

CONSUMER LAW (MISCELLANEOUS PROVISIONS) BILL 1994

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The objectives of the legislation are to facilitate the joining of the Queensland Motor Vehicles Securities Register with the New South Wales (REVS) Register, to introduce into Queensland law the offence of odometer tampering, to effect the repeal of certain Acts, to introduce some consumer protection measures, and to effect some technical amendments to legislation.

The proposed amendments covered in the Consumer Law (Miscellaneous Provisions) Bill include:—

- A requirement that a motor dealer supply a purchaser of a used motor vehicle with a certificate from the Motor Vehicles Securities Register on the day that the sale is made;
- A requirement that a motor dealer ensures that title to a used motor vehicle is passed to the purchaser;
- The creation of the offence of odometer tampering;
- The removal of the present requirement under the *Auctioneers and Agents Act 1971* for the Registrar to publish the list of licensees under the Act;
- The repeal of the *Mortgage Brokers Act 1987* and the *Trade Measurement (Bread) Act 1990*.

Reasons for the Bill

At present there is no national linkage between Australian motor vehicle securities registries, which has resulted in losses of up to \$10 million annually because of cross border trading in encumbered vehicles. In 1991 the Special Premiers Conference acknowledged the problem and recommended that a national motor vehicle securities register be established as a matter of priority. Queensland has now indicated its intention to participate in the national implementation. The amendments put forward in this Bill, together with the amendments enacted in the *Justice Legislation (Miscellaneous Provisions) Act 1992*, will facilitate Queensland's participation in the national scheme.

The creation of the offence of odometer tampering and the introduction of the requirement that a motor dealer selling a used vehicle supply the purchaser with a security interest certificate from the Motor Vehicles Securities Register, are positive steps in consumer protection in the State.

Estimated cost for government implementation

Additional costs will be incurred in the establishment of the link-up with the New South Wales system. However, these costs will be offset by significant increases in revenue.

Consultation

In relation to the proposal to link Queensland with the national database, the following government departments/bodies were consulted:—

- Treasury
- Information Policy Board
- Office of the Cabinet
- Business Industry and Regional Development
- Participants in the Finance and Motor Dealing Industry

The amendments are supported by those parties consulted.

NOTES ON PROVISIONS

Details of specific clauses are as follows.

PART 1—PRELIMINARY

Clause 1 states the short title of the Act.

Clause 2 provides for the commencement day of the Bill.

Clause 3 states that schedule 1 amends the Acts mentioned in it.

Clause 4 states that schedule 2 repeals the Acts mentioned in it.

PART 2—AMENDMENT OF THE AUCTIONEERS AND AGENTS ACT 1971

Clause 5 states that the *Auctioneers and Agents Act 1971* is amended in this Part.

Clause 6 inserts the definition of “security interest certificate” into the *Auctioneers and Agents Act*.

Clause 7 omits section 57 and replaces it with a new section 57. The section provides that a motor dealer must ensure that the purchaser gains clear title to the motor vehicle at the time of sale. It is a defence for the motor dealer to prove that the dealer took all reasonable steps to ensure that section 57(2) is complied with. The clause further provides that the motor dealer is required to provide to the purchaser on the day of, and before the sale, a security interest certificate issued on the day of the sale.

The dealer is required to give to the purchaser an approved form stating particulars about the vehicle and stating that the dealer has ensured that the purchaser will gain clear title to the vehicle at the time of sale. The dealer must ask the purchaser to sign a form acknowledging the receipt of the

security interest certificate and the approved form.

Clause 8 creates the offence of odometer tampering. The clause provides that a person must not tamper with a motor vehicle's odometer with intent to falsely represent that, at a particular time, the vehicle had not travelled more than a specified distance.

The clause provides that the court, on finding a person guilty of an offence under section 59A(1), may, on its own initiative, or on the application of the person who has suffered loss, order the person who committed the offence to provide compensation for loss arising from the commission of the offence.

The clause further provides that evidence that a motor vehicle's odometer was tampered with when the vehicle was in dealer's possession is evidence that the dealer contravened section 59A(1). The clause further provides that evidence that a motor vehicle's odometer reading shortly after a dealer had possession of the vehicle was less than its reading when the dealer took possession of the vehicle is evidence that the dealer contravened section 59A(1).

Clause 9 provides that where a person recovers from the Auctioneers and Agents Fidelity Guarantee Fund an amount that is more than the person is entitled to recover under section 99(2), including an amount the person must notify the Auctioneers and Agents Committee of under section 99(2A), the amount to which the person is not entitled will be a debt recoverable by civil action.

PART 3—AMENDMENT OF MOTOR VEHICLES SECURITIES ACT 1986

Clause 10 provides that the *Motor Vehicles Securities Act 1986* is amended in this Part.

Clause 11.

Section 6(1) is amended by replacing the word “registrar” with “chief executive”.

Section 6(2)(c) will state that the register must state the date and time the

interest is registered.

Section 6(3) provides that the time stated in the register must be expressed as the relevant time in New South Wales.

Clause 12 omits sections 22-24.

Section 22 will allow the chief executive to issue security interest certificates in the way the chief executive considers appropriate. The time of issue of the certificate must be expressed as the relevant time in New South Wales.

Section 23 redrafts section 23 of the present Act and provides for the inspection of the register.

Section 24 is a redraft of section 24 of the present Act.

Clause 13 omits section 25.

Clause 14 amends section 38(2).

Schedule 1

CONSEQUENTIAL AND MINOR AMENDMENTS

AUCTIONEERS AND AGENTS ACT 1971

Clauses 1-5 redraft section 14A(3).

Clause 6 removes the requirement to Gazette licences under section 25.

Clause 7 renumbers section 25(5).

Clause 8 deletes the words “licence or” from section 28(6)(c).

Clause 9 omits section 41.

Clause 10 inserts “57” into section 98(1)(a).

MOTOR VEHICLES SECURITIES ACT 1986

These amendments replace the word “registrar” with the words “chief executive” in various sections. The amendments also allow the prescribing of matters under the regulations and for other minor matters.

**TRADE MEASUREMENT ACT 1990 AND TRADE
MEASUREMENT (ADMINISTRATION) ACT 1990**

These amendments are consequential amendments resulting from the repeal of the *Trade Measurement (Bread) Act 1990*.

Certain provisions in the *Trade Measurement (Administration) Act 1990* are also updated.

Schedule 2

Repeals the *Mortgage Brokers Act 1987* and the *Trade Measurement (Bread) Act 1990*.