

Queensland



# **MOTOR VEHICLES SECURITIES ACT 1986**

**Reprinted as in force on 1 January 2003  
(includes amendments up to Act No. 68 of 2002)**

**Warning—see last endnote for uncommenced amendments**

**Reprint No. 2G**

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This Act is reprinted as at 1 January 2003. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

## **Dates shown on reprints**

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# Queensland



## MOTOR VEHICLES SECURITIES ACT 1986

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# MOTOR VEHICLES SECURITIES ACT 1986

[as amended by all amendments that commenced on or before 1 January 2003]

## **An Act to provide for the registration of instruments creating security interests in motor vehicles and trailers and for other purposes**

### **1 Short title**

This Act may be cited as the *Motor Vehicles Securities Act 1986*.

### **5 Definitions**

In this Act—

“**auctioneer**” means an auctioneer under the Auctioneers and Motor Dealers legislation.

“**Auctioneers and Motor Dealers legislation**” means the *Auctioneers and Agents Act 1971* or the *Property Agents and Motor Dealers Act 2000*.

“**bill of sale**” has the same meaning as in the *Bills of Sale and Other Instruments Act 1955*.

“**chassis number**”, of a motor vehicle, means an identification number of the chassis that is permanently marked on the chassis or another part of the motor vehicle, but does not include the motor vehicle’s VIN.

“**hire-purchase agreement**” has the same meaning as in the *Hire-purchase Act 1959* or the *Credit (Rural Finance) Act 1996*.

“**identifying particulars**”, of a motor vehicle, means the following—

- (a) registration number, including the name of the State the vehicle is registered in;
- (b) make, model and body type;
- (c) year of manufacture;
- (d) engine number;
- (e) chassis number or VIN.

**“instrument”** means an instrument evidencing a security interest.

**“insurer”** means a body corporate authorised under the *Insurance Act 1973* (Cwlth) to carry on insurance business.

**“motor vehicle”** has the meaning given by the regulations.

**“register”** means the register kept under section 6.<sup>1</sup>

**“registered security interest”** means a security interest that is included in the register under this Act.

**“security interest”** means an interest in a motor vehicle by way of security for or in respect of a liability, whether present, contingent or future created or otherwise arising in or under or in connection with a bill of sale, mortgage, charge, lien, hire-purchase agreement, lease or instrument having a like effect to any of them and includes the interest of—

- (a) an owner within the meaning of the *Hire-purchase Act 1959* in respect of the liability of the hirer within the meaning of that Act;
- (b) a lessor in respect of the liability of a lessee.

**“security interest certificate”** means a security interest certificate issued under section 22.<sup>2</sup>

**“VIN”**, of a motor vehicle, means the unique vehicle identification number assigned to, and permanently attached to, the vehicle.

**“water damaged motor vehicle”** see section 5B.

## **5B Meaning of “water damaged motor vehicle”**

A motor vehicle is a **“water damaged motor vehicle”** if the vehicle—

- (a) is insured against damage by water; and
- (b) on or after 8 April 1986 but before the commencement of the *Motor Vehicles Securities and Another Act Amendment Act 2002*, section 5, is so severely damaged by water that the vehicle’s insurer decides it is uneconomic to repair the vehicle.

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1 Section 6 (Register)

2 Section 22 (Security interest certificate)



*Example of paragraph (b)—*

A motor vehicle is so severely damaged by flood that the cost of repairing the vehicle is more than its value or insured value.

## **6 Register**

(1) A register of security interests must be kept by the chief executive.

(2) The register must include the following particulars in relation to each security interest that is included in the register—

- (a) the name of the person holding the interest;
- (b) the registration number given to the interest;
- (c) the day and time the interest is registered or the registration is renewed;
- (d) details of the motor vehicle the subject of the interest;
- (e) other particulars the chief executive considers are appropriate to identify the interest;
- (f) other particulars prescribed under the regulations.

(3) The time of registration stated in the register must be expressed as the relevant time in New South Wales.

(4) The chief executive—

- (a) must also include in the register—
  - (i) the particulars of water damaged motor vehicles notified to the chief executive under this Act on or after 8 April 1986 but before the commencement of the *Motor Vehicles Securities and Another Act Amendment Act 2002*, section 5; and
  - (ii) the day the particulars mentioned in subparagraph (i) were included in the register; and
- (b) may include in the register any particulars of stolen motor vehicles the chief executive considers appropriate.

## **7 Application for registration, or renewal of registration, of security interest**

(1) An application for the registration, or renewal of registration, of a security interest must be—

- (a) made in the prescribed way; and
- (b) supported by any prescribed information; and
- (c) accompanied by the prescribed fee.

(1A) Also, the application must be accompanied by—

- (a) the VIN of the motor vehicle the subject of the security interest; or
- (b) if there is no VIN for the motor vehicle, the motor vehicle's chassis number.

(2) The chief executive is not required to inquire into the validity of information given in support of the application.

### **7AA Registration, or renewal of registration, of security interest**

(1) If the chief executive is satisfied that an application under section 7 is properly made, the chief executive must register, or renew the registration of the security interest by entering in the register the relevant particulars mentioned in section 6(2).<sup>3</sup>

(2) Applications for registration, or renewal of registration, of security interests must be registered in the order of time of lodgment with the chief executive.

### **7AB Expiry of registration**

(1) A registration of a security interest after the commencement of this section expires on the earlier of the following days—

- (a) the day 5 years after the registration takes effect;
- (b) the day the security interest expires.

(2) A registration of a security interest not more than 1 year before the commencement of this section expires 5 years after the commencement.

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3 Section 6 (Register)

(3) A registration of a security interest more than 1, but not more than 2, years before the commencement of this section expires 4 years after the commencement.

(4) A registration of a security interest more than 2, but not more than 3, years before the commencement of this section expires 3 years after the commencement.

(5) A registration of a security interest more than 3, but not more than 4, years before the commencement of this section expires 2 years after the commencement.

(6) A registration of a security interest more than 4, but not more than 5, years before the commencement of this section expires 1 year after the commencement.

(7) A registration of a security interest more than 5 years before the commencement of this section expires 6 months after the commencement.

(8) Despite subsections (2) to (7), if the security interest expires on an earlier day, the registration expires on the earlier day.

(9) Subsections (2) to (8) and this subsection expire on 1 January 2003.

### **7AC Renewal of registration and expiry of renewed registration**

(1) The registration of a security interest may be renewed before the registration, or a renewal of the registration, expires.

(2) A renewal expires on the earlier of the following days—

- (a) the day 5 years after the day the renewal of registration takes effect;
- (b) the day the security interest expires.

### **7A Registration of confiscation orders**

(1) A confiscation order applying to a motor vehicle of a person or creating a charge over a motor vehicle of a person may be registered under this Act.

(2) If the confiscation order is a restraining order, registration of the order has effect for the duration of the restraining order.

(3) Otherwise, registration has effect until the confiscation order is discharged.

(4) A person who deals with a motor vehicle affected by a confiscation order registered under this section is taken to know of the confiscation order for the purposes of the *Criminal Proceeds Confiscation Act 2002*, section 52 or 143.<sup>4</sup>

(5) The chief executive must, on receipt of a request accompanied by a certified copy of the confiscation order, include in the register particulars of the confiscation order for the motor vehicle that may be prescribed under a regulation.

(6) In this section—

“**confiscation order**” means any of the following under the *Criminal Proceeds Confiscation Act 2002*—

- (a) a restraining order;
- (b) a forfeiture order;
- (c) a pecuniary penalty order;
- (d) a proceeds assessment order.

## **8 Application for assignment of a registered security interest**

(1) An assignment of a registered security interest may be registered, but is not required to be registered.

(2) An application for the assignment of a registered security interest must be—

- (a) made in the prescribed way; and
- (b) supported by any prescribed information; and
- (c) accompanied by the prescribed fee.

(3) The chief executive is not required to inquire into the validity of information given in support of the application.

## **9 Registration of assignment of a registered security interest**

(1) If the chief executive is satisfied that an application made under section 8 is properly made, the chief executive must register the assignment by entering in the register particulars of the parties to the assignment.

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<sup>4</sup> *Criminal Proceeds Confiscation Act 2002*, sections 52 (Contravention of restraining order) and 143 (Contravention of restraining order)

(2) Applications for registration of assignments of security interests must be registered in the order of time of lodgment with the registrar.

## **10 Registration becomes effective on next business day**

The registration, or renewal of registration, of—

- (a) a security interest; or
- (b) an assignment of a registered security interest; or
- (c) a memorandum of satisfaction; or
- (d) another prescribed document;

does not take effect until the beginning of the next business day after particulars of the registration, or renewal of registration, are entered in the register.

## **11 Effect of failure to register a security interest**

Subject to section 12, an unregistered security interest in relation to a motor vehicle does not have effect against a person who is not a party to the instrument creating the interest.

## **12 Priority of security interests**

(1) The holder of a security interest (the “**relevant interest**”) in a motor vehicle is entitled to priority for any title, or right to possession, conferred by the interest as against—

- (a) the holder of a subsequent security interest if at the time the subsequent security interest was created the holder of the interest had notice of the relevant interest; and
- (b) subject to paragraph (a), the holder of another security interest if—
  - (i) the relevant interest and the other interest are both registered; and
  - (ii) the application to register the relevant interest was lodged before the application to register the other interest.

(2) Subsection (1) does not apply to a security interest that is a registrable charge to which the Corporations Act, chapter 2K<sup>5</sup> applies.

### **13 Notice of security interest**

Except where it is otherwise prescribed, for the purposes of this Act, a person has notice of a security interest where at the material time—

- (a) the person has actual notice of the security interest; or
- (b) the security interest is included in the register; or
- (c) the person has been put on inquiry as to the existence of the security interest and has abstained from inquiry or further inquiry when the person might reasonably have expected the inquiry or further inquiry to reveal the security interest.

### **14 Application for discharge of registered security interest**

(1) An application for the discharge of a registered security interest must be—

- (a) made in the prescribed way; and
- (b) supported by any prescribed information and prescribed document; and
- (c) accompanied by any prescribed fee (if any).

(2) Application may be made for a full or partial discharge of the interest.

(3) The chief executive is not required to inquire into the validity of information or documents given in support of the application.

(4) In this section—

**“partial discharge”** means—

- (a) a discharge of an obligor under a registered security interest in relation to the obligor’s performance of a specified part of the obligor’s obligation under the security interest; or
- (b) if a registered security interest relates to more than 1 vehicle—a release of the security interest in relation to any of the vehicles.

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5 Corporations Act, chapter 2K (Charges)

**15 Registration of discharge of registered security interest**

If the chief executive is satisfied that an application made under section 14 is properly made, the chief executive must register the discharge by—

- (a) entering in the register any particulars prescribed under the regulations; and
- (b) doing anything else that may be prescribed under the regulations.

**17 Onus to cancel registration on discharge**

A person who is the holder of a registered security interest at the time the interest is fully discharged must, within 14 days after the discharge happens—

- (a) lodge an application under section 14 for the full discharge of the interest; and
- (b) do anything else that may be necessary to effect the registration of the discharge.

Maximum penalty—20 penalty units.

**18 Rectification of register**

Where a prescribed change occurs in the particulars entered in the register, the chief executive may vary the particulars in the entry in the register accordingly and shall note in the register the date on which the particulars were varied.

**19 Correction of errors**

If the chief executive is satisfied that an error, omission or failure to comply with this Act has happened in relation to—

- (a) a registered security interest; or
- (b) the register;

the chief executive must do everything necessary to correct the error, omission or failure.

**20 Chief executive may cancel registration**

(1) If it appears to the chief executive that a registered security interest has been discharged or extinguished, the chief executive may, by written notice given to the person shown in the register as the holder of the interest, require that person to show cause within 14 days after the giving of the notice why the registration of the interest should not be cancelled.

(2) If the person fails to show cause to the chief executive's satisfaction, the chief executive may cancel the registration of the interest and note the day of cancellation in the register.

**21 False or misleading information**

(1) A person must not, for the purposes of this Act—

- (a) make a statement to an officer or employee of the department that the person knows is false or misleading in a material particular; or
- (b) omit from a statement to an officer or employee of the department anything without which the statement is, to the person's knowledge, false or misleading in a material particular.

Maximum penalty—100 penalty units or 1 year's imprisonment.

(2) A complaint against a person for an offence against subsection (1)(a) or (b) is sufficient if it states that the information given was false or misleading to the person's knowledge.

**21A False or misleading documents**

A person must not, for the purposes of this Act, give to an officer or employee of the department a document containing information that the person knows is false, misleading or incomplete in a material particular without—

- (a) indicating to the officer or employee that the document is false, misleading or incomplete in a material particular and the respect in which the document is false, misleading or incomplete in a material particular; and
- (b) giving the correct information to the officer or employee if the person has, or can reasonably obtain, the correct information.

Maximum penalty—100 penalty units or 1 year's imprisonment.



## **22 Security interest certificate**

(1) The chief executive must give a person a security interest certificate for a vehicle if the person—

- (a) asks the chief executive, in the approved form, for the certificate; and
- (b) pays the fee prescribed under the regulations.

(2) A security interest certificate for a motor vehicle must—

- (a) if security interests are registered for the vehicle—state particulars about the security interests; and
- (b) if no security interest is registered for the vehicle—state that fact.

(3) The certificate must also state—

- (a) the day and time it is issued; and
- (aa) if identifying particulars for a motor vehicle are included on the register identifying the vehicle as a stolen or a water damaged motor vehicle—state that fact; and
- (b) other particulars the chief executive considers appropriate.

(4) The chief executive may issue the certificate in the way the chief executive considers appropriate.

*Example of the way the certificate may be issued—*

The chief executive may issue the certificate by electronic means from the department's computer to a motor dealer's computer and printed by the dealer's printer.

(5) The time of issue stated in the certificate must be expressed as the relevant time in New South Wales.

## **23 Inspecting the register**

A person may, on payment of the fee prescribed under the regulations—

- (a) inspect the register at the department's Brisbane office when the office is open to the public; and
- (b) take extracts from, or obtain a copy of details in, the register.

## **23A Inspecting searchable application**

(1) A person may, on payment of the fee prescribed under a regulation, inspect a searchable application.

(2) In this section—

**“searchable application”** means an application under any of the following provisions—

- (a) section 7(1);
- (b) section 8(2);
- (c) section 14(1);
- (d) section 42(2).

## **24 Forged etc. certificates**

(1) A person must not, without lawful excuse, possess a document that is, or purports to be, a security interest certificate if—

- (a) the certificate is forged and the person knows or believes it is forged; or
- (b) the certificate contains a false representation and the person knows or believes it contains a false representation.

Maximum penalty—100 penalty units.

(2) A person must not fraudulently change a security interest certificate.

Maximum penalty—100 penalty units.

## **26 Extinguishing of security interest**

(1) Where a person is the holder of a security interest in a motor vehicle and a purchaser purchases or purports to purchase an interest in that motor vehicle for value and in good faith and without notice of the security interest at the time the person pays the purchase price (or, where the price is not paid at any one time when the person first pays part of the purchase price)—

- (a) the security interest in that motor vehicle is extinguished; and
- (b) the purchaser acquires the interest purchased or putatively purchased in that motor vehicle free from the security interest.

(2) The onus of proving that an interest in a motor vehicle is acquired free from a security interest in that motor vehicle is on the person who asserts that the interest in the motor vehicle is so acquired.

(3) In any proceedings before a court, a document purporting to be a certificate under the hand of the chief executive relating to an entry in the register or to the absence of such an entry shall be admissible and be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

(4) For the purposes of this section, the giving of any valuable consideration in satisfaction of a purchase price or of part of a purchase price shall be taken to be payment of the purchase price or, as the case may be, of part of the purchase price.

## **27 Purchases to which s 26 does not apply**

(1) For the purpose of section 26, a purchase or putative purchase of an interest in a motor vehicle by a person (the “**purchaser**”) is not for value and in good faith and without notice of a security interest in that motor vehicle where—

- (a) the purchaser is a member of the same household as the seller or putative seller; or
- (b) the purchaser and the seller or putative seller are bodies corporate that are related to each other; or
- (c) one of them, the purchaser and the seller or putative seller, is a body corporate and the other is a natural person who within the meaning of the Corporations Act is a director or officer of the body corporate;

unless the person asserting that it is such a purchase or putative purchase proves beyond reasonable doubt that it is such a purchase or putative purchase.

(2) For the purposes of subsection (1), the question whether bodies corporate are related to each other shall be determined in the same manner as the question whether corporations within the meaning of the Corporations Act are related to each other would be determined under that law.

**28 Compensation for loss etc. by holder of security interest**

(1) A person who suffers loss by reason that a security interest of which the person is the holder is extinguished by the operation of section 26,<sup>6</sup> being a security interest—

- (a) in relation to which an application for registration had been lodged with the chief executive; and
- (b) that, at the time the loss was suffered—
  - (i) had not been registered; or
  - (ii) was incorrectly entered in the register; or
  - (iii) had ceased to be registered by reason of the cancellation under section 20<sup>7</sup> of the registration;

is entitled to make application to the accountable officer for payment of compensation to the applicant.

(2) The accountable officer may make a payment to the applicant under the *Financial Administration and Audit Act 1977*, section 106.<sup>8</sup>

(3) The accountable officer may make a payment for loss suffered after the cancellation of a registration under section 20 only if the officer is satisfied that the applicant did not show sufficient cause under the section why the registration should not be cancelled—

- (a) because of circumstances beyond the applicant's control; or
- (b) for reasons that ought reasonably to be excused.

(4) Compensation paid in respect of an application under subsection (1) shall not exceed, after discounting for any GST payable on any supply relating to the payment of the compensation—

- (a) the amount of the debt or other pecuniary obligation or the value of any other obligation secured by the security interest; or
- (b) the value of the motor vehicle in which was held the security interest in respect of which compensation was applied for;

at the time the loss is suffered, whichever is the less.

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6 Section 26 (Extinguishing of security interest)

7 Section 20 (Chief executive may cancel registration)

8 *Financial Administration and Audit Act 1977*, section 106 (Losses and special payments)

(5) In this section—

“**accountable officer**” means the accountable officer of the department under the *Financial Administration and Audit Act 1977*.

### **30 Compensation for loss etc. by purchaser**

(1) A person who suffers loss arising from, or in connection with, the purchase or putative purchase of a motor vehicle where—

- (a) before the purchase was made or the putative purchase was entered upon, a certificate was issued under section 22<sup>9</sup> in respect of the motor vehicle; and
- (b) the certificate did not contain particulars of a registered security interest in respect of the motor vehicle at the time of issue of the certificate;

is entitled to make application to the accountable officer for the payment of compensation to the applicant.

(2) The accountable officer may make a payment to the applicant under the *Financial Administration and Audit Act 1977*, section 106.<sup>10</sup>

(3) The accountable officer must not make a payment if the applicant at the time of suffering the loss—

- (a) had actual notice of the security interest; or
- (b) had been put on inquiry as to the existence of such a security interest and had abstained from inquiry or further inquiry when the person might reasonably have expected the inquiry or further inquiry to reveal the security interest.

(4) In this section—

“**accountable officer**” means the accountable officer of the department under the *Financial Administration and Audit Act 1977*.

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9 Section 22 (Security interest certificate)

10 *Financial Administration and Audit Act 1977*, section 106 (Losses and special payments)

**30A Appointment and qualifications**

(1) The chief executive may appoint a public service officer as an inspector.

(2) However, the chief executive may appoint a person as an inspector only if the chief executive is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

**30B Appointment conditions and limit on powers**

(1) An inspector holds office on any conditions stated in—

- (a) the inspector's instrument of appointment; or
- (b) a signed notice given to the inspector; or
- (c) a regulation.

(2) The instrument of appointment, a signed notice given to the inspector or a regulation may limit the inspector's powers under this Act.

(3) In this section—

**“signed notice”** means a notice signed by the chief executive.

**30C Issue of identity card**

(1) The chief executive must issue an identity card to each inspector.

(2) The identity card must—

- (a) contain a recent photo of the inspector; and
- (b) contain a copy of the inspector's signature; and
- (c) identify the person as an inspector under this Act; and
- (d) state an expiry date for the card.

(3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

**30D Production or display of inspector's identity card**

(1) In exercising a power under this Act in relation to a person, an inspector must—

- (a) produce the inspector's identity card for the person's inspection before exercising the power; or
- (b) have the identity card displayed so it is clearly visible to the person when exercising the power.

(2) However, if it is not practicable to comply with subsection (1), the inspector must produce the identity card for the person's inspection at the first reasonable opportunity.

(3) For subsection (1), an inspector does not exercise a power in relation to a person only because the inspector has exercised a power of entry under section 30H(1)(b) or (2).

### **30E When inspector ceases to hold office**

(1) An inspector ceases to hold office if any of the following happens—

- (a) the term of office stated in a condition of office ends;
- (b) under another condition of office, the inspector ceases to hold office;
- (c) the inspector's resignation under section 30F takes effect.

(2) Subsection (1) does not limit the ways an inspector may cease to hold office.

(3) In this section—

**“condition of office”** means a condition on which the inspector holds office.

### **30F Resignation**

(1) An inspector may resign by signed notice given to the chief executive.

(2) However, if holding office as an inspector is a condition of the inspector holding another office, the inspector may not resign as an inspector without resigning from the other office.

**30G Return of identity card**

A person who ceases to be an inspector must return the person's identity card to the chief executive within 21 days after ceasing to be an inspector unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

**30H Power to enter places**

(1) An inspector may enter a place if—

- (a) its occupier consents to the entry; or
- (b) it is a public place and the entry is made when the place is open to the public; or
- (c) the entry is authorised by a warrant; or
- (d) the place is required to be open for inspection under the terms of a licence issued under the Auctioneers and Motor Dealers legislation.

(2) For the purpose of asking the occupier of a place for consent to enter, an inspector may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

**30I Entry with consent**

(1) This section applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place under section 30H(1)(a).

(2) Before asking for the consent, the inspector must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

(3) If the consent is given, the inspector may ask the occupier to sign an acknowledgment of the consent.



(4) The acknowledgment must state—

- (a) the occupier has been told—
  - (i) the purpose of the entry; and
  - (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) the occupier gives the inspector consent to enter the place and exercise powers under this Act; and
- (d) the time and date the consent was given.

(5) If the occupier signs the acknowledgment, the inspector must immediately give a copy to the occupier.

(6) If—

- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
- (b) an acknowledgement complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

### **30J Application for warrant**

(1) An inspector may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

### **30K Issue of warrant**

(1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and
- (b) the evidence is at the place, or may be at the place within the next 7 days.

(2) The warrant must state—

- (a) that a stated inspector may, with necessary and reasonable help and force—
  - (i) enter the place and any other place necessary for entry; and
  - (ii) exercise the inspector’s powers under this Act; and
- (b) the offence for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when the place may be entered; and
- (e) the date, within 14 days after the warrant’s issue, the warrant ends.

### **30L Special warrants**

(1) An inspector may apply for a warrant (a “**special warrant**”) by phone, fax, radio or another form of communication if the inspector considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the inspector’s remote location.

(2) Before applying for the special warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.

(3) The inspector may apply for the special warrant before the application is sworn.

(4) After issuing the special warrant, the magistrate must immediately fax a copy (the “**facsimile warrant**”) to the inspector if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy to the inspector—

- (a) the magistrate must tell the inspector—
  - (i) what the terms of the special warrant are; and

- (ii) the date and time the special warrant was issued; and
- (b) the inspector must complete a form of warrant (a “**warrant form**”) and write on it—
  - (i) the magistrate’s name; and
  - (ii) the date and time the magistrate issued the special warrant; and
  - (iii) the terms of the special warrant.

(6) The facsimile warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the other powers stated in the special warrant issued.

(7) The inspector must, at the first reasonable opportunity, send to the magistrate—

- (a) the sworn application; and
- (b) if the inspector completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the special warrant.

(9) If—

- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a special warrant; and
- (b) the warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a special warrant authorised the exercise of the power.

### **30M Warrants—procedure before entry**

(1) This section applies if an inspector named in a warrant issued under this Act for a place is intending to enter the place under the warrant.

(2) Before entering the place, the inspector must do or make a reasonable attempt to do the following things—

- (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the inspector’s identity card or other document evidencing the inspector’s appointment;

- (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form mentioned in section 30L(6), a copy of the facsimile warrant or warrant form;
- (c) tell the person the inspector is permitted by the warrant to enter the place;
- (d) give the person an opportunity to allow the inspector immediate entry to the place without using force.

(3) However, the inspector need not comply with subsection (2) if the inspector believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

### **30N General powers after entering places**

(1) This section applies to an inspector who enters a place.

(2) However, if an inspector enters a place to get the occupier's consent to enter premises, this section applies to the inspector only if the consent is given or the entry is otherwise authorised.

(3) For enforcing compliance with this Act, the inspector may—

- (a) search any part of the place; or
- (b) inspect, measure, test, photograph or film any part of the place or anything at the place; or
- (c) take a thing, or a sample of or from a thing, for analysis or testing; or
- (d) take an extract from, or copy, a document at the place; or
- (e) take into or onto the place any person, equipment and materials the inspector reasonably requires for exercising a power under this Act; or
- (f) require the occupier of the place, or a person at the place, to give the inspector reasonable help to exercise the inspector's powers under paragraphs (a) to (e); or
- (g) require the occupier of the place, or a person at the place, to give the inspector information to help the inspector ascertain whether this Act is being complied with.

(4) When making a requirement mentioned in subsection (3)(f) or (g), the inspector must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

**30O Failure to help inspector**

(1) A person required to give reasonable help under section 30N(3)(f) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) If an individual is required under section 30N(3)(f) to give information, or produce a document, it is a reasonable excuse for the individual not to comply with the requirement that complying with the requirement might tend to incriminate the individual.

**30P Failure to give information**

(1) A person of whom a requirement is made under section 30N(3)(g) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) It is a reasonable excuse for an individual not to comply with the requirement that complying with the requirement might tend to incriminate the individual.

**30Q Seizing evidence at a place that may be entered without consent or warrant**

An inspector who enters a place that may be entered under section 30H without the consent of the occupier and without a warrant, may seize a thing at the place if the inspector reasonably believes the thing is evidence of an offence against this Act.

**30R Seizing evidence at a place that may only be entered with consent or warrant**

(1) This section applies if—

- (a) an inspector is authorised to enter a place under section 30H only with the consent of the occupier of the place or a warrant; and
- (b) the inspector enters the place after obtaining the necessary consent or warrant.

(2) If the inspector enters the place with the occupier's consent, the inspector may seize a thing at the place if—

- (a) the inspector reasonably believes the thing is evidence of an offence against this Act; and
- (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.

(3) If the inspector enters the place with a warrant, the inspector may seize the evidence for which the warrant was issued.

(4) The inspector also may seize anything else at the place if the inspector reasonably believes—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being—
  - (i) hidden, lost or destroyed; or
  - (ii) used to continue, or repeat, the offence.

(5) Also, the inspector may seize a thing at the place if the inspector reasonably believes it has just been used in committing an offence against this Act.

### **30S Securing seized things**

Having seized a thing, an inspector may—

- (a) move the thing from the place where it was seized (the “**place of seizure**”); or
- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it.

*Examples of restricting access to a thing—*

1. Sealing a thing and marking it to show access to it is restricted.
2. Sealing the entrance to a room where the seized thing is situated and marking the entrance to show access to the room is restricted.

**30T Tampering with seized things**

If an inspector restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing, or something restricting access to the thing, without an inspector's approval.

Maximum penalty—50 penalty units.

**30U Power to support seizure**

(1) To enable a thing to be seized, an inspector may require the person in control of it—

- (a) to take it to a stated reasonable place by a stated reasonable time; and
- (b) if necessary, to remain in control of it at the stated place for a reasonable time.

(2) The requirement—

- (a) must be made by notice in the approved form; or
- (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice in the approved form as soon as practicable.

(3) A further requirement may be made under this section about the same thing if it is necessary and reasonable to make the further requirement.

(4) A person of whom a requirement is made under subsection (1) or (3) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—50 penalty units.

**30V Receipts for seized things**

(1) As soon as practicable after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.

(3) The receipt must describe generally each thing seized and its condition.

(4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt, given the thing's nature, condition and value.

### **30W Return of seized things**

(1) If a seized thing has not been forfeited, the inspector must return it to its owner—

- (a) at the end of 6 months; or
- (b) if a proceeding for an offence involving the thing is started within 6 months—at the end of the proceeding and any appeal from the proceeding.

(2) Despite subsection (1), unless the thing has been forfeited, the inspector must immediately return a thing seized as evidence to its owner if the inspector stops being satisfied its continued retention as evidence is necessary.

### **30X Access to seized things**

(1) Until a seized thing is forfeited or returned, an inspector must allow its owner to inspect it and, if it is a document, to copy it.

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

### **30Y Power to require name and address**

(1) This section applies if—

- (a) an inspector finds a person committing an offence against this Act; or
- (b) an inspector finds a person in circumstances that lead, or has information that leads, the inspector to reasonably suspect the person has just committed an offence against this Act.

(2) The inspector may require the person to state the person's name and residential address.

(3) When making the requirement, the inspector must warn the person it is an offence to fail to state the person's name or residential address unless the person has a reasonable excuse.



(4) The inspector may require the person to give evidence of the correctness of the stated name or residential address if the inspector reasonably suspects the stated name or address is false.

(5) A requirement under subsection (2) or (4) is called a “**personal details requirement**”.

### **30Z Failure to give name or address**

(1) A person of whom a personal details requirement is made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(2) A person does not commit an offence against subsection (1) if—

- (a) the person was required to state the person’s name and residential address by an inspector who suspected the person had committed an offence against this Act; and
- (b) the person is not proved to have committed the offence.

### **30ZA Notice of damage**

(1) This section applies if—

- (a) an inspector damages property when exercising or purporting to exercise a power; or
- (b) a person (the “**other person**”) acting under the direction of an inspector damages property.

(2) The inspector must immediately give notice of particulars of the damage to the person who appears to the inspector to be the owner of the property.

(3) If the inspector believes the damage was caused by a latent defect in the property or circumstances beyond the inspector’s or other person’s control, the inspector may state the belief in the notice.

(4) If, for any reason, it is impracticable to comply with subsection (2), the inspector must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

(5) This section does not apply to damage the inspector reasonably believes is trivial.

(6) In this section—

“owner”, of property, includes the person in possession or control of it.

### **30ZB Compensation**

(1) A person may claim from the chief executive the cost of repairing or replacing property damaged because of the exercise or purported exercise of a power under any of the following provisions (“**declared provisions**”)—

- section 30H
- section 30N
- section 30Q to 30S
- section 30U.

(2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under the declared provisions.

(3) Compensation may be claimed and ordered to be paid in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
- (b) for an offence against this Act brought against the person claiming compensation.

(4) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

### **30ZC False or misleading information**

A person must not give information to an inspector the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

### **30ZD False or misleading documents**

(1) A person must not give an inspector a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the inspector, to the best of the person's ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

### **30ZE Obstructing inspectors**

(1) A person must not obstruct an inspector in the exercise of a power unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) If a person has obstructed an inspector and the inspector decides to proceed with the exercise of the power, the inspector must warn the person that—

- (a) it is an offence to obstruct the inspector unless the person has a reasonable excuse; and
- (b) the inspector considers the person's conduct is an obstruction.

(3) In this section—

“**obstruct**” includes hinder and attempt to obstruct.

### **30ZG Arrangements for fees**

(1) A person may apply to the chief executive for approval of an arrangement for the payment of fees under this Act.

*Example—*

An arrangement may be for the payment of fees in advance or in arrears.

(2) The application must be—

- (a) in writing stating the particulars of the proposed arrangement; and
- (b) accompanied by the prescribed fee.

(3) If the chief executive approves the proposed arrangement, the person may pay fees under this Act in accordance with the arrangement.

### **31 Delegation**

The chief executive may delegate the chief executive's powers to a person who is a public service employee.

### **32 Protection**

(1) An officer or employee of the department, incurs no civil liability for an honest act or omission in the performance or purported performance of functions under this Act.

(2) A liability that would, apart from this section, attach to an officer or employee, attaches instead to the State.

### **34 Proceedings for offences**

(1) An offence against this Act may be prosecuted in a summary way under the *Justices Act 1886*, upon the complaint of any person authorised in writing in that behalf either generally or in the particular case by the Minister.

(2) A prosecution for an offence against this Act may be commenced within 1 year from the time when the matter of complaint arose or within 6 months after the matter of complaint comes to the knowledge of the complainant, whichever is the period later to expire.

(3) An authority to prosecute purporting to have been signed by the Minister is evidence of that authority without proof.

### **35 Offence by corporation**

Where an offence against this Act committed by a corporation is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the corporation, he or she, as well as the corporation, shall be deemed to have committed that offence and is liable to be proceeded against and punished accordingly.

### **36 Fees and penalties**

All fees paid and all penalties and costs recovered in relation to proceedings under this Act shall be paid to and form part of the consolidated fund.

**37 Evidentiary provisions**

In any proceedings—

- (a) it is not necessary to prove the appointment of the chief executive; and
- (b) a signature purporting to be that of the chief executive is evidence of the signature it purports to be; and
- (c) a certificate purporting to be signed by the chief executive stating that it is a copy or an extract of a document is evidence of the matter; and
- (d) a certificate purporting to be signed by the chief executive stating that on a day or time mentioned in the certificate—
  - (i) a security interest was registered; or
  - (ii) a document was filed or produced in the chief executive's office;is evidence of the matter; and
- (e) a certificate purporting to be signed by the chief executive stating that a document is a copy of a security interest certificate is evidence that it is a security interest certificate issued under the Act.

**38 Recognised States**

(1) If the Governor in Council is satisfied that—

- (a) another State or a Territory has enacted a law in relation to the registration of security interests; and
- (b) suitable arrangements may be made between Queensland and the other State or Territory for the recording and transfer of information in relation to the registrations;

the Governor in Council may, by regulation, declare that other State or Territory to be a recognised State.

(2) If a security interest is registered under the law of a recognised State, the security interest is taken to have been registered under this Act.

### **39 Regulation-making power**

(1) The Governor in Council may make regulations for the purposes of this Act.

(2) A regulation may make provision with respect to—

- (a) the matters for which fees, costs and charges are payable under this Act, the amounts of the fees, costs and charges, the persons who are liable to pay fees, costs and charges, when fees, costs and charges are payable, and the recovery of any unpaid amount of fees, costs and charges; and
- (b) prescribing offences for contraventions of a regulation, and fixing a maximum penalty of a fine of 20 penalty units for each contravention.

(3) The power to make a regulation under this Act to prescribe a fee includes, and is declared to have always included, the power to prescribe fees for the following—

- (a) an application to change particulars of a registered security interest entered in the register;
- (b) an application for correction of an error, omission or failure mentioned in section 19;<sup>11</sup>
- (c) an application for approval for a person to hold an account with the chief executive for fees payable by the person under this Act;
- (d) the inspection of an application made to the chief executive, other than an application mentioned in paragraph (c).

### **45 Validation of regulatory provisions**

(1) A regulatory provision as made and as amended from time to time prescribing for a matter mentioned in the provision is taken to be, and always to have been, as validly made as the provision would be, or would have been, if this Act had always authorised the Governor in Council to make a regulation prescribing for the matter in the provision.

(2) In this section—

**“matter”** includes fee.

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11 Section 19 (Correction of errors)

**“regulatory provision”** means each of the following provisions of the *Motor Vehicles Securities Regulation 1995*—

- (a) sections 9(3), 11(b) and 12;
- (b) schedule, items 6, 7, 8 and 12.

#### **46 Validation of inclusion of particulars of water damaged motor vehicles on register**

The inclusion by the chief executive on the register of the particulars of a water damaged motor vehicle before the commencement of the *Motor Vehicles Securities and Other Acts Amendment Act 2001* is taken to be and always to have been validly included as if this Act had always authorised the chief executive to include the particulars on the register.

#### **46A Declaration about commencement of certain provisions**

To remove any doubt, it is declared that the *Motor Vehicles Securities and Other Acts Amendment Act 2001*, section 19(4), part 3, sections 35, 36, 38 to 40, 42 and 46(2) are always taken to have commenced on 7 June 2001.

**ENDNOTES****1 Index to endnotes**

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 January 2003. Future amendments of the Motor Vehicles Securities Act 1986 may be made in accordance with this reprint under the Reprints Act 1992, section 49.



### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the latest reprint.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

#### TABLE OF REPRINTS

Reprint No.	Amendments included	Effective	Reprint date
1	to Act No. 57 of 1995	28 November 1995	13 December 1995
1A	to Act No. 56 of 1996	20 November 1996	20 January 1997
2	to Act No. 56 of 1996	20 November 1996	2 June 1998
2A	to Act No. 4 of 1999	7 May 1999	2 December 1999
2B	to Act No. 20 of 2000	1 July 2000	21 July 2000
2C	to Act No. 45 of 2001	15 July 2001	24 August 2001
2D	to Act No. 13 of 2002	24 April 2002	21 June 2002
			(Column discontinued)
			Notes
2E	to Act No. 13 of 2002	1 July 2002	
2F	to Act No. 52 of 2002	30 September 2002	
2G	to Act No. 68 of 2002	1 January 2003	

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	1
Obsolete and redundant provisions	1

## 6 List of legislation

### **Motor Vehicles Securities Act 1986 No. 24** (Motor Vehicles and Boats Securities Act 1986)

date of assent 8 April 1986

ss 1–2 commenced on date of assent (see s 2(1))

s 3 commenced 1 August 1986 (proc pubd gaz 26 July 1986 p 2283)

remaining provisions commenced 1 December 1986 (proc pubd gaz 1 November 1986 p 1353)

amending legislation—

### **Motor Vehicles Securities Act Amendment Act 1986 No. 38**

date of assent 15 September 1986

ss 1–2, 4 commenced on date of assent (see s 2(1))

remaining provisions commenced 1 December 1986 (proc pubd gaz 1 November 1986 p 1353)

### **Statute Law (Miscellaneous Provisions) Act 1989 No. 103 s 3 sch**

date of assent 25 October 1989

commenced on date of assent

### **Justice Legislation (Miscellaneous Amendments) Act 1991 No. 42 ss 1–3 sch**

date of assent 5 August 1991

commenced on date of assent

### **Justice Legislation (Miscellaneous Provisions) Act 1992 No. 40 pts 1, 4**

date of assent 14 August 1992

ss 1–2 commenced on date of assent

s 139 commenced 4 December 1992 (1992 SL No. 384)

remaining provisions commenced 17 April 1995 (1995 SL No. 90)

### **Statute Law (Miscellaneous Provisions) Act 1993 No. 32 ss 1–3 sch 1**

date of assent 3 June 1993

commenced on date of assent

### **Consumer Law (Miscellaneous Provisions) Act 1993 No. 82 pts 1, 8**

date of assent 17 December 1993

commenced on date of assent

**Consumer Law (Miscellaneous Provisions) Act 1995 No. 1 pts 1, 5 s 3 sch 1**

date of assent 3 March 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 17 April 1995 (1995 SL No. 89)

**Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 2**

date of assent 28 November 1995

commenced on date of assent

**Public Service Act 1996 No. 37 ss 1–2, 147 sch 2**

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

**Consumer Law and Other Justice Legislation (Miscellaneous Provisions) Act 1996  
No. 56 pts 1, 15**

date of assent 20 November 1996

commenced on date of assent

**Bills of Sale and Other Securities Amendment Act 1999 No. 4, pts 1, 4**

date of assent 18 March 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 7 May 1999 (1999 SL No. 78)

**GST and Related Matters Act 2000 No. 20 ss 1, 2(4), 29 sch 3**

date of assent 23 June 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2(4))

**Motor Vehicles Securities and Other Acts Amendment Act 2001 No. 38 pts 1–2,  
s 46(1) sch 1 (this Act is amended, see amending legislation below)**

date of assent 7 June 2001

ss 1–3, 6(2) (to the extent it ins the defs “auctioneer”, “Auctioneers and Motor Dealers legislation”, “identifying particulars”, “insurer” and “water damaged motor vehicle”), 7 (to the extent it ins s 5B), 8(3), 19(4), 25 (to the extent it ins ss 30A–30G, 30H, 30I–30M, 30N–30P, 30Q–30X, 30Y–30Z, 30ZA–30ZE and 30ZF–30ZG), 26, 27 (to the extent it ins ss 44A, 45–46) commenced on date of assent

s 27 (to the extent in ins s 46A) commenced 8 June 2002 (automatic commencement under AIA s 15DA(2))

remaining provisions not yet proclaimed into force (automatic commencement under AIA s 15DA(2) deferred to 8 June 2003 (2002 SL No. 114 s 2))

amending legislation—

**Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3 (amends  
2001 No. 38 above)**

date of assent 28 June 2001

ss 1–2 commenced on date of assent

sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

**Tourism, Racing and Fair Trading (Miscellaneous Provisions) Act 2002 No. 13 ss 1, 124 sch (amends 2001 No. 38 above)**

date of assent 24 April 2002  
commenced on date of assent

**Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3**

date of assent 28 June 2001  
ss 1–2 commenced on date of assent  
sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)  
remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

**Tourism, Racing and Fair Trading (Miscellaneous Provisions) Act 2002 No. 13 ss 1, 2(3), pt 15**

date of assent 24 April 2002  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 July 2002 (2002 SL No. 149)

**Motor Vehicles Securities and Another Act Amendment Act 2002 No. 50 pts 1–2**

date of assent 24 September 2002  
ss 1–2 commenced on date of assent  
remaining provisions commenced 30 September 2002 (see s 2)

**Tourism, Racing and Fair Trading (National Competition Policy) Amendment Act 2002 No. 52 ss 1, 2(2), 19 sch**

date of assent 24 September 2002  
ss 1–2, 19 commenced on date of assent  
remaining provisions commenced 1 January 2003 (2002 SL No. 296)

**Criminal Proceeds Confiscation Act 2002 No. 68 ss 1–2(1), 339 sch 4**

date of assent 29 November 2002  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 January 2003 (see s 2(1))

## 7 List of annotations

**Title** amd R1 (see RA s 37)  
sub 2001 No. 38 s 4

**PART 1—PRELIMINARY**

**pt hdg** ins 2001 No. 38 s 5

**Short title**

**s 1** sub 2001 No. 38 s 5

**Commencement**

s 2 om R1 (see RA s 37)

**Transitional provisions**

s 3 amd 1986 No. 38 s 4  
om 1992 No. 40 s 138

**Amendment of Bills of Sale and Other Instruments Act**

s 4 om 1992 No. 40 s 138

**Definitions**

prov hdg sub 1996 No. 56 s 137  
s 5 amd 1992 No. 40 s 139(3)  
renum (as s 2) 2001 No. 38 s 46(1) sch 1  
def “**approved form**” ins 2001 No. 38 s 6(2)  
def “**auctioneer**” ins 2001 No. 38 s 6(2)  
def “**Auctioneers and Motor Dealers legislation**” ins 2001 No. 38 s 6(2)  
def “**boat**” ins 2001 No. 38 s 6(2)  
def “**chassis number**” ins 2002 No. 50 s 4(1)  
def “**existing security interest**” ins 2001 No. 38 s 6(2) (amd 2002 No. 13 s 124 sch)  
def “**hire-purchase agreement**” amd 2002 No. 52 s 19 sch  
def “**holder**” ins 2001 No. 38 s 6(2) (amd 2002 No. 13 s 124 sch)  
def “**identifying particulars**” ins 2001 No. 38 s 6(2)  
amd 2002 No. 50 s 4(2)  
def “**insurer**” ins 2001 No. 38 s 6(2)  
def “**Minister**” om 1992 No. 40 s 139(1)  
def “**motor vehicle**” sub 1992 No. 40 s 139(1)–(2); 2001 No. 38 s 6(1)–(2)  
def “**primary section**” ins 2001 No. 38 s 6(2) (amd 2002 No. 13 s 124 sch)  
def “**registered security interest**” ins 1992 No. 40 s 139(2)  
def “**registrar**” sub 1992 No. 40 s 139(1)–(2)  
om 1995 No. 1 s 3 sch 1  
def “**security interest**” amd 2001 No. 38 s 6(3)  
def “**security interest certificate**” ins 1995 No. 1 s 3 sch 1  
def “**transferred security interest**” ins 2001 No. 38 s 6(2) (amd 2002 No. 13 s 124 sch)  
def “**VIN**” ins 2002 No. 50 s 4(1)  
def “**water damaged motor vehicle**” ins 2001 No. 38 s 6(2)

**Meaning of “motor vehicle”**

5A ins 2001 No. 38 s 7  
renum (as s 3) 2001 No. 38 s 46(1) sch 1

**Meaning of “water damaged motor vehicle”**

5B ins 2001 No. 38 s 7  
renum (as s 4) 2001 No. 38 s 46(1) sch 1  
amd 2002 No. 50 s 5

**Application of declared sections**

5C ins 2001 No. 38 s 7  
renum (as s 5) 2001 No. 38 s 46(1) sch 1

**PART 2—REGISTRATION, PRIORITY AND NOTICE OF SECURITY INTERESTS****pt hdg** ins 2001 No. 38 s 7**Register****s 6** amd 1986 No. 38 s 5  
sub 1992 No. 40 s 140  
amd 1995 No. 1 ss 16, 3 sch 1; 1996 No. 56 s 138; 2001 No. 38 ss 8(1)–(2), (3), 46(1) sch 1; 2002 No. 50 s 6**Approval of standard forms of instruments****s 6A** ins 1986 No. 38 s 6  
om 1992 No. 40 s 141**Application for registration, or renewal of registration, of security interest****prov hdg** amd 1996 No. 56 s 139(1)  
**s 7** amd 1986 No. 38 s 7  
sub 1992 No. 40 s 142  
amd 1995 No. 1 s 3 sch 1; 1996 No. 56 s 139(2); 2001 No. 38 s 9;  
2002 No. 50 s 7**Registration, or renewal of registration, of security interest****prov hdg** amd 1996 No. 56 s 140(1)  
**s 7AA** ins 1992 No. 40 s 142  
amd 1995 No. 1 s 3 sch 1; 1996 No. 56 s 140(2)–(4)  
renum (as s 7A) 2001 No. 38 s 46(1) sch 1**Expiry of registration****s 7AB** ins 1996 No. 56 s 141  
(2)–(9) exp 1 January 2003 (see s 7AB(9))  
renum (as s 7B) 2001 No. 38 s 46(1) sch 1**Renewal of registration and expiry of renewed registration****s 7AC** ins 1996 No. 56 s 141  
renum (as s 7C) 2001 No. 38 s 46(1) sch 1**Registration of confiscation orders****s 7A** ins 1991 No. 42 s 3 sch  
amd 1995 No. 57 s 4 sch 2; 2001 No. 38 s 10  
sub 2002 No. 68 s 339 sch 4**Application for assignment of a registered security interest****s 8** amd 1986 No. 38 s 8  
sub 1992 No. 40 s 143  
amd 1995 No. 1 s 3 sch 1; 2001 No. 38 s 11**Registration of assignment of a registered security interest****s 9** sub 1986 No. 38 s 9; 1992 No. 40 s 143  
amd 1995 No. 1 s 3 sch 1**Registration becomes effective on next business day****s 10** sub 1992 No. 40 s 143  
amd 1996 No. 56 s 142

**Effect of failure to register a security interest**

s 11 sub 1992 No. 40 s 143  
om 2001 No. 38 s 12

**Priority of security interests**

s 12 sub 1992 No. 40 s 144; sub 2001 No. 38 s 13 (as amd 2001 No. 45 s 29 sch 3)  
amd 2001 No. 45 s 29 sch 3

**Notice of security interest**

s 13 amd 1992 No. 40 s 145

**PART 3—DISCHARGE OF REGISTERED SECURITY INTERESTS**

pt hdg ins 2001 No. 38 s 14

**Division 1—Discharge of registered security interest**

div hdg ins 2001 No. 38 s 14

**Application for discharge of registered security interest**

s 14 amd 1986 No. 38 s 10  
sub 1992 No. 40 s 146  
amd 1995 No. 1 s 3 sch 1; 2001 No. 38 s 15

**Registration of discharge of registered security interest**

s 15 amd 1986 No. 38 s 11  
sub 1992 No. 40 s 146  
amd 1995 No. 1 s 3 sch 1

**Registration fees**

s 16 amd 1986 No. 38 s 12  
om 1992 No. 40 s 147

**Onus to cancel registration on discharge**

s 17 amd 1986 No. 38 s 13  
sub 1992 No. 40 s 148  
amd 1993 No. 32 s 3 sch 1; 1995 No. 1 s 3 sch 1; 1995 No. 57 s 4 sch 2

**Rectification of register**

s 18 amd 1995 No. 1 s 3 sch 1  
sub 2001 No. 38 s 16

**Removal of particulars of improperly registered interests**

s 18A ins 2001 No. 38 s 16

**Correction of errors**

s 19 amd 1986 No. 38 s 14  
sub 1992 No. 40 s 149  
amd 1995 No. 1 s 3 sch 1

**Chief executive may cancel registration**

s 20 sub 1992 No. 40 s 149  
amd 1995 No. 1 s 3 sch 1

**Division 2—False or misleading information or documents**

div hdg ins 2001 No. 38 s 17

**False or misleading information**

**s 21** amd 1986 No. 38 s 15  
sub 1992 No. 40 s 149

**False or misleading documents**

**s 21A** ins 1992 No. 40 s 149

**PART 4—SECURITY INTERESTS**

**pt hdg** ins 2001 No. 38 s 18

**Division 1—Security interest certificates**

**div hdg** ins 2001 No. 38 s 18

**Security interest certificate**

**s 22** sub 1992 No. 40 s 150; 1995 No. 1 s 17  
amd 2001 No. 38 ss 19(1)–(3), (4), (5), 46(1) sch 1

**Inspecting the register**

**s 23** sub 1992 No. 40 s 150; 1995 No. 1 s 17; 2001 No. 38 s 20

**Inspecting searchable application**

**s 23A** ins 2002 No. 13 s 57

**Forged etc. certificates**

**s 24** amd 1992 No. 40 s 151  
sub 1995 No. 1 s 17

**Division 2—Extinguishment of security interests**

**div hdg** ins 2001 No. 38 s 21

**Purchaser from approved dealer not to be deemed to have notice of security interest in certain circumstances**

**s 25** amd 1992 No. 40 s 152  
om 1995 No. 1 s 18

**Extinguishing of security interest**

**s 26** amd 1995 No. 1 s 3 sch 1; 2001 No. 38 s 22

**Revival of extinguished security interest**

**s 26A** ins 2001 No. 38 s 23

**Purchases to which s 26 does not apply**

**prov hdg** amd R1 (see RA s 5(d))  
**s 27** amd 1992 No. 40 s 153; 2001 No. 38 s 24; 2001 No. 45 s 29 sch 3

**Compensation for loss etc. by holder of security interest**

**s 28** amd 1986 No. 38 s 16; 1992 No. 40 s 154; 1993 No. 82 s 42; 1995 No. 1 s 3  
sch 1; 2000 No. 20 s 29 sch 3

**Compensation for loss during first 12 months of operation of section**

**s 29** om 1992 No. 40 s 155

**Compensation for loss etc. by purchaser**

**s 30** amd 1992 No. 40 s 156; 1993 No. 82 s 43; 1995 No. 57 s 4 sch 2; 1999 No. 4  
s 41  
sub 2001 No. 38 s 25



**PART 5—INVESTIGATION AND ENFORCEMENT****pt hdg** ins 2001 No. 38 s 25**Division 1—Inspectors****div hdg** ins 2001 No. 38 s 25**Appointment and qualifications****s 30A** ins 2001 No. 38 s 25**Appointment conditions and limit on powers****s 30B** ins 2001 No. 38 s 25**Issue of identity card****s 30C** ins 2001 No. 38 s 25**Production or display of inspector's identity card****s 30D** ins 2001 No. 38 s 25**When inspector ceases to hold office****s 30E** ins 2001 No. 38 s 25**Resignation****s 30F** ins 2001 No. 38 s 25**Return of identity card****s 30G** ins 2001 No. 38 s 25**Division 3—Powers of inspectors****div hdg** ins 2001 No. 38 s 25**Subdivision 1—Entry of places****sdiv hdg** ins 2001 No. 38 s 25**Power to enter places****s 30H** ins 2001 No. 38 s 25**Subdivision 2—Procedure for entry****sdiv hdg** ins 2001 No. 38 s 25**Entry with consent****s 30I** ins 2001 No. 38 s 25**Application for warrant****s 30J** ins 2001 No. 38 s 25**Issue of warrant****s 30K** ins 2001 No. 38 s 25**Special warrants****s 30L** ins 2001 No. 38 s 25**Warrants—procedure before entry****s 30M** ins 2001 No. 38 s 25**Subdivision 3—Powers after entry****sdiv hdg** ins 2001 No. 38 s 25

**General powers after entering places**

s 30N ins 2001 No. 38 s 25

**Failure to help inspector**

s 30O ins 2001 No. 38 s 25

**Failure to give information**

s 30P ins 2001 No. 38 s 25

**Subdivision 4—Power to seize evidence**sdiv hdg ins 2001 No. 38 s 25**Seizing evidence at a place that may be entered without consent or warrant**

s 30Q ins 2001 No. 38 s 25

**Seizing evidence at a place that may only be entered with consent or warrant**

s 30R ins 2001 No. 38 s 25

**Securing seized things**

s 30S ins 2001 No. 38 s 25

**Tampering with seized things**

s 30T ins 2001 No. 38 s 25

**Power to support seizure**

s 30U ins 2001 No. 38 s 25

**Receipts for seized things**

s 30V ins 2001 No. 38 s 25

**Return of seized things**

s 30W ins 2001 No. 38 s 25

**Access to seized things**

s 30X ins 2001 No. 38 s 25

**Subdivision 5—Power to obtain information**sdiv hdg ins 2001 No. 38 s 25**Power to require name and address**

s 30Y ins 2001 No. 38 s 25

**Failure to give name or address**

s 30Z ins 2001 No. 38 s 25

**Division 4—General enforcement matters**div hdg ins 2001 No. 38 s 25 (renum 2002 No. 13 s 124 sch)**Notice of damage**

s 30ZA ins 2001 No. 38 s 25

**Compensation**

s 30ZB ins 2001 No. 38 s 25

**False or misleading information**

s 30ZC ins 2001 No. 38 s 25

**False or misleading documents**

s 30ZD ins 2001 No. 38 s 25

**Obstructing inspectors**

s 30ZE ins 2001 No. 38 s 25

**PART 6—GENERAL**

pt hdg ins 2001 No. 38 s 25

**Notification of insurer's intention to sell water damaged motor vehicle**s 30ZF ins 2001 No. 38 s 25  
om 2002 No. 50 s 8**Arrangements for fees**

s 30ZG ins 2001 No. 38 s 25

**Delegation**s 31 amd 1989 No. 103 s 3 sch  
sub 1992 No. 40 s 157; 1995 No. 1 s 3 sch 1  
amd 1996 No. 37 s 147 sch 2**Protection**s 32 sub 1992 No. 40 s 157  
amd 1995 No. 1 s 3 sch 1**General penalty for offence**

s 33 om 1992 No. 40 s 158

**Proceedings for offences**

s 34 amd 1989 No. 103 s 3 sch

**Fees and penalties**

s 36 amd 1992 No. 40 s 159

**Evidentiary provisions**s 37 amd 1986 No. 38 s 17  
sub 1992 No. 40 s 160  
amd 1995 No. 1 s 3 sch 1**Recognised States**s 38 sub 1986 No. 38 s 18; 1992 No. 40 s 160  
amd 1995 No. 1 s 19**Regulation-making power**prov hdg sub 2001 No. 38 s 26(1)  
s 39 ins 1986 No. 38 s 19  
sub 1992 No. 40 s 160  
amd 2001 No. 38 s 26(2)–(4)**Savings provision**s 40 prev s 40 ins 1992 No. 40 s 160  
om 1995 No. 57 s 4 sch 2  
pres s 40 ins 2001 No. 38 s 27

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**PART 6—TRANSITIONAL PROVISIONS FOR MOTOR VEHICLES  
SECURITIES AND OTHER ACTS AMENDMENT ACT 2001**

**pt hdg** ins 2001 No. 38 s 27 (renum 2002 No. 13 s 124 sch)

**Validations**

**s 41** prev s 41 ins 1993 No. 82 s 44  
exp 17 January 1994 (see s 41(8))  
AIA s 20A applies (see s 41(7))  
pres s 41 ins 2001 No. 38 s 27 (amd 2002 No. 13 s 124 sch)

**Registration of existing security interest under Bills of Sale and Other Instruments  
Act 1955**

**s 42** ins 2001 No. 38 s 27 (amd 2002 No. 13 s 124 sch)

**Chief executive to register transferred security interest**

**s 43** ins 2001 No. 38 s 27

**Transitional rules for deciding priority of security interests**

**s 44** ins 2001 No. 38 s 27

**Chief executive may require notice about water damaged motor vehicles**

**s 44A** ins 2001 No. 38 s 27  
exp 7 June 2002 (see s 44A(3))

**PART 7—VALIDATION PROVISIONS**

**pt hdg** ins 2001 No. 38 s 27 (renum 2002 No. 13 s 124 sch)

**Validation of regulatory provisions**

**s 45** ins 2001 No. 38 s 27

**Validation of inclusion of particulars of water damaged motor vehicles on register**

**s 46** ins 2001 No. 38 s 27

**Declaration about commencement of certain provisions**

**s 46A** ins 2001 No. 38 s 27

**Expiry of pt 7**

**s 47** ins 2001 No. 38 s 27 (amd 2002 No. 13 s 124 sch)

## **8 Provisions that have not commenced and are not incorporated into reprint**

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

**Motor Vehicles Securities and Other Acts Amendment Act 2001 No. 38 ss 4, 5, 6(1), 6(2) (to the extent it ins the defs “approved form”, “boat”, “existing security interest”, “holder”, “motor vehicle”, “primary section”, “transferred security interest”), 6(3), 7 (to the extent it ins ss 5A and 5C and pt 2 hdg), 8(1)–(2), 9–12, 13 (as amd 2001 No. 45 s 29 sch 3), 14–18, 19(1)–(3), 19(5), 20–24, 25 (to the extent it sub s 30 and ins pt 5 hdg, div 1 and div 3 hdgs, sdiv 1–5 hdgs, div 4 hdg and pt 6 hdg) and**

27 (to the extent it ins s 40, pt 6 hdg, ss 41–44, pt 7 hdg and s 47). However, the uncommenced provisions were further amended by the Tourism, Racing and Fair Trading (Miscellaneous Provisions) Act 2002 No. 13 s 124 sch. These amendments appear as follows—

#### 4 Replacement of title

Title—

*omit, insert—*

‘An Act to provide for the registration of security interests in motor vehicles and boats, and for other purposes’.

#### 5 Replacement of s 1 (Short title)

Section 1—

*omit, insert—*

### ‘PART 1—PRELIMINARY

#### ‘1 Short title

‘This Act may be cited as the *Motor Vehicles and Boats Securities Act 1986*.’.

#### 6 Amendment of s 5 (Definitions)

(1) Section 5, definition “**motor vehicle**”—

*omit.*

(2) Section 5—

*insert—*

‘**“approved form”** means a form approved by the chief executive under section 40.<sup>12</sup>

**“boat”** means a ship within the meaning of the *Transport Operations (Marine Safety) Act 1994* that is registered under that Act.

**“existing security interest”**, for part 6, see section 41.

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12 Section 40 (Approved forms)

“**holder**”, for part 6, see section 41.

“**motor vehicle**” see section 3.

“**primary section**”, for part 6, see section 41.

“**transferred security interest**”, for part 6, see section 41.’.

(3) Section 5, definition “**security interest**”, after ‘motor vehicle’—

*insert—*

‘or boat’.

## **7 Insertion of new ss 5A to 5C and pt hdg**

After section 5—

*insert—*

### **‘5A Meaning of “motor vehicle”**

‘(1) “**Motor vehicle**” means a land vehicle that moves on wheels and is propelled by a motor that is part of the vehicle.

‘(2) “**Motor vehicle**” also includes a caravan or trailer designed to be attached to, or drawn by, a motor vehicle of a type mentioned in subsection (1).

‘(3) “**Motor vehicle**” does not include the following—

- (a) a vehicle designed for use primarily in the mining industry;
- (b) farm machinery;
- (c) a vehicle designed for use on a railway or tramway.

### **‘5C Application of declared sections**

‘(1) If a motor vehicle or boat is in Queensland, a declared section applies to a security interest in the motor vehicle or boat despite anything to the contrary in an Act or a law of another State about a security interest in the motor vehicle or boat.

‘(2) For subsection (1), it does not matter whether the interest is created within or outside Queensland.

‘(3) In this section—

“**declared section**” means each of the following—

- section 12
- section 13
- section 26
- section 26A
- section 27.<sup>13</sup>

## **‘PART 2—REGISTRATION, PRIORITY AND NOTICE OF SECURITY INTERESTS’.**

### **8 Amendment of s 6 (Register)**

(1) Section 6(2)(d), after ‘motor vehicle’—

*insert—*

‘or boat’.

(2) Section 6(3)—

*omit, insert—*

‘(3) The register may be kept in the way the chief executive considers appropriate.’.

### **9 Amendment of s 7 (Application for registration, or renewal of registration, of security interest)**

(1) Section 7(1)(b)—

*omit.*

(2) Section 7(1)(c)—

*renumber* as section 7(1)(b).

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<sup>13</sup> Section 12 (Priority of security interests), 13 (Notice of security interest), 26 (Extinguishing of security interest), 26A (Revival of extinguished security interest) and 27 (Purchases to which s 26 does not apply)

**10 Amendment of s 7A (Registration of restraining orders)**

Section 7A(2), (3) and (4) after ‘motor vehicle’—

*insert—*

‘or boat’.

**11 Amendment of s 8 (Application for assignment of a registered security interest)**

(1) Section 8(2)(b)—

*omit.*

(2) Section 8(2)(c)—

*renumber* as section 8(2)(b).

**12 Omission of s 11 (Effect of failure to register a security interest)**

Section 11—

*omit.*

**13 Replacement of s 12 (Priority of security interests)**

Section 12—

*omit, insert—*

**‘12 Priority of security interests**

‘(1) A registered security interest in a motor vehicle or boat ranks in priority over an unregistered security interest in the same motor vehicle or boat.

‘(2) A registered security interest in a motor vehicle or boat ranks in priority over another registered security interest in the same motor vehicle or boat according to the order of registration.

‘(3) An unregistered security interest in a motor vehicle or boat ranks in priority over a registered security interest in the same motor vehicle or boat if—

- (a) under the unregistered security interest the holder of the interest takes possession of the motor vehicle or boat; and



- (b) the taking of possession happens before the registered security interest is registered.

‘(4) Despite the *Property Law Act 1974*, section 82,<sup>14</sup> the priority given to a security interest under this section has effect for all amounts, including further advances, owing to the holder of the security interest under it.

‘(5) Subsections (1) to (4) apply subject to the following—

- (a) the Corporations Act  
 (b) an agreement between the holders of security interests.

‘(6) Also, despite subsections (1) to (4), a repairer’s lien over the motor vehicle or boat ranks in priority over any other security interest in the motor vehicle or boat regardless of—

- (a) when it was created; or  
 (b) whether it was registered, or if registered, when it was registered.

‘(7) In this section—

“**repairer’s lien**”, for a motor vehicle or boat, means a lien held by a person possessing the motor vehicle or boat as security for payment for services or materials supplied in relation to the motor vehicle or boat by the person in the ordinary course of business.’.

## **14 Insertion of pt and div hdgs**

After section 13—

*insert—*

### **‘PART 3—DISCHARGE OF REGISTERED SECURITY INTERESTS**

*‘Division 1—Discharge of registered security interest’.*

## **15 Amendment of s 14 (Application for discharge of registered security interest)**

(1) Section 14(1)(b)—

*omit.*

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14 *Property Law Act 1974*, section 82 (Tacking and further advances)

(2) Section 14(1)(c), ‘(if any)’—

*omit.*

(3) Section 14(1)(c)—

*renumber* as section 14(1)(b).

## **16 Replacement of s 18 (Rectification of register)**

Section 18—

*omit, insert—*

### **‘18 Rectification of register**

‘(1) This section applies if there is a change in any of the particulars entered in the register for a registered security interest.

‘(2) The chief executive may, on application by, or for, the holder of the interest, amend the register to record the change.

‘(3) The application must—

- (a) be made in the way prescribed under a regulation; and
- (b) be accompanied by the prescribed fee.

### **‘18A Removal of particulars of improperly registered interests**

‘(1) This section applies if, after registering an interest that appeared to the chief executive to be a security interest, the chief executive, whether on the basis of information given to the chief executive or otherwise, reasonably believes the interest is not a security interest.

‘(2) The chief executive may, by written notice, require the holder of the interest to give to the chief executive within a stated reasonable time, of at least 14 days, information the chief executive reasonably considers is necessary to enable the chief executive to decide whether the interest is a security interest.

‘(3) The holder must comply with the requirement within the time stated in the notice or the longer time the chief executive may allow in writing.

Maximum penalty—30 penalty units.

‘(4) After considering all the information given to the chief executive, the chief executive may, if reasonably satisfied the interest is not a security interest, remove the particulars of the interest included in the register.

‘(5) However, before removing the particulars, the chief executive must give written notice of the decision and the reasons for the decision to—

- (a) the holder; and
- (b) the person the chief executive reasonably believes is the owner or person in possession of the motor vehicle or boat the subject of the interest.

‘(6) The notice must state the following—

- (a) the holder may apply to a Magistrates Court (“**court**”) before the end of the notice period for an order maintaining the registration;
- (b) the particulars included in the register will be removed from the register unless the holder obtains a court order maintaining the registration.

‘(7) The chief executive must remove the particulars included in the register if—

- (a) before the end of the notice period, the holder has not—
  - (i) satisfied the chief executive that the holder has filed an application for an order maintaining the registration; or
  - (ii) given the chief executive a copy of a court order maintaining the registration; or
- (b) a court orders, on application under subsection (8), that the particulars included on the register be removed.

‘(8) On application by the holder, a court may order—

- (a) that the registration be maintained; or
- (b) that the particulars included in the register be removed.

‘(9) In this section—

“**notice period**” means a period of 14 days after giving a notice under subsection (5).’.

## 17 Insertion of div hdg

After section 20—

*insert—*

*‘Division 2—False or misleading information or documents’.*

**18 Insertion of pt hdg**

After section 21A—

*insert—*

**‘PART 4—SECURITY INTERESTS**

*‘Division 1—Security interest certificates’.*

**19 Amendment of s 22 (Security interest certificate)**

(1) Section 22(1), ‘vehicle’ to ‘approved form’—

*omit, insert—*

‘motor vehicle or boat if the person—

(a) asks the chief executive, in the way prescribed under a regulation’.

(2) Section 22(2), after ‘motor vehicle’—

*insert—*

‘or boat’.

(3) Section 22(2)(a) and (b), ‘the vehicle’—

*omit, insert—*

‘the motor vehicle or boat’.

(5) Section 22(5)—

*omit.*

**20 Replacement of s 23 (Inspecting the register)**

Section 23—

*omit, insert—*

**‘23 Inspecting register**

‘(1) On payment of the fee prescribed under a regulation, a person may inspect the register or get a copy of details in the register—

(a) at an office of the department when the office is open to the public; or

(b) by using a computer under arrangements approved by the chief executive.

‘(2) In this section—

“**computer**” means a mechanical, electronic or other device that processes data.’.

## **21 Insertion of div hdg**

After section 24—

*insert—*

*‘Division 2—Extinguishment of security interests’.*

## **22 Amendment of s 26 (Extinguishing of security interest)**

(1) Section 26(1), after ‘motor vehicle’, first mention—

*insert—*

‘or boat (the “**holder**”)’.

(2) Section 26(1), after ‘motor vehicle’, second, third and fourth mention—

*insert—*

‘or boat’.

(3) Section 26(1), ‘person’, second and third mention—

*omit, insert—*

‘purchaser’.

(4) Section 26(2) to (4)—

*renumber* as 26(4) to (6).

(5) Section 26(4) as renumbered, after ‘motor vehicle’—

*insert—*

‘or boat’.

(6) Section 26—

*insert—*

‘(2) If a security interest is extinguished under subsection (1), the holder of the security interest is, to the extent of the amount owing to the holder under the security interest, subrogated to the rights, if any, of the seller, or a predecessor in title of the seller, in the motor vehicle or boat, including the right to receive any unpaid purchase price for it.

‘(3) The purchaser obtains a good discharge—

- (a) as against the seller—for any payment of part of the purchase price made to the holder because of the holder’s rights under subsection (2); and
- (b) as against the seller and the holder—for any payment of part of the purchase price made by the purchaser before the purchaser receives notice of the holder’s rights mentioned in subsection (2).’.

### **23 Insertion of new s 26A**

After section 26—

*insert—*

#### **‘26A Revival of extinguished security interest**

‘(1) This section applies if—

- (a) a security interest in a motor vehicle or boat is extinguished under section 26(1); and
- (b) after the security interest is extinguished, the contract under which the purchaser purchased or putatively purchased an interest in the motor vehicle or boat is rescinded.

‘(2) On the rescission, the security interest in the motor vehicle or boat is revived and is taken not to have been extinguished by the purchase or putative purchase of an interest in the motor vehicle or boat.’.

### **24 Amendment of s 27 (Purchases to which s 26 does not apply)**

(1) Section 27(1), after ‘motor vehicle’—

*insert—*

‘or boat’.

(2) Section 27—

*insert—*

‘(3) Also for section 26, the purchase or putative purchase of an interest in the motor vehicle or boat by the purchaser is taken not to have been made for value and in good faith and without notice of a security interest in the motor vehicle or boat if—

- (a) the purchaser is—
  - (i) a lessor, owner or supplier of motor vehicles or boats who supplies them to anyone else as a user under a facility agreement; or
  - (ii) another person who purchases motor vehicles or boats with the intention of supplying them to others as users under facility agreements; and
- (b) before the purchaser purchased the interest in the motor vehicle or boat from the seller, the user under a facility agreement for the supply of the motor vehicle or boat—
  - (i) had negotiated for the supply of the motor vehicle or boat with the seller; and
  - (ii) had notice of an existing security interest in the motor vehicle or boat and has not acted in good faith.

‘(4) In this section—

“**facility agreement**” means a lease, hire purchase agreement or other contract for the supply of a motor vehicle or boat.

“**user**” means a lessee, hirer or buyer.’.

## **25 Replacement of s 30 (Compensation for loss etc. by purchaser)**

Section 30—

*omit, insert—*

### **‘30 Effects of incorrect certificate**

‘(1) This section applies if—

- (a) a purchaser purchases an interest in a motor vehicle or boat for value and in good faith; and
- (b) a certificate issued under section 22 for the motor vehicle or boat—

- (i) if the interest is purchased at auction—is given to the purchaser by the auctioneer within 48 hours after property in the interest passes to the purchaser; or
- (ii) if the interest is purchased other than at auction—is obtained by or for the purchaser on the day the interest is purchased, but before the purchase is completed; and
- (c) the certificate does not contain particulars of a security interest that was registered at the time the certificate was issued; and
- (d) the purchaser does not, at the time of the purchase, have notice of the security interest as mentioned in section 13(a) or (c)<sup>15</sup>.

‘(2) Despite the purchaser having notice of the security interest as mentioned in section 13(b), the security interest in the motor vehicle or boat is extinguished, or taken to have been extinguished, on the issue of the certificate.

‘(3) If the holder of the security interest extinguished under subsection (2) suffers loss because of the extinguishment, the holder may apply to the accountable officer for compensation.

‘(4) The accountable officer may make a payment to the person under the *Financial Administration and Audit Act 1977*, section 106.<sup>16</sup>

## ‘PART 5—INVESTIGATION AND ENFORCEMENT

### ‘*Division 1—Inspectors*

### ‘*Division 3—Powers of inspectors*

#### ‘*Subdivision 1—Entry of places*

#### ‘*Subdivision 2—Procedure for entry*

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15 Section 13 (Notice of security interest)

16 *Financial Administration and Audit Act 1977*, section 106 (Losses and special payments)



*‘Subdivision 3—Powers after entry*

*‘Subdivision 4—Power to seize evidence*

*‘Subdivision 5—Power to obtain information*

*‘Division 4—General enforcement matters*

## **‘PART 6—GENERAL’.**

### **27 Insertion of new s 40 and pts 6 and 7**

After section 39—

*insert—*

### **‘40 Approved forms**

‘The chief executive may approve forms for use under this Act.

## **‘PART 6—TRANSITIONAL PROVISIONS FOR MOTOR VEHICLES SECURITIES AND OTHER ACTS AMENDMENT ACT 2001**

### **‘41 Definitions for pt 6**

‘In this part—

“existing security interest” see section 42(1).

“holder” see section 42(1).

“primary section” see section 42(4).

“transferred security interest” see section 42(4)(a).

#### **‘42 Registration of existing security interest under Bills of Sale and Other Instruments Act 1955**

‘(1) This section applies if, immediately before the commencement of this section, a person (“**holder**”) holds a security interest (“**existing security interest**”), that is registered under the Bills of Sale Act, in a boat.

‘(2) Before the end of a period prescribed under a regulation, the holder may apply to the chief executive in the approved form to have the existing security interest, to the extent that it relates to the boat, registered under this Act.

‘(3) No fee is payable for the application.

‘(4) On the commencement of section 8 (the “**primary section**”) of the *Motor Vehicles Securities and Other Acts Amendment Act 2001*, an existing security interest, to the extent that it relates to the boat and for which the chief executive has received an application under subsection (2)—

(a) is taken to be a security interest registered under this Act (“**transferred security interest**”) from the time of its registration under the Bills of Sale Act; and

(b) ceases to be a registered security interest under the Bills of Sale Act.

‘(5) Despite subsection (4) and the Bills of Sale Act, section 7, and so that a transferred security interest has the same priority that it had as an existing security interest, the provisions of the Bills of Sale Act that applied immediately before the commencement of the primary section for the purposes of the priority of the existing security interest continue to apply to the transferred security interest after the commencement.

‘(6) In this section—

“**Bills of Sale Act**” means the *Bills of Sale and Other Instruments Act 1955*.

#### **‘43 Chief executive to register transferred security interest**

‘As soon as practicable after the commencement of the primary section, the chief executive must include the particulars of each transferred security interest in the register.

**‘44 Transitional rules for deciding priority of security interests**

‘(1) The provisions of this Act for deciding the priority of existing security interests and the *Property Law Act 1974*, section 82,<sup>17</sup> as those provisions and that section were in force immediately before the commencement, continue to have effect after the commencement for deciding priority as between—

- (a) the holders of existing security interests; and
- (b) the holder of an existing security interest and the holder of a new security interest.

‘(2) Subsection (1) applies subject to an agreement between the holders.

‘(3) In this section—

“**commencement**” means the commencement of this section.

“**existing security interest**” means a security interest in force immediately before the commencement.

“**new security interest**” means a security interest created after the commencement.

**‘PART 7—VALIDATION PROVISIONS****‘47 Expiry of pt 7**

‘This part expires 1 year after it commences.’.

**Motor Vehicles Securities and Other Acts Amendment Act 2001 No. 38 s 46(1) sch 1**  
reads as follows—

**MOTOR VEHICLES SECURITIES ACT 1986****1 Sections 5, 5A, 5B and 5C—**

*renumber* as sections 2, 3, 4 and 5.

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<sup>17</sup> *Property Law Act 1974*, section 82 (Tacking and further advances)

**2 Section 6(4)(b), after ‘motor vehicles’—**

*insert—*

‘or boats’.

**3 Sections 7AA, 7AB, 7AC and 7D—**

*renumber* as sections 7A, 7B, 7C and 7D.

**4 Section 22(3)(aa) and (b)—**

*omit, insert—*

- ‘(b) if identifying particulars for a motor vehicle are included on the register identifying the vehicle as a stolen or a water damaged motor vehicle—state that fact; and
- (c) if identifying particulars for a boat are included on the register identifying the boat as a stolen boat—state that fact; and
- (d) other particulars the chief executive considers appropriate.’.

**Note—The provisions below amend the Motor Vehicle Securities and Other Acts Amendment Act 2001 No. 38 pts 1–2, s 46(1) sch 1 (appearing above).**

**Tourism, Racing and Fair Trading (Miscellaneous Provisions) Act 2002 No. 13 s 124 sch reads as follows—**

**1 Section 6(2), definitions “existing security interest”, “holder”, “primary section” and “transferred security interest”, ‘part 6’—**

*omit, insert—*

‘part 7’.

**2 Section 25, new part 5, division 3—**

*renumber* as part 5, division 2.

**3 Section 25, new part 5, division 4—**

*renumber* as part 5, division 3.

**4 Section 27, heading—***omit, insert—***‘27 Insertion of new s 40 and pts 7 and 8’.****5 Section 27, new part 6—***renumber as part 7.***6 Section 27, new section 41, heading—***omit, insert—***‘41 Definitions for pt 7’.****7 Section 27, new section 42(4), ‘section 8’—***omit, insert—**‘section 8(1)’.***8 Section 27, new part 7—***renumber as part 8.***10 Section 27, new section 47, heading—***omit, insert—***‘47 Expiry of pt 8’.****11 Schedule 1, entry for Motor Vehicles Securities Act 1986, item 3—***omit, insert—***‘3 Sections 7AA, 7AB, 7AC and 7A—***renumber as sections 7A, 7B, 7C and 7D.’.*