the register of information relating to goods of those classes reported to the Commissioner of Police as having been stolen;
- (c) to provide that, where goods are subject to a registrable interest, a person who purchases the goods—
 - (i) from a dealer in those goods—in good faith (except in relation to notice of the registrable interest in the goods) and for value; or
 - (ii) from any other person—in good faith, for value and without notice of the registrable interest,

acquires the property in the goods freed and discharged from the registrable interest;

- (d) to provide for the compensation of the holder of such an interest who has applied for, or obtained, registration of the interest but suffers a loss because, by the operation of the proposed Act, a purchaser of the goods has acquired the goods freed and discharged from the interest; and

- (e) to make other provisions in connection with the objects referred to in paragraphs (a)–(d).
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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act (except sections 1 and 2 which will commence on assent) to commence on a day to be appointed by the Governor-in-Council.

Clause 3 provides for the manner in which certain expressions used in the proposed Act are to be interpreted.

Clause 4 requires the Commissioner for Consumer Affairs to maintain a Register of Interests in Goods for the purposes of the proposed Act.

Clause 5 requires the Commissioner, on the making of the appropriate application and payment of the prescribed fee, to record in the Register certain information relating to an interest in goods that is registrable under the proposed Act and also authorises the recording of information relating to goods reported stolen.

Clause 6 enables information recorded in the Register to be amended where appropriate.

Clause 7 provides for the cancellation of a recording in the Register—

- (a) after a certain time;
- (b) upon earlier application; or
- (c) if the recording is wrong.

Clause 8 requires the Commissioner to issue a search certificate containing particulars of any recording in the Register affecting specified goods and enables the applicant for the certificate to rely upon it in the absence of actual notice that it is, or may be, incorrect.

Clause 9 applies to goods of a class specified in an order of the Minister published in the Gazette and provides for the circumstances in which a purchaser of goods of that class acquires the goods free from any interest in the goods of a mortgagee, lessor or owner under a hire-purchase agreement.

Clause 10 confers certain rights of action against certain persons other than a purchaser of goods where a person whose registrable interest in the goods is defeated by the operation of the proposed Act.

Clause 11 provides for the payment to the Consolidated Fund of fees charged under the proposed Act and for payment from money provided by Parliament of compensation awarded as referred to in clauses 12 and 13 or, on appeal, as referred to in clause 15.

Clause 12 enables the Commissioner to award compensation to the holder of a registrable interest in goods who fails through ignorance of the provisions of the proposed Act to register the interest and thereby suffers a loss during the period of 6 months after which an interest in goods of the same class first became registrable.

Clause 13 enables the Commissioner to award compensation to the holder of a registrable interest in goods who has applied for, or obtained, registration of the interest but who has suffered a loss because the proposed Act has operated to confer an unencumbered title on a purchaser of the goods.

Clause 14 deals with the assessment of compensation referred to in clauses 12 and 13.

Clause 15 provides for an appeal to the Commercial Tribunal of New South Wales against a decision of the Commissioner on an application for compensation referred to in clauses 12 and 13.

Clause 16 enables the Commissioner to delegate the exercise of functions under the Act.

Clause 17 penalises certain offences relating to the provision of false or misleading information and a failure to register early termination of a registered interest.

Clause 18 provides for the equal guilt of a director or officer of a corporation who consents to, or connives at, the commission by the corporation of an offence against the proposed Act.

Clause 19 provides that proceedings for an offence against the proposed Act are to be disposed of summarily by a Local Court constituted by a Magistrate but may be taken only by the Commissioner, by a person authorised by the Commissioner or by a prescribed officer.

Clause 20 saves any rights or remedies not expressly excluded by the proposed Act and renders void any provision of an agreement with a purchaser that would otherwise prevent the full operation of the Act.

Clause 21 enables the Governor-in-Council to make regulations to give effect to the proposed Act.

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REGISTRATION OF INTERESTS IN GOODS BILL 1986

NEW SOUTH WALES



No. , 1986

A BILL FOR

An Act with respect to the registration, in relation to motor vehicles and any other prescribed goods, of security interests, the interests of lessors and the interests of owners under hire-purchase agreements; and for other purposes.

See also Bills of Sale (Amendment) Bill 1986; Sale of Goods (Registrable Interests) Amendment Bill 1986; Credit (Regulated Mortgages) Amendment Bill 1986.

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

5 Short title

1. This Act may be cited as the "Registration of Interests in Goods Act 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this
10 Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Interpretation

15 3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Commercial Tribunal" means the Commercial Tribunal of New South Wales;

20 "Commissioner" means the Commissioner for Consumer Affairs appointed under section 13 of the Consumer Protection Act 1969 and any person appointed under section 14 of that Act to act as Commissioner for Consumer Affairs;

"creditor", in relation to a registrable interest in goods, means the person in whom the registrable interest is vested;

25 "dealer", in relation to goods, means—

(a) where the goods are a motor vehicle—a dealer within the meaning of the Motor Dealers Act 1974; or

(b) in any other case—a person prescribed as a dealer in the goods;

30 "debtor", in relation to a registrable interest in goods, means—

(a) where the registrable interest is a security interest in the goods—the person whose performance of an obligation is secured by the security interest;

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(b) where the registrable interest is the interest in the goods of a lessor—the lessee of the goods;

5 (c) where the registrable interest is the interest in the goods of the owner under a hire-purchase agreement to which the goods are subject—the hirer of the goods; or

(d) where the registrable interest is any other prescribed interest in the goods—the person prescribed as the debtor;

“goods” means all chattels personal other than—

(a) things in action and money; and

10 (b) anything that may be the subject of an agreement registrable under the Liens on Crops and Wool and Stock Mortgages Act 1898;

“hire-purchase agreement” means—

(a) a letting of goods with an option to purchase the goods; or

15 (b) an agreement for the purchase of goods by instalments (whether described as rent or hire or otherwise) not being an agreement whereby the property in the goods being purchased passes at the time of the agreement or upon, or at any time before, delivery of the goods;

20 “hirer”, in relation to a hire-purchase agreement, means the person to whom goods are let, hired or agreed to be sold under the hire-purchase agreement;

“lease”, in relation to goods, means—

25 (a) a contract for the hiring of the goods that is not a hire-purchase agreement; or

(b) a licence to use the goods;

“motor vehicle” has the same meaning as it has in the Motor Traffic Act 1909;

30 “owner”, in relation to a hire-purchase agreement, means the person by whom goods are let, hired or agreed to be sold under the hire-purchase agreement;

“prescribed goods” means—

(a) a motor vehicle; or

(b) any other goods prescribed by the regulations;

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“purchase”, in relation to goods, means acquire the goods from a person selling or exchanging the goods and having, or purporting to have, authority to dispose of the goods by that means;

5 “Register” means the Register of Interests in Goods maintained under section 4;

“registered” means recorded in the Register otherwise than in accordance with section 5 (3);

“registrable interest”, in relation to goods, means—

- 10 (a) the interest in the goods of the person to whom is owed the obligation of which the performance is secured by a security interest to which the goods are subject;
- (b) the interest in the goods of a lessor of the goods;
- (c) the interest in the goods of the owner under a hire-purchase agreement relating to the goods; or
- 15 (d) any other prescribed interest in the goods;

“regulations” means regulations made under section 21;

“security interest”, in relation to goods, means an interest or power—

- (a) reserved in or over an interest in the goods; or
 - 20 (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, under a lease or hire-purchase agreement or an agreement
- 25 excluded from this definition by the regulations;

“this Act” includes the regulations.

(2) In this Act, a reference to payment of a purchase price is a reference—

- 30 (a) where the purchase is effected otherwise than by an exchange—to a manner of giving valuable consideration in satisfaction of the purchase price;
- (b) where the whole of the purchase price is not paid at one time—to the first payment of part of the purchase price; or
- (c) where the purchase is effected by an exchange—to the making of the exchange.

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Register to be maintained

4. (1) The Commissioner shall maintain a Register of Interests in Goods for the purposes of this Act.

(2) The Register may be maintained in or upon any medium, or
5 combination of mediums, capable of having information recorded in or upon it or them.

(3) The Commissioner may, from time to time, vary the manner or form in which the whole or any part of the Register is maintained.

(4) Section 24 of the Stamp Duties Act 1920 does not impose any duty
10 or liability on the Commissioner in relation to the making under this Act of a recording in the Register, and the Commissioner is not concerned to inquire, before making a recording in the Register relating to a registrable interest in goods, whether the instrument giving rise to the registrable interest is liable to stamp duty, or is unstamped, or is insufficiently stamped.

15 Registration of interest in prescribed goods

5. (1) Application may be made, in a manner approved by the Commissioner, for registration of a registrable interest in prescribed goods.

(2) Where an application is made under subsection (1) and the prescribed fee is paid or arrangements have been made with the Commissioner for its
20 payment, the Commissioner shall register the interest to which the application relates by recording in the Register the prescribed information relating to the interest.

(3) The Commissioner may record in the Register a reference to other prescribed information, including information received from the
25 Commissioner of Police in relation to prescribed goods reported to the Commissioner of Police as having been stolen or otherwise unlawfully obtained and may cancel or amend any such recording.

(4) A recording made under subsection (3) is not a recording of, and does not operate to create, a registrable interest in the goods to which the
30 recording relates.

Variation of recording

6. (1) Application may be made, in a manner approved by the Commissioner, for a variation (otherwise than by cancellation of registration) of the information recorded in the Register in relation to a
35 registrable interest in goods.

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(2) Where an application is made under subsection (1) and the prescribed fee is paid or arrangements have been made with the Commissioner for its payment, the Commissioner shall, in accordance with the application, vary the information recorded in the Register.

- 5 (3) Where, because of the existence of prescribed circumstances (other than circumstances requiring or permitting a cancellation of registration) the Commissioner is satisfied that the information recorded in the Register in relation to a registrable interest in goods is inaccurate, the Commissioner may, whether or not an appropriate application has been made under
 10 subsection (1), vary the information in a manner that rectifies the inaccuracy.

Cancellation of registration

7. (1) The Commissioner may cancel the registration of an interest after the date specified in the Register as the date on which the interest ceases to
 15 be a registrable interest.

(2) Where—

- (a) a registered interest ceases to be a registrable interest before its registration may be cancelled under subsection (1); and
 20 (b) the prescribed documents are lodged with the Commissioner, or the Commissioner is, in a manner approved by the Commissioner, otherwise notified that paragraph (a) applies,

the Commissioner shall cancel the registration of the interest.

(3) Where—

- (a) an interest, or a purported interest, in goods has been registered;
 25 (b) it appears to the Commissioner—
 (i) that the interest has ceased to exist; or
 (ii) that the interest never existed; and
 (c) the Commissioner is not authorised by subsection (1) or (2) to cancel the registration,

30 the Commissioner may, by notice in writing given to the person registered as holder of the interest, require the person, within a period (being not less than 14 days) specified in the notice, to show cause why the registration should not be cancelled.

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(4) Where a notice has been given under subsection (3), the Commissioner shall, not earlier than the expiration of the period specified in the notice, cancel the registration of the interest to which the notice relates unless—

- 5 (a) cause has been shown why the registration should not be cancelled;
 or
- (b) an order of the Commercial Tribunal staying or prohibiting the
 cancellation (which order the Tribunal is authorised to make), or
10 written notice of such an order, has been served on the
 Commissioner.

(5) A notice is sufficiently given to a person under subsection (3) if it is given by post, and a proper address for that purpose is the address of the person recorded in the Register.

Search certificates and notice

- 15 8. (1) The Commissioner shall, upon application made in relation to specified goods of a class specified in an order in force under section 9 (1), issue a certificate specifying—

- (a) the time and date of its issue;
- 20 (b) whether or not the goods are, at that time, affected by a registered
 interest; and
- (c) if the goods are so affected—such particulars as may be
 prescribed.

(2) The Commissioner may include in a certificate under subsection (1) information relating to matters that may be recorded under section 5 (3).

- 25 (3) For the purposes of this Act and section 164 of the Conveyancing Act 1919, a person, or the solicitor or agent of a person, who obtains a certificate under subsection (1)—

- (a) shall be deemed to have made a proper search of the Register for
 registrable interests in the goods to which the certificate relates,
30 the result of the search being correctly reflected in the certificate;
 and
- (b) is not affected by notice of any information (other than the
 information in the certificate) relating to a registrable interest in
35 those goods by reason only of a failure to make a further search
 in the Register before the end of the day that next succeeds the
 day of issue of the certificate.

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(4) For the purposes of this Act, and notwithstanding section 164 of the Conveyancing Act 1919, a person is not, by reason only of a failure by the person, or by any other person, to make a search as to—

- (a) interests registered under any Act other than this Act; or
- 5 (b) instruments registered, deposited, filed or recorded under any Act or registered under the Companies (New South Wales) Code,

affected by notice of a registrable interest in goods of a class specified in an order in force under section 9 (1).

10 (5) The Commissioner may, in relation to specified goods of a class specified in an order in force under section 9 (1), issue a certificate as to the state of the Register in relation to those goods at a particular time, or during a particular period, that preceded the time and date of issue of the certificate.

15 (6) The Commissioner may charge for a certificate under subsection (1) or (5) such fee as may be prescribed.

(7) A certificate purporting to have been issued under subsection (1) or (5) is, without proof of the signature of the Commissioner or, as the case may be, the delegate of the Commissioner, admissible in evidence in any proceedings and, except in relation to matter that may be recorded under 20 section 5 (3), is evidence of the matters specified in the certificate.

(8) The State is not liable, and the Commissioner and other persons engaged in the administration of this Act are not liable, in respect of the reliability of any information given by the Commissioner or any such person in relation to a matter that may be recorded under section 5 (3).

25 Purchase of goods that are subject to a registrable interest

9. (1) The Minister may, by order published in the Gazette, notify that, on and from a specified day, this section has effect in relation to prescribed goods of a specified class.

30 (2) Where goods of a class specified in an order in force under subsection (1) are the subject of a registrable interest (whether the registrable interest arose before, or arises on or after, the day specified in the order) and the goods are purchased as provided by subsection (3) or (4)—

- 35 (a) the property (if any) in the goods of the creditor who has the registrable interest is divested from the creditor and vested in the purchaser; and

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- (b) the purchaser acquires the goods freed and discharged from the registrable interest.

(3) Goods are purchased as provided by this subsection if the goods are purchased—

- 5 (a) by a person who is not a dealer in the goods from a dealer in the goods;
 (b) except as provided by paragraph (c)—in good faith and for value; and
 (c) with or without notice of the registrable interest.

10 (4) Goods are purchased as provided by this subsection if the goods are purchased otherwise than as referred to in subsection (3) (a)—

- (a) from the debtor under the registrable interest to which the goods are subject;
 (b) in good faith and for value; and
15 (c) without notice, at the time of payment of the purchase price, of the registrable interest.

 (5) Subject to subsection (6), in any proceedings before a court or other tribunal having authority to receive and consider evidence, an assertion that a specified purchase was a purchase as provided by subsection (3) or, as the case may be, a purchase as provided by subsection (4) is, except in relation to the giving of value, evidence that the purchase specified was a purchase in accordance with the assertion.

 (6) In any proceedings before a court or other tribunal having authority to receive and consider evidence, it shall be presumed, unless the contrary is proved, that a purchase is not a purchase as provided by subsection (3) or (4) if—

- 25 (a) the purchaser and the seller are corporations that are, for the purposes of the Companies (New South Wales) Code, deemed to be related to each other;
30 (b) one of the purchaser and the seller is a corporation and the other a natural person who, within the meaning of the Companies (New South Wales) Code, is a director or officer of the corporation; or
 (c) the purchaser and the seller are related to, or associated with, each other as prescribed.

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(7) In subsection (4), a reference to a purchase from the debtor under a registrable interest includes a reference to a purchase from a person other than the debtor who is in possession of the goods in circumstances where the debtor's right to possession of the goods has been lost or the debtor is estopped from asserting that right against the purchaser.

Rights of creditor and purchaser where registrable interest defeated

10. (1) Where—

- 10 (a) a person who is not a dealer in goods of a class specified in an order in force under section 9 (1) purchases any such goods from such a dealer;
 - (b) at any time before payment of the purchase price, the dealer had notice that the goods were subject to a registrable interest; and
 - (c) immediately before payment of the purchase price, the registrable interest had not been discharged or cancelled,
- 15 the dealer is liable to the creditor who had the registrable interest for loss sustained by the creditor by reason of the operation of section 9 in relation to the registrable interest.

(2) Where, by the operation of section 9, a purchaser of goods acquires the goods freed and discharged from a registrable interest but, at the time of the acquisition, part only of the purchase price is paid to the seller—

- 25 (a) the creditor who had the registrable interest is, to the extent of the amount that was owed by the debtor to the creditor under the registrable interest, subrogated to the rights that, but for the subrogation, the seller would have in relation to payment by the purchaser of the balance of the purchase price of the goods; and
- (b) the purchaser of the goods obtains a good discharge—
 - (i) as against the debtor—for any payment of part of the purchase price made under paragraph (a) to the creditor; and
 - 30 (ii) as against the debtor and the creditor—for any payment of part of the purchase price made before the purchaser is notified in writing of the rights of the creditor under that paragraph.

(3) Where—

- 35 (a) by the operation of section 9, a purchase of goods results in the goods being freed and discharged from a registrable interest; and

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(b) the contract of purchase is subsequently rescinded,
the registrable interest revives and has effect as if the purchase had not occurred.

Compensation payments

- 5 **11.** The fees paid and payable to the Commissioner under this Act shall be paid into the Consolidated Fund and any compensation awarded by the Commissioner under section 12 or 13, or by the Tribunal under section 15, shall be paid out of money provided by Parliament.

Limited right to compensation following early failure to register

- 10 **12. (1)** Where—

(a) within the period of 6 months that next succeeds the day specified in an order in force under section 9 (1), the creditor under a registrable interest in goods of the class to which the order relates sustains a loss by reason of the operation of that section; and

- 15 (b) the creditor did not, before sustaining the loss, apply for registration of the registrable interest,

the creditor may apply to the Commissioner for an order awarding compensation for the loss.

- (2) Where, upon an application under subsection (1), the Commissioner
20 is satisfied that the applicant failed to apply for registration of the relevant registrable interest by reason of—

(a) circumstances beyond the control of the applicant; or

- 25 (b) circumstances from which it might reasonably be inferred that the applicant was not aware of the necessity to register the registrable interest in order to avoid sustaining a loss by reason of the operation of section 9,

the Commissioner may make an order awarding the applicant compensation for the loss.

Award of compensation for loss by creditor

- 30 **13.** Where—

(a) application is made for registration of a registrable interest in goods;

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(b) whether or not the registrable interest has been registered—a lack of notice of the registrable interest is the result of a certificate issued under section 8 (1) that does not disclose the registrable interest; and

- 5 (c) as a result of the lack of notice, the operation of section 9 in relation to a purchase of the goods causes the creditor under the registered interest to sustain a loss,

the Commissioner may, on application by the creditor, make an order awarding the applicant compensation for the loss.

10 Assessment of compensation

14. (1) Compensation awarded to a creditor under section 12 or 13 shall be such amount as is determined by the Commissioner under that section but shall not in any case exceed the amount of the loss sustained by the creditor by reason of the operation of section 9 or the amount of the price
15 paid in respect of the purchase that caused the loss, whichever is the lesser amount.

- (2) Where, by the operation of section 10, a creditor has, by subrogation, rights against the purchaser of the goods in relation to which the creditor had a registrable interest, the maximum amount of compensation that may
20 be awarded to the creditor under section 12 or 13 is the amount (if any) by which the creditor's loss exceeds the unpaid balance of the purchase price.

Appeal to Commercial Tribunal

15. (1) A person aggrieved by a decision of the Commissioner on an application under section 12 or 13 may appeal against the decision to the
25 Commercial Tribunal in accordance with rules of the Tribunal.

(2) Upon the hearing of an appeal under this section, the Tribunal may—

- (a) make any order that the Commissioner could have made in relation to the matter of the appeal; or
(b) dismiss the appeal.

30 Delegation

16. (1) The Commissioner may delegate to a person engaged in the administration of this or any other Act administered by the Minister (whether or not by reference to the person for the time being holding a specified office or position) the exercise of any of the functions of the
35 Commissioner under this Act, other than this power of delegation.

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- (2) A delegation under this section—
- (a) shall be in writing;
 - (b) may be general or limited; and
 - (c) may be revoked, wholly or partly, by the Commissioner.
- 5 (3) A delegate is, in the exercise of a function delegated under this section, subject to such conditions as are specified in the instrument of delegation.
- (4) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the Commissioner.
- 10 (5) A delegation under this section does not prevent the exercise of a function by the Commissioner.
- (6) A function purporting to have been exercised by a delegate under this section shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.
- 15 (7) In this section—
- (a) a reference to a function includes a reference to a power, authority and duty; and
 - (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

20 Offences

17. (1) A person shall not, in relation to an application for—
- (a) registration of an interest in goods; or
 - (b) a variation of information recorded in the Register,
- make a statement, or provide information, that is false or misleading by
 25 reason of the inclusion of false or misleading matter or the omission of any material matter.

Penalty: \$1,000.

- (2) Where a registered interest in goods ceases to be a registrable interest before the Commissioner is authorised by section 7 (1) to cancel the
 30 registration, the holder of the interest shall, not later than 7 days after the interest ceases to be a registrable interest, lodge with the Commissioner the documents, or other notification, necessary to obtain cancellation of the registration under section 7 (2).

Penalty: \$500.

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(3) It is a defence to a prosecution of a person for an offence under subsection (1) if it is proved that, when the statement was made or the information was given, the person—

- (a) believed on reasonable grounds that the false matter was true;
- 5 (b) believed on reasonable grounds that the misleading matter was not misleading; or
- (c) in the case of an omission—
 - (i) believed on reasonable grounds that material matter had not been omitted; or
 - 10 (ii) did not know that the omitted matter was material.

Offence by corporation

18. Where an offence against this Act committed by a corporation is proved to have been committed with the consent or connivance of a person who, within the meaning of the Companies (New South Wales) Code, is a
15 director, manager, secretary or other officer of the corporation, the person is guilty of the same offence.

Proceedings

19. (1) Proceedings for an offence against this Act may—

- 20 (a) be taken and prosecuted by the Commissioner or, in the name of the Commissioner, by a person acting with the authority of the Commissioner or with the authority of a prescribed officer; and
- (b) be disposed of before a Local Court constituted by a Magistrate sitting alone.

25 (2) In proceedings for an offence against this Act, an authority to prosecute, purporting to have been signed by the Commissioner, or by a prescribed officer referred to in subsection (1), is evidence of that authority without proof of the signature of the Commissioner or the prescribed officer, as the case may be.

(3) Proceedings for an offence against this Act may be conducted by—

- 30 (a) the informant in person;
- (b) counsel or attorney for the informant;
- (c) a person authorised in writing by the informant for the purpose; or
- (d) an officer of the public service.

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(4) Proceedings for an offence against this Act may be commenced by information laid not later than 3 years after the time of commission of the alleged offence or, with the consent of the Attorney General, at any later time.

5 Saving of rights and remedies

20. (1) Except to the extent that this Act expressly provides otherwise, nothing in this Act modifies or excludes a right or remedy that a person would have had if this Act had not been enacted.

(2) A provision in an agreement (whether or not in writing) with a purchaser under which the operation of a provision of this Act is excluded, modified or restricted is void.

(3) A person shall not enter into an agreement with a purchaser if the agreement includes a provision that, under subsection (1), is void.

Penalty—subsection (3): \$1,000.

15 Regulations

21. (1) 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.

20 (2) A regulation may impose a penalty not exceeding \$1,000 for a breach of the regulation.

(3) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- 25 (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

REGISTRATION OF INTERESTS IN GOODS ACT 1986
No. 37

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REGISTRATION OF INTERESTS IN GOODS ACT 1986 No. 37

NEW SOUTH WALES



Act No. 37, 1986

An Act with respect to the registration, in relation to motor vehicles and any other prescribed goods, of security interests, the interests of lessors and the interests of owners under hire-purchase agreements; and for other purposes. [Assented to 6 May 1986.]

See also Bills of Sale (Amendment) Act 1986; Sale of Goods (Registrable Interests) Amendment Act 1986; Credit (Regulated Mortgages) Amendment Act 1986.

Registration of Interests in Goods 1986

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Registration of Interests in Goods Act 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Interpretation

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Commercial Tribunal" means the Commercial Tribunal of New South Wales;

"Commissioner" means the Commissioner for Consumer Affairs appointed under section 13 of the Consumer Protection Act 1969 and any person appointed under section 14 of that Act to act as Commissioner for Consumer Affairs;

"creditor", in relation to a registrable interest in goods, means the person in whom the registrable interest is vested;

"dealer", in relation to goods, means—

- (a) where the goods are a motor vehicle—a dealer within the meaning of the Motor Dealers Act 1974; or
- (b) in any other case—a person prescribed as a dealer in the goods;

"debtor", in relation to a registrable interest in goods, means—

- (a) where the registrable interest is a security interest in the goods—the person whose performance of an obligation is secured by the security interest;

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- (b) where the registrable interest is the interest in the goods of a lessor—the lessee of the goods;
- (c) where the registrable interest is the interest in the goods of the owner under a hire-purchase agreement to which the goods are subject—the hirer of the goods; or
- (d) where the registrable interest is any other prescribed interest in the goods—the person prescribed as the debtor;

“goods” means all chattels personal other than—

- (a) things in action and money; and
- (b) anything that may be the subject of an agreement registrable under the Liens on Crops and Wool and Stock Mortgages Act 1898;

“hire-purchase agreement” means—

- (a) a letting of goods with an option to purchase the goods; or
- (b) an agreement for the purchase of goods by instalments (whether described as rent or hire or otherwise) not being an agreement whereby the property in the goods being purchased passes at the time of the agreement or upon, or at any time before, delivery of the goods;

“hirer”, in relation to a hire-purchase agreement, means the person to whom goods are let, hired or agreed to be sold under the hire-purchase agreement;

“lease”, in relation to goods, means—

- (a) a contract for the hiring of the goods that is not a hire-purchase agreement; or
- (b) a licence to use the goods;

“motor vehicle” has the same meaning as it has in the Motor Traffic Act 1909;

“owner”, in relation to a hire-purchase agreement, means the person by whom goods are let, hired or agreed to be sold under the hire-purchase agreement;

“prescribed goods” means—

- (a) a motor vehicle; or
- (b) any other goods prescribed by the regulations;

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“purchase”, in relation to goods, means acquire the goods from a person selling or exchanging the goods and having, or purporting to have, authority to dispose of the goods by that means;

“Register” means the Register of Interests in Goods maintained under section 4;

“registered” means recorded in the Register otherwise than in accordance with section 5 (3);

“registrable interest”, in relation to goods, means—

- (a) the interest in the goods of the person to whom is owed the obligation of which the performance is secured by a security interest to which the goods are subject;
- (b) the interest in the goods of a lessor of the goods;
- (c) the interest in the goods of the owner under a hire-purchase agreement relating to the goods; or
- (d) any other prescribed interest in the goods;

“regulations” means regulations made under section 21;

“security interest”, in relation to goods, 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, under a lease or hire-purchase agreement or an agreement excluded from this definition by the regulations;

“this Act” includes the regulations.

(2) In this Act, a reference to payment of a purchase price is a reference—

- (a) where the purchase is effected otherwise than by an exchange—to a manner of giving valuable consideration in satisfaction of the purchase price;
- (b) where the whole of the purchase price is not paid at one time—to the first payment of part of the purchase price; or
- (c) where the purchase is effected by an exchange—to the making of the exchange.

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Register to be maintained

4. (1) The Commissioner shall maintain a Register of Interests in Goods for the purposes of this Act.

(2) The Register may be maintained in or upon any medium, or combination of mediums, capable of having information recorded in or upon it or them.

(3) The Commissioner may, from time to time, vary the manner or form in which the whole or any part of the Register is maintained.

(4) Section 24 of the Stamp Duties Act 1920 does not impose any duty or liability on the Commissioner in relation to the making under this Act of a recording in the Register, and the Commissioner is not concerned to inquire, before making a recording in the Register relating to a registrable interest in goods, whether the instrument giving rise to the registrable interest is liable to stamp duty, or is unstamped, or is insufficiently stamped.

Registration of interest in prescribed goods

5. (1) Application may be made, in a manner approved by the Commissioner, for registration of a registrable interest in prescribed goods.

(2) Where an application is made under subsection (1) and the prescribed fee is paid or arrangements have been made with the Commissioner for its payment, the Commissioner shall register the interest to which the application relates by recording in the Register the prescribed information relating to the interest.

(3) The Commissioner may record in the Register a reference to other prescribed information, including information received from the Commissioner of Police in relation to prescribed goods reported to the Commissioner of Police as having been stolen or otherwise unlawfully obtained and may cancel or amend any such recording.

(4) A recording made under subsection (3) is not a recording of, and does not operate to create, a registrable interest in the goods to which the recording relates.

Variation of recording

6. (1) Application may be made, in a manner approved by the Commissioner, for a variation (otherwise than by cancellation of registration) of the information recorded in the Register in relation to a registrable interest in goods.

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(2) Where an application is made under subsection (1) and the prescribed fee is paid or arrangements have been made with the Commissioner for its payment, the Commissioner shall, in accordance with the application, vary the information recorded in the Register.

(3) Where, because of the existence of prescribed circumstances (other than circumstances requiring or permitting a cancellation of registration) the Commissioner is satisfied that the information recorded in the Register in relation to a registrable interest in goods is inaccurate, the Commissioner may, whether or not an appropriate application has been made under subsection (1), vary the information in a manner that rectifies the inaccuracy.

Cancellation of registration

7. (1) The Commissioner may cancel the registration of an interest after the date specified in the Register as the date on which the interest ceases to be a registrable interest.

(2) Where—

- (a) a registered interest ceases to be a registrable interest before its registration may be cancelled under subsection (1); and
- (b) the prescribed documents are lodged with the Commissioner, or the Commissioner is, in a manner approved by the Commissioner, otherwise notified that paragraph (a) applies,

the Commissioner shall cancel the registration of the interest.

(3) Where—

- (a) an interest, or a purported interest, in goods has been registered;
- (b) it appears to the Commissioner—
 - (i) that the interest has ceased to exist; or
 - (ii) that the interest never existed; and
- (c) the Commissioner is not authorised by subsection (1) or (2) to cancel the registration,

the Commissioner may, by notice in writing given to the person registered as holder of the interest, require the person, within a period (being not less than 14 days) specified in the notice, to show cause why the registration should not be cancelled.

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(4) Where a notice has been given under subsection (3), the Commissioner shall, not earlier than the expiration of the period specified in the notice, cancel the registration of the interest to which the notice relates unless—

- (a) cause has been shown why the registration should not be cancelled; or
- (b) an order of the Commercial Tribunal staying or prohibiting the cancellation (which order the Tribunal is authorised to make), or written notice of such an order, has been served on the Commissioner.

(5) A notice is sufficiently given to a person under subsection (3) if it is given by post, and a proper address for that purpose is the address of the person recorded in the Register.

Search certificates and notice

8. (1) The Commissioner shall, upon application made in relation to specified goods of a class specified in an order in force under section 9 (1), issue a certificate specifying—

- (a) the time and date of its issue;
- (b) whether or not the goods are, at that time, affected by a registered interest; and
- (c) if the goods are so affected—such particulars as may be prescribed.

(2) The Commissioner may include in a certificate under subsection (1) information relating to matters that may be recorded under section 5 (3).

(3) For the purposes of this Act and section 164 of the Conveyancing Act 1919, a person, or the solicitor or agent of a person, who obtains a certificate under subsection (1)—

- (a) shall be deemed to have made a proper search of the Register for registrable interests in the goods to which the certificate relates, the result of the search being correctly reflected in the certificate; and
- (b) is not affected by notice of any information (other than the information in the certificate) relating to a registrable interest in those goods by reason only of a failure to make a further search in the Register before the end of the day that next succeeds the day of issue of the certificate.

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(4) For the purposes of this Act, and notwithstanding section 164 of the Conveyancing Act 1919, a person is not, by reason only of a failure by the person, or by any other person, to make a search as to—

- (a) interests registered under any Act other than this Act; or
- (b) instruments registered, deposited, filed or recorded under any Act or registered under the Companies (New South Wales) Code,

affected by notice of a registrable interest in goods of a class specified in an order in force under section 9 (1).

(5) The Commissioner may, in relation to specified goods of a class specified in an order in force under section 9 (1), issue a certificate as to the state of the Register in relation to those goods at a particular time, or during a particular period, that preceded the time and date of issue of the certificate.

(6) The Commissioner may charge for a certificate under subsection (1) or (5) such fee as may be prescribed.

(7) A certificate purporting to have been issued under subsection (1) or (5) is, without proof of the signature of the Commissioner or, as the case may be, the delegate of the Commissioner, admissible in evidence in any proceedings and, except in relation to matter that may be recorded under section 5 (3), is evidence of the matters specified in the certificate.

(8) The State is not liable; and the Commissioner and other persons engaged in the administration of this Act are not liable, in respect of the reliability of any information given by the Commissioner or any such person in relation to a matter that may be recorded under section 5 (3).

Purchase of goods that are subject to a registrable interest

9. (1) The Minister may, by order published in the Gazette, notify that, on and from a specified day, this section has effect in relation to prescribed goods of a specified class.

(2) Where goods of a class specified in an order in force under subsection (1) are the subject of a registrable interest (whether the registrable interest arose before, or arises on or after, the day specified in the order) and the goods are purchased as provided by subsection (3) or (4)—

- (a) the property (if any) in the goods of the creditor who has the registrable interest is divested from the creditor and vested in the purchaser; and

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- (b) the purchaser acquires the goods freed and discharged from the registrable interest.

(3) Goods are purchased as provided by this subsection if the goods are purchased—

- (a) by a person who is not a dealer in the goods from a dealer in the goods;
- (b) except as provided by paragraph (c)—in good faith and for value; and
- (c) with or without notice of the registrable interest.

(4) Goods are purchased as provided by this subsection if the goods are purchased otherwise than as referred to in subsection (3) (a)—

- (a) from the debtor under the registrable interest to which the goods are subject;
- (b) in good faith and for value; and
- (c) without notice, at the time of payment of the purchase price, of the registrable interest.

(5) Subject to subsection (6), in any proceedings before a court or other tribunal having authority to receive and consider evidence, an assertion that a specified purchase was a purchase as provided by subsection (3) or, as the case may be, a purchase as provided by subsection (4) is, except in relation to the giving of value, evidence that the purchase specified was a purchase in accordance with the assertion.

(6) In any proceedings before a court or other tribunal having authority to receive and consider evidence, it shall be presumed, unless the contrary is proved, that a purchase is not a purchase as provided by subsection (3) or (4) if—

- (a) the purchaser and the seller are corporations that are, for the purposes of the Companies (New South Wales) Code, deemed to be related to each other;
- (b) one of the purchaser and the seller is a corporation and the other a natural person who, within the meaning of the Companies (New South Wales) Code, is a director or officer of the corporation; or
- (c) the purchaser and the seller are related to, or associated with, each other as prescribed.

(7) In subsection (4), a reference to a purchase from the debtor under a registrable interest includes a reference to a purchase from a person other than the debtor who is in possession of the goods in circumstances where the debtor's right to possession of the goods has been lost or the debtor is estopped from asserting that right against the purchaser.

Rights of creditor and purchaser where registrable interest defeated

10. (1) Where—

- (a) a person who is not a dealer in goods of a class specified in an order in force under section 9 (1) purchases any such goods from such a dealer;
- (b) at any time before payment of the purchase price, the dealer had notice that the goods were subject to a registrable interest; and
- (c) immediately before payment of the purchase price, the registrable interest had not been discharged or cancelled,

the dealer is liable to the creditor who had the registrable interest for loss sustained by the creditor by reason of the operation of section 9 in relation to the registrable interest.

(2) Where, by the operation of section 9, a purchaser of goods acquires the goods freed and discharged from a registrable interest but, at the time of the acquisition, part only of the purchase price is paid to the seller—

- (a) the creditor who had the registrable interest is, to the extent of the amount that was owed by the debtor to the creditor under the registrable interest, subrogated to the rights that, but for the subrogation, the seller would have in relation to payment by the purchaser of the balance of the purchase price of the goods; and
- (b) the purchaser of the goods obtains a good discharge—
 - (i) as against the debtor—for any payment of part of the purchase price made under paragraph (a) to the creditor; and
 - (ii) as against the debtor and the creditor—for any payment of part of the purchase price made before the purchaser is notified in writing of the rights of the creditor under that paragraph.

(3) Where—

- (a) by the operation of section 9, a purchase of goods results in the goods being freed and discharged from a registrable interest; and

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(b) the contract of purchase is subsequently rescinded,
the registrable interest revives and has effect as if the purchase had not occurred.

Compensation payments

11. The fees paid and payable to the Commissioner under this Act shall be paid into the Consolidated Fund and any compensation awarded by the Commissioner under section 12 or 13, or by the Tribunal under section 15, shall be paid out of money provided by Parliament.

Limited right to compensation following early failure to register

12. (1) Where—

- (a) within the period of 6 months that next succeeds the day specified in an order in force under section 9 (1), the creditor under a registrable interest in goods of the class to which the order relates sustains a loss by reason of the operation of that section; and
- (b) the creditor did not, before sustaining the loss, apply for registration of the registrable interest,

the creditor may apply to the Commissioner for an order awarding compensation for the loss.

(2) Where, upon an application under subsection (1), the Commissioner is satisfied that the applicant failed to apply for registration of the relevant registrable interest by reason of—

- (a) circumstances beyond the control of the applicant; or
- (b) circumstances from which it might reasonably be inferred that the applicant was not aware of the necessity to register the registrable interest in order to avoid sustaining a loss by reason of the operation of section 9,

the Commissioner may make an order awarding the applicant compensation for the loss.

Award of compensation for loss by creditor

13. Where—

- (a) application is made for registration of a registrable interest in goods;

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- (b) whether or not the registrable interest has been registered—a lack of notice of the registrable interest is the result of a certificate issued under section 8 (1) that does not disclose the registrable interest; and
- (c) as a result of the lack of notice, the operation of section 9 in relation to a purchase of the goods causes the creditor under the registered interest to sustain a loss,

the Commissioner may, on application by the creditor, make an order awarding the applicant compensation for the loss.

Assessment of compensation

14. (1) Compensation awarded to a creditor under section 12 or 13 shall be such amount as is determined by the Commissioner under that section but shall not in any case exceed the amount of the loss sustained by the creditor by reason of the operation of section 9 or the amount of the price paid in respect of the purchase that caused the loss, whichever is the lesser amount.

(2) Where, by the operation of section 10, a creditor has, by subrogation, rights against the purchaser of the goods in relation to which the creditor had a registrable interest, the maximum amount of compensation that may be awarded to the creditor under section 12 or 13 is the amount (if any) by which the creditor's loss exceeds the unpaid balance of the purchase price.

Appeal to Commercial Tribunal

15. (1) A person aggrieved by a decision of the Commissioner on an application under section 12 or 13 may appeal against the decision to the Commercial Tribunal in accordance with rules of the Tribunal.

- (2) Upon the hearing of an appeal under this section, the Tribunal may—
 - (a) make any order that the Commissioner could have made in relation to the matter of the appeal; or
 - (b) dismiss the appeal.

Delegation

16. (1) The Commissioner may delegate to a person engaged in the administration of this or any other Act administered by the Minister (whether or not by reference to the person for the time being holding a specified office or position) the exercise of any of the functions of the Commissioner under this Act, other than this power of delegation.

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(2) A delegation under this section—

- (a) shall be in writing;
- (b) may be general or limited; and
- (c) may be revoked, wholly or partly, by the Commissioner.

(3) A delegate is, in the exercise of a function delegated under this section, subject to such conditions as are specified in the instrument of delegation.

(4) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the Commissioner.

(5) A delegation under this section does not prevent the exercise of a function by the Commissioner.

(6) A function purporting to have been exercised by a delegate under this section shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

(7) In this section—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Offences

17. (1) A person shall not, in relation to an application for—

- (a) registration of an interest in goods; or
- (b) a variation of information recorded in the Register,

make a statement, or provide information, that is false or misleading by reason of the inclusion of false or misleading matter or the omission of any material matter.

Penalty: \$1,000.

(2) Where a registered interest in goods ceases to be a registrable interest before the Commissioner is authorised by section 7 (1) to cancel the registration, the holder of the interest shall, not later than 7 days after the interest ceases to be a registrable interest, lodge with the Commissioner the documents, or other notification, necessary to obtain cancellation of the registration under section 7 (2).

Penalty: \$500.

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(3) It is a defence to a prosecution of a person for an offence under subsection (1) if it is proved that, when the statement was made or the information was given, the person—

- (a) believed on reasonable grounds that the false matter was true;
- (b) believed on reasonable grounds that the misleading matter was not misleading; or
- (c) in the case of an omission—
 - (i) believed on reasonable grounds that material matter had not been omitted; or
 - (ii) did not know that the omitted matter was material.

Offence by corporation

18. Where an offence against this Act committed by a corporation is proved to have been committed with the consent or connivance of a person who, within the meaning of the Companies (New South Wales) Code, is a director, manager, secretary or other officer of the corporation, the person is guilty of the same offence.

Proceedings

19. (1) Proceedings for an offence against this Act may—

- (a) be taken and prosecuted by the Commissioner or, in the name of the Commissioner, by a person acting with the authority of the Commissioner or with the authority of a prescribed officer; and
- (b) be disposed of before a Local Court constituted by a Magistrate sitting alone.

(2) In proceedings for an offence against this Act, an authority to prosecute, purporting to have been signed by the Commissioner, or by a prescribed officer referred to in subsection (1), is evidence of that authority without proof of the signature of the Commissioner or the prescribed officer, as the case may be.

(3) Proceedings for an offence against this Act may be conducted by—

- (a) the informant in person;
- (b) counsel or attorney for the informant;
- (c) a person authorised in writing by the informant for the purpose;
or
- (d) an officer of the public service.

(4) Proceedings for an offence against this Act may be commenced by information laid not later than 3 years after the time of commission of the alleged offence or, with the consent of the Attorney General, at any later time.

Saving of rights and remedies

20. (1) Except to the extent that this Act expressly provides otherwise, nothing in this Act modifies or excludes a right or remedy that a person would have had if this Act had not been enacted.

(2) A provision in an agreement (whether or not in writing) with a purchaser under which the operation of a provision of this Act is excluded, modified or restricted is void.

(3) A person shall not enter into an agreement with a purchaser if the agreement includes a provision that, under subsection (1), is void.

Penalty—subsection (3): \$1,000.

Regulations

21. (1) 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.

(2) A regulation may impose a penalty not exceeding \$1,000 for a breach of the regulation.

(3) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;

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- (b) apply differently according to different factors of a specified kind;
or
 - (c) authorise any matter or thing to be from time to time determined,
applied or regulated by any specified person or body,
- or may do any combination of those things.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1986

