

Queensland



**MOTOR VEHICLES
SECURITIES AND OTHER
ACTS AMENDMENT ACT 2001**

Act No. 38 of 2001

Queensland



MOTOR VEHICLES SECURITIES AND OTHER ACTS AMENDMENT ACT 2001

TABLE OF PROVISIONS

| Section | | Page |
|---|---|------|
| PART 1—PRELIMINARY | | |
| 1 | Short title | 8 |
| 2 | Commencement | 8 |
| PART 2—AMENDMENT OF MOTOR VEHICLES SECURITIES ACT 1986 | | |
| 3 | Act amended in pt 2 | 9 |
| 4 | Replacement of title | 9 |
| 5 | Replacement of s 1 (Short title) | 9 |
| PART 1—PRELIMINARY | | |
| 1 | Short title | 9 |
| 6 | Amendment of s 5 (Definitions) | 9 |
| 7 | Insertion of new ss 5A to 5C and pt hdg | 11 |
| | 5A Meaning of “motor vehicle” | 11 |
| | 5B Meaning of “water damaged motor vehicle” | 11 |
| | 5C Application of declared sections | 11 |
| PART 2—REGISTRATION, PRIORITY AND NOTICE OF SECURITY INTERESTS’. | | |
| 8 | Amendment of s 6 (Register) | 12 |
| 9 | Amendment of s 7 (Application for registration, or renewal of registration, of security interest) | 13 |
| 10 | Amendment of s 7A (Registration of restraining orders) | 13 |
| 11 | Amendment of s 8 (Application for assignment of a registered security interest) | 13 |
| 12 | Omission of s 11 (Effect of failure to register a security interest) | 13 |
| 13 | Replacement of s 12 (Priority of security interests) | 13 |

*Motor Vehicles Securities and Other Acts Amendment
Act 2001*

| | | |
|----|---|----|
| 12 | Priority of security interests | 14 |
| 14 | Insertion of pt and div hdgs | 15 |
| | PART 3—DISCHARGE OF REGISTERED SECURITY INTERESTS | |
| | <i>Division 1—Discharge of registered security interest’.</i> | |
| 15 | Amendment of s 14 (Application for discharge of registered security interest) | 15 |
| 16 | Replacement of s 18 (Rectification of register) | 15 |
| | 18 Rectification of register | 15 |
| | 18A Removal of particulars of improperly registered interests | 16 |
| 17 | Insertion of div hdg | 17 |
| | <i>Division 2—False or misleading information or documents’.</i> | |
| 18 | Insertion of pt hdg | 17 |
| | PART 4—SECURITY INTERESTS | |
| | <i>Division 1—Security interest certificates’.</i> | |
| 19 | Amendment of s 22 (Security interest certificate) | 17 |
| 20 | Replacement of s 23 (Inspecting the register) | 18 |
| | 23 Inspecting register | 18 |
| 21 | Insertion of div hdg | 18 |
| | <i>Division 2—Extinguishment of security interests’.</i> | |
| 22 | Amendment of s 26 (Extinguishing of security interest) | 19 |
| 23 | Insertion of new s 26A | 20 |
| | 26A Revival of extinguished security interest | 20 |
| 24 | Amendment of s 27 (Purchases to which s 26 does not apply) | 20 |
| 25 | Replacement of s 30 (Compensation for loss etc. by purchaser) | 21 |
| | 30 Effects of incorrect certificate | 21 |
| | PART 5—INVESTIGATION AND ENFORCEMENT | |
| | <i>Division 1—Inspectors</i> | |
| | 30A Appointment and qualifications | 22 |
| | 30B Appointment conditions and limit on powers | 22 |
| | 30C Issue of identity card | 23 |
| | 30D Production or display of inspector’s identity card | 23 |
| | 30E When inspector ceases to hold office | 23 |
| | 30F Resignation | 24 |

*Motor Vehicles Securities and Other Acts Amendment
Act 2001*

| | | |
|------|---|----|
| 30G | Return of identity card | 24 |
| | <i>Division 3—Powers of inspectors</i> | |
| | <i>Subdivision 1—Entry of places</i> | |
| 30H | Power to enter places | 24 |
| | <i>Subdivision 2—Procedure for entry</i> | |
| 30I | Entry with consent | 25 |
| 30J | Application for warrant | 26 |
| 30K | Issue of warrant | 26 |
| 30L | Special warrants | 27 |
| 30M | Warrants—procedure before entry | 28 |
| | <i>Subdivision 3—Powers after entry</i> | |
| 30N | General powers after entering places | 29 |
| 30O | Failure to help inspector | 29 |
| 30P | Failure to give information | 30 |
| | <i>Subdivision 4—Power to seize evidence</i> | |
| 30Q | Seizing evidence at a place that may be entered without consent or warrant 30 | |
| 30R | Seizing evidence at a place that may only be entered with consent or warrant | 30 |
| 30S | Securing seized things | 31 |
| 30T | Tampering with seized things | 31 |
| 30U | Power to support seizure | 31 |
| 30V | Receipts for seized things | 32 |
| 30W | Return of seized things | 32 |
| 30X | Access to seized things | 33 |
| | <i>Subdivision 5—Power to obtain information</i> | |
| 30Y | Power to require name and address | 33 |
| 30Z | Failure to give name or address | 34 |
| | <i>Division 4—General enforcement matters</i> | |
| 30ZA | Notice of damage | 34 |
| 30ZB | Compensation | 35 |
| 30ZC | False or misleading information | 35 |
| 30ZD | False or misleading documents | 35 |

*Motor Vehicles Securities and Other Acts Amendment
Act 2001*

| | | |
|----|---|----|
| | 30ZE Obstructing inspectors | 36 |
| | PART 6—GENERAL | |
| | 30ZF Notification of insurer’s intention to sell water damaged motor vehicle | 36 |
| | 30ZG Arrangements for fees | 37 |
| 26 | Amendment of s 39 (Regulations). | 37 |
| 27 | Insertion of new s 40 and pts 6 and 7 | 38 |
| | 40 Approved forms | 38 |
| | PART 6—TRANSITIONAL PROVISIONS FOR MOTOR VEHICLES SECURITIES AND OTHER ACTS AMENDMENT ACT 2001 | |
| | 41 Definitions for pt 6 | 38 |
| | 42 Registration of existing security interest under Bills of Sale and Other Instruments Act 1955 | 39 |
| | 43 Chief executive to register transferred security interest. | 40 |
| | 44 Transitional rules for deciding priority of security interests | 40 |
| | 44A Chief executive may require notice about water damaged motor vehicles | 40 |
| | PART 7—VALIDATION PROVISIONS | |
| | 45 Validation of regulatory provisions | 41 |
| | 46 Validation of inclusion of particulars of water damaged motor vehicles on register | 41 |
| | 47 Expiry of pt 7 | 41 |
| | PART 3—AMENDMENT OF AUCTIONEERS AND AGENTS ACT 1971 | |
| 28 | Act amended in pt 3 | 42 |
| 29 | Amendment of s 2 (Definitions) | 42 |
| 30 | Insertion of s 43A | 42 |
| | 43A Announcements before auction | 42 |
| 31 | Insertion of s 68A | 42 |
| | 68A Notice to be given about used motor vehicle—water damaged motor vehicle | 43 |
| | PART 4—AMENDMENT OF BILLS OF SALE AND OTHER INSTRUMENTS ACT 1955 | |
| 32 | Act amended in pt 4 | 43 |
| 33 | Replacement of s 7 (Application of pt 2) | 43 |
| | 7 Application of pt 2 | 43 |
| 34 | Insertion of new pt 7 | 44 |

*Motor Vehicles Securities and Other Acts Amendment
Act 2001*

| | |
|---|--|
| PART 7—TRANSITIONAL PROVISIONS FOR MOTOR VEHICLES SECURITIES AND OTHER ACTS AMENDMENT ACT 2001 | |
| 57 | Ending of registration of security interest over boat 44 |
| PART 5—AMENDMENT OF PROPERTY AGENTS AND MOTOR DEALERS ACT 2000 | |
| 35 | Act amended in pt 5. 45 |
| 36 | Replacement of s 17 (Meaning of “residential property”) 45 |
| 37 | Insertion of new ch 7, pt 2, div 7A 46 |
| | <i>Division 7A—Sales of used boats</i> |
| | 230A Definitions for div 7A 46 |
| | 230B Sales of used boats 47 |
| 38 | Insertion of new ch 7, pt 2, div 9. 48 |
| | <i>Division 9—Sales of water damaged motor vehicles</i> |
| | 232A Announcements before auction 48 |
| 39 | Insertion of new ch 9, pt 2, div 6. 48 |
| | <i>Division 6—Sales of used motor vehicles that are water damaged motor vehicles</i> |
| | 294A Notice to be given about used motor vehicle—water damaged motor vehicle 49 |
| 40 | Amendment of s 364 (Definitions for ch 11)‘Section 364, definition “contract”— 49 |
| 41 | Amendment of s 471 (Persons who can not claim). 49 |
| 42 | Amendment of sch 3 (Dictionary). 50 |
| PART 6—AMENDMENT OF SECOND–HAND DEALERS AND COLLECTORS ACT 1984 | |
| 43 | Act amended in pt 5. 50 |
| 44 | Amendment of s 6 (Definitions) 50 |
| 45 | Insertion of new pt 3, div 3 51 |
| | <i>Division 3—Sales of second hand boats, other than by auction</i> |
| | 48A Definitions for div 3. 51 |
| | 48B Sale of boat by disposer other than by auction 51 |
| PART 7—OTHER CONSEQUENTIAL AND MINOR AMENDMENTS OF ACTS AND REGULATION | |
| 46 | Amendments 53 |

*Motor Vehicles Securities and Other Acts Amendment
Act 2001*

| | |
|---|----|
| SCHEDULE 1 | 54 |
| CONSEQUENTIAL AND MINOR AMENDMENTS OF ACTS | |
| MOTOR VEHICLES SECURITIES ACT 1986 | 54 |
| PROPERTY AGENTS AND MOTOR DEALERS ACT 2000 | 55 |
| TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) ACT 1995 | 55 |
| SCHEDULE 2 | 56 |
| CONSEQUENTIAL AMENDMENT OF REGULATION | |
| MOTOR VEHICLES SECURITIES REGULATION 1995 | 56 |

Queensland



**Motor Vehicles Securities and Other Acts
Amendment Act 2001**

Act No. 38 of 2001

**An Act to amend the *Motor Vehicles Securities Act 1986*, and for other
purposes**

[Assented to 7 June 2001]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Motor Vehicles Securities and Other Acts Amendment Act 2001*.

2 Commencement

(1) The following provisions commence on assent—¹

- section 3
- section 6(2) (to the extent it inserts the definitions “**auctioneer**”, “**Auctioneers and Motor Dealers legislation**”, “**identifying particulars**”, “**insurer**” and “**water damaged motor vehicle**”)
- section 7 (to the extent it inserts section 5B)
- section 8(3)
- section 19(3A)
- section 25 (to the extent it inserts sections 30A to 30G, 30H, 30I to 30M, 30N to 30P, 30Q to 30X, 30Y to 30Z, 30ZA to 30ZE and 30ZF to 30ZG)
- section 26
- section 27 (to the extent it inserts sections 44A, 45 and 46)
- part 2A
- section 31
- section 31A
- sections 32A to 32C

¹ Because of the incorporation of amendments in committee and subsequent clerical renumbering, the references in this subsection to part 2A and sections 19(3A), 31, 31A, 32A to 32C, 34, and 38(2) should now be read as references to part 3 and sections 19(4), 35, 36, 38 to 40, 42 and 46(2) respectively.

- section 34 (to the extent it inserts the definition “**water damaged motor vehicle**”)
- section 38(2) and schedule 2.

(2) The remaining provisions commence on a day to be fixed by proclamation.

PART 2—AMENDMENT OF MOTOR VEHICLES SECURITIES ACT 1986

3 Act amended in pt 2

This part amends the *Motor Vehicles Securities Act 1986*.

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 40.²

“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*.

“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.

“holder”, for part 6, see section 41.

“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 vehicle identification number.

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

“motor vehicle” see section 3.

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

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

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

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

insert—

‘or boat’.

2 Section 40 (Approved forms)

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.

‘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, is so severely damaged by water that the vehicle’s insurer decides it is uneconomic to repair the vehicle.

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.

‘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 27.³

‘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.’.

(3) Section 6—

insert—

‘(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 section 30ZF or 44A;⁴ and

3 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)

4 Section 30ZF (Notification of insurer’s intention to sell water damaged motor vehicle) or 44A (Chief executive may require notice about water damaged motor vehicles)

- (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.’.

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).

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 82,⁵ 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) an express contrary provision in the Corporations Law;
- (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.’.

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

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.

(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’.

(4) Section 22(3)—

insert—

‘(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’.

(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)⁶.

‘(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 106.⁷

‘PART 5—INVESTIGATION AND ENFORCEMENT

‘Division 1—Inspectors

‘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.

⁶ Section 13 (Notice of security interest)

⁷ *Financial Administration and Audit Act 1977*, section 106 (Losses and special payments)

‘(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.

'Division 3—Powers of inspectors

'Subdivision 1—Entry of places

'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.

‘Subdivision 2—Procedure for entry

‘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.

‘Subdivision 3—Powers after entry

‘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.

‘Subdivision 4—Power to seize evidence

‘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.

‘Subdivision 5—Power to obtain information

‘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.

‘Division 4—General enforcement matters

‘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.

'PART 6—GENERAL

'30ZF Notification of insurer's intention to sell water damaged motor vehicle

'(1) This section applies if a water damaged motor vehicle is to be sold in Queensland by or for the vehicle's insurer.

'(2) The insurer must, at least 2 days before the day the vehicle is submitted for sale, advise the nominated seller of the vehicle that the vehicle is a water damaged motor vehicle.

Maximum penalty—50 penalty units.

'(3) The insurer must, at least 2 days before the day the vehicle is submitted for sale—

- (a) notify the chief executive that—

- (i) the vehicle is a water damaged vehicle; and
- (ii) the insurer intends to sell the vehicle; and
- (b) give the chief executive the vehicle's identifying particulars or ensure that the chief executive is given the identifying particulars.

Maximum penalty—50 penalty units.

‘(4) In this section—

“**nominated seller**”, of a water damaged motor vehicle, means the person instructed, or to be instructed, by the vehicle's insurer to sell the vehicle.

‘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.’.

26 Amendment of s 39 (Regulations)

(1) Section 39, heading—

omit, insert—

‘**39 Regulation-making power**’.

(2) Section 39(2)(a)—

omit.

(3) Section 39(2)(b) and (c)—

renumber as section 39(2)(a) and (b).

(4) Section 39—

insert—

‘(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;⁸
- (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).’.

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).

⁸ Section 19 (Correction of errors)

“**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 82,⁹ 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.

‘44A Chief executive may require notice about water damaged motor vehicles

‘(1) The chief executive may by written notice to an insurer require the insurer to give the chief executive, within the time stated in the notice of at least 21 days, a written statement of the identifying particulars of any water damaged motor vehicle sold by, or for, the insurer between 1 March 2001 and the commencement of this section.

‘(2) The insurer must ensure the chief executive is given the written statement of particulars unless the insurer has a reasonable excuse.

Maximum penalty—50 penalty units.’

⁹ *Property Law Act 1974*, section 82 (Tacking and further advances)

‘(3) This section expires 1 year after it commences.

‘PART 7—VALIDATION PROVISIONS

‘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.

“**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.

‘47 Expiry of pt 7

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

PART 3—AMENDMENT OF AUCTIONEERS AND AGENTS ACT 1971

28 Act amended in pt 3

This part amends the *Auctioneers and Agents Act 1971*.

29 Amendment of s 2 (Definitions)

Section 2—

insert—

‘**“water damaged motor vehicle”** means a motor vehicle—

- (a) that is a water damaged motor vehicle under the *Motor Vehicles Securities Act 1986*; and
- (b) whose identifying particulars are included in the register kept under that Act.’.

30 Insertion of s 43A

After section 43—

insert—

‘43A Announcements before auction

‘An auctioneer must announce, immediately before the auction of a water damaged motor vehicle, that the vehicle is a water damaged motor vehicle.

Maximum penalty—100 penalty units.’.

31 Insertion of s 68A

Part 5, division 4, after section 68—

insert—

‘68A Notice to be given about used motor vehicle—water damaged motor vehicle

‘(1) This section applies if a used motor vehicle that is a water damaged motor vehicle is to be sold by a motor dealer, other than by auction, to a prospective buyer (“**buyer**”).

‘(2) Before the motor dealer sells the vehicle to the buyer, the motor dealer must ask the buyer to sign a written acknowledgement, printed in type no smaller than 12 point, that the used motor vehicle is a water damaged motor vehicle.

Maximum penalty—200 penalty units.

‘(3) The motor dealer must—

- (a) give the original acknowledgement to the buyer; and
- (b) keep a copy of the acknowledgement for 5 years after it is signed; and
- (c) make a copy available for immediate inspection by an inspector who asks to see it.

Maximum penalty—200 penalty units.’.

**PART 4—AMENDMENT OF BILLS OF SALE AND
OTHER INSTRUMENTS ACT 1955**

32 Act amended in pt 4

This part amends the *Bills of Sale and Other Instruments Act 1955*.

33 Replacement of s 7 (Application of pt 2)

Section 7—

omit, insert—

‘7 Application of pt 2

‘This part does not apply to a security interest, whether created before or after the commencement of this section, to the extent that the security

interest relates to a motor vehicle or boat as defined under the *Motor Vehicles and Boats Securities Act 1986*, section 2.’.

34 Insertion of new pt 7

After section 56—

insert—

‘PART 7—TRANSITIONAL PROVISIONS FOR MOTOR VEHICLES SECURITIES AND OTHER ACTS AMENDMENT ACT 2001

‘57 Ending of registration of security interest over boat

‘(1) This section applies if, at the end of the prescribed period, a holder of an existing security interest in a boat as defined in the *Motor Vehicles and Boats Securities Act 1986* has not applied to the chief executive to have the interest, to the extent it relates to the boat, registered under the *Motor Vehicles and Boats Securities Act 1986*.

‘(2) To the extent the existing security interest relates to the boat—

- (a) the existing security interest ceases to be registered under this Act; and
- (b) part 2 no longer applies to the security interest.

‘(3) In this section—

“**prescribed period**” means the period prescribed under a regulation under the *Motor Vehicles and Boats Securities Act 1986*, section 42(2).¹⁰’.

¹⁰ *Motor Vehicles and Boats Securities Act 1986*, section 42 (Registration of existing security interest under Bills of Sale and Other Instruments Act 1955)

PART 5—AMENDMENT OF PROPERTY AGENTS AND MOTOR DEALERS ACT 2000

35 Act amended in pt 5

This part amends the *Property Agents and Motor Dealers Act 2000*.

36 Replacement of s 17 (Meaning of “residential property”)

Section 17—

omit, insert—

‘17 Meaning of “residential property”

‘(1) Property is **“residential property”** if the property is—

- (a) a single parcel of land on which a place of residence is constructed or being constructed; or
- (b) a single parcel of vacant land in a residential area.

‘(2) Without limiting subsection (1), property is **“residential property”** if the property is any of the following lots that is a place of residence or in a residential area—

- (a) a lot included in a community titles scheme, or proposed to be included in a community titles scheme, under the *Body Corporate and Community Management Act 1997*;
- (b) a lot or proposed lot under the *Building Units and Group Titles Act 1980*;
- (c) a lot shown on a leasehold building units plan registered or to be registered under the *South Bank Corporation Act 1989*.

‘(3) Despite subsections (1) and (2), the following property is not **“residential property”**—

- (a) a single parcel of land on which a place of residence is constructed or being constructed if the property is used substantially for the purposes of industry, commerce or primary production;
- (b) a single parcel of vacant land, if the property—
 - (i) is in a non-residential area; or

- (ii) is in a residential area, but only if a local government has approved development in relation to the property, the development is other than for residential purposes and the approval is current; or
- (iii) is used substantially for the purposes of industry, commerce or primary production.

‘(4) In this section—

“**development**” see the *Integrated Planning Act 1997*, section 1.3.2.

“**non-residential area**” means an area other than a residential area.

“**planning scheme**” see the *Integrated Planning Act 1997*, section 2.1.1.

“**residential area**” means an area identified on a map in a planning scheme as an area for residential purposes.

“**residential purposes**” includes rural residential purposes and future residential purposes.’.

37 Insertion of new ch 7, pt 2, div 7A

After section 230—

insert—

‘Division 7A—Sales of used boats

‘230A Definitions for div 7A

‘In this division—

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

“**boat registration law**” means any of the following—

- (a) the *Transport Operations (Marine Safety) Act 1994*;
- (b) the repealed *Queensland Marine Act 1958*;
- (c) a law of another State or a foreign country that corresponds to a law mentioned in paragraph (a) or (b).

“**disposer**” means a collector or dealer under the *Second-hand Dealers and Collectors Act 1984*.

“used boat” means a boat that has, at any time, been licensed or registered under a boat registration law.

‘230B Sales of used boats

‘(1) This section applies if a used boat is to be sold by an auctioneer at auction to someone else (**“buyer”**).

‘(2) The auctioneer must, within 48 hours after property in the boat passes to the buyer, give the buyer—

- (a) a security interest certificate for the boat issued after property in the boat passes; and
- (b) a notice (**“explanatory notice”**) in the approved form.

Maximum penalty—200 penalty units.

‘(3) If the security interest certificate for the boat shows that a security interest is registered for the boat—

- (a) the sale is ineffective from the time it is made; and
- (b) the responsible person must do everything in the person’s power to return the buyer to the position the buyer was in before the boat was purchased including, for example, by paying to the buyer—
 - (i) the amount the buyer paid for the boat; and
 - (ii) any amount the buyer paid for boat inspection, auctioneer’s charges or stamp duty.

‘(4) An amount payable to the buyer under subsection (3)(b) may be recovered as a debt.

‘(5) The auctioneer must ask the buyer to sign the acknowledgment of receipt of the security interest certificate included in the explanatory notice.

Maximum penalty—200 penalty units.

‘(6) The auctioneer must—

- (a) give the original of the explanatory notice to the buyer; and
- (b) keep a copy of the explanatory notice; and
- (c) make the copy available for immediate inspection by an inspector who asks to see it.

Maximum penalty—200 penalty units.

‘(7) The auctioneer may charge the buyer an amount for the provision of the security interest certificate not greater than the amount prescribed under a regulation.

‘(8) An auctioneer who charges a buyer an amount for providing the security interest certificate that is more than the amount prescribed commits an offence.

Maximum penalty—200 penalty units.

‘(9) A proceeding against an auctioneer for an offence against this section does not affect any civil liability of any person, including the auctioneer or disposer, arising out of the same facts that constitute the offence.

‘(10) In this section—

“responsible person” means—

- (a) if the auctioneer (“seller”) owns the boat or is auctioning the boat for someone other than a disposer or another auctioneer—the seller;
- (b) if the auctioneer (“seller”) is auctioning the boat for a disposer or another auctioneer (“other auctioneer”)—the disposer or other auctioneer for whom the seller is auctioning the boat.’.

38 Insertion of new ch 7, pt 2, div 9

Chapter 7, part 2—

insert—

‘Division 9—Sales of water damaged motor vehicles

‘232A Announcements before auction

‘An auctioneer must announce, immediately before the auction of a water damaged motor vehicle, that the vehicle is a water damaged motor vehicle.

Maximum penalty—100 penalty units.’.

39 Insertion of new ch 9, pt 2, div 6

Chapter 9, part 2—

insert—

‘Division 6—Sales of used motor vehicles that are water damaged motor vehicles

‘294A Notice to be given about used motor vehicle—water damaged motor vehicle

‘(1) This section applies if a used motor vehicle that is a water damaged motor vehicle is to be sold by a motor dealer, other than by auction, to a prospective buyer (“**buyer**”).

‘(2) Before the motor dealer sells the vehicle to the buyer, the motor dealer must ask the buyer to sign a written acknowledgement, printed in type no smaller than 12 point, that the used motor vehicle is a water damaged motor vehicle.

Maximum penalty—200 penalty units.

‘(3) The motor dealer must—

- (a) give the original of the acknowledgement to the buyer; and
- (b) keep a copy of the acknowledgement; and
- (c) make a copy available for immediate inspection by an inspector who asks to see it.

Maximum penalty—200 penalty units.’.

40 Amendment of s 364 (Definitions for ch 11)‘Section 364, definition “contract”—

omit, insert—

‘ “**contract**” means a contract, other than a contract formed on a sale by auction, to buy residential property in Queensland.’.

41 Amendment of s 471 (Persons who can not claim)

Section 471(2)—

insert—

- ‘(h) a person who suffers financial loss because of, or arising out of, the person’s dealings with an auctioneer in relation to the sale of a used boat.’.

42 Amendment of sch 3 (Dictionary)

Schedule 3—

insert—

‘**“boat”** for chapter 7, part 2, division 7A, see section 230A.

“disposer” for chapter 7, part 2, division 7A, see section 230A.

“used boat” for chapter 7, part 2, division 7A, see section 230A.

“water damaged motor vehicle” means a motor vehicle—

- (a) that is a water damaged motor vehicle under the *Motor Vehicles Securities Act 1986*; and
- (b) whose identifying particulars are included in the register kept under that Act.’.

PART 6—AMENDMENT OF SECOND-HAND DEALERS AND COLLECTORS ACT 1984

43 Act amended in pt 5¹¹

This part amends the *Second-hand Dealers and Collectors Act 1984*.

44 Amendment of s 6 (Definitions)

Section 6—

insert—

‘**“boat”**, for part 3, division 3, see section 48A.

“disposer”, for part 3, division 3, see section 48A.

“security interest certificate”, for part 3, division 3, see section 48A.’.

11 Because of the incorporation of amendments in committee and subsequent clerical renumbering, the reference in this section heading to part 5 should now be read as a reference to part 6.

45 Insertion of new pt 3, div 3

Part 3—

insert—

‘Division 3—Sales of second hand boats, other than by auction

‘48A Definitions for div 3

‘In this division—

“**boat**” means a boat as defined in the *Motor Vehicles and Boats Securities Act 1986* that is second-hand goods.

“**disposer**” means a collector or dealer.

“**security interest certificate**” means a security interest certificate issued under the *Motor Vehicles and Boats Securities Act 1986*, section 22.¹²

‘48B Sale of boat by disposer other than by auction

‘(1) This section applies to the sale of a boat by a disposer, in any way other than at auction, to some one else (“**buyer**”).

‘(2) The disposer must not agree to sell the boat to the buyer unless, immediately before the agreement is made, the disposer gives the buyer—

- (a) a notice (“**explanatory notice**”) in the approved form; and
- (b) a security interest certificate for the boat issued on that day (“**sale day**”).

Maximum penalty—200 penalty units.

‘(3) The disposer must ask the buyer to sign the acknowledgment of receipt of the security interest certificate included in the explanatory notice.

Maximum penalty—200 penalty units.

‘(4) The disposer must—

- (a) give the original of the explanatory notice to the buyer; and

¹² *Motor Vehicles and Boats Securities Act 1986*, section 22 (Security interest certificate)

- (b) keep a copy of the explanatory notice for the period prescribed under a regulation or, if no period is prescribed, for at least 2 years after the original of the notice is given to the buyer; and
- (c) make the copy available for immediate inspection by an authorised officer who asks to see it.

Maximum penalty—200 penalty units.

‘(5) The disposer may charge the buyer an amount for the provision of the security interest certificate not greater than the amount prescribed under a regulation.

‘(6) A disposer who charges a buyer an amount for providing the security interest certificate that is more than the amount prescribed commits an offence.

Maximum penalty—200 penalty units.

‘(7) Subsection (8) applies if—

- (a) the disposer contravenes subsection (2); and
- (b) on the sale day a registered security interest existed over the boat.

‘(8) The buyer may, within a reasonable time not longer than 6 months after becoming aware of the existence of the security interest, rescind the agreement by written notice to the disposer.

‘(9) If the buyer rescinds the agreement under subsection (8)—

- (a) the sale is ineffective from the time it is made; and
- (b) the disposer must do everything in the disposer’s power to return the buyer to the position the buyer was in before the boat was purchased including, for example, by paying to the buyer—
 - (i) the amount the buyer paid for the boat; and
 - (ii) any amount the buyer paid for boat inspection, registration transfer fees or stamp duty.

‘(10) An amount payable to the buyer under subsection (9) may be recovered as a debt.

‘(11) A proceeding against a disposer for an offence against this section does not affect any civil liability of any person, including the disposer, arising out of the same facts that constitute the offence.’

**PART 7—OTHER CONSEQUENTIAL AND MINOR
AMENDMENTS OF ACTS AND REGULATION**

46 Amendments

- (1) Schedule 1 amends the Acts mentioned in it.
- (2) Schedule 2 amends the regulation mentioned in it.

SCHEDULE 1

CONSEQUENTIAL AND MINOR AMENDMENTS OF ACTS

section 46(1)

MOTOR VEHICLES SECURITIES ACT 1986

1 Sections 5, 5A, 5B and 5C—

renumber as sections 2, 3, 4 and 5.

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.’.

SCHEDULE 1 (continued)

PROPERTY AGENTS AND MOTOR DEALERS ACT 2000

- 1** Schedule 3, definition “security interest certificate”, after ‘*Vehicles*’—

insert—

‘*and Boats*’.

**TRANSPORT OPERATIONS (ROAD USE
MANAGEMENT) ACT 1995**

- 1** Section 135(8), definition “security interest”, ‘*Securities*’ to ‘5(1)’—

omit, insert—

‘*and Boats Securities Act 1986, section 2*’.

SCHEDULE 2

CONSEQUENTIAL AMENDMENT OF REGULATION

section 46(2)

MOTOR VEHICLES SECURITIES REGULATION 1995

1 Section 12—

omit.