

MOTOR VEHICLES SECURITIES AND OTHER ACTS AMENDMENT BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the legislation

The *Motor Vehicles Securities Act 1986* (“the Act”) provides for the registration of security interests over motor vehicles and trailers. The motor vehicles securities register has in recent years been linked electronically to similar registers in New South Wales, Victoria, the Australian Capital Territory, South Australia and the Northern Territory. The national register has become known as the Register of Encumbered Vehicles or REVS register.

The Bill will amend the Act to:

- provide for the registration of security interests over boats;
- implement recommendations of the National Vehicle Security Project; and
- make other miscellaneous amendments to: allow for streamlining of procedures, recognise computerisation of the register and other existing practises and validate the collection of some fees.

The addition of boats to the register is in response to industry requests and follows the lead of New South Wales which has included security interests over boats since 1996. While the boats register will not initially be linked to that in New South Wales, there is potential for that linkage in the future.

Amendments are also made to the *Second-hand Dealers and Collectors Act 1984* and the *Property Agents and Motor Dealers Act 2000* to ensure that the REVS for boats initiative has a consumer protection objective. The *Second-hand Dealers and Collectors Act 1984* will provide that second-hand boat dealers must produce a REVS certificate prior to sale, so that a prospective buyer will be aware whether or not the boat is encumbered. The *Property Agents and Motor Dealers Act 2000* will provide that in the

case of auction sales, where it is not known until after auction whether a particular boat will be sold or not, the certificate must be produced after auction. If a security interest is registered, then any moneys paid will be refunded.

The National Vehicle Security Project comprised a National Working Party which recommended amendments to the Act to eliminate inconsistencies between the REVS legislation in the various States and Territories. These recommendations were included in a 1996 Report written by Professor Tony Duggan, which is referred to below as the "Duggan Report." The implementation of these recommendations will improve the effectiveness of the national REVS register.

Administrative Cost

The Office of Fair Trading has recently undertaken a redevelopment of the REVS computer system, funded out of existing budgets. The new system incorporates the necessary systems for implementation of REVS for boats. As the service will be an extension of the existing REVS services, existing resources including staffing, will be utilised to implement and maintain the REVS for boats register.

Fundamental Legislative Principles

There is some possibility that some sections of the Regulation and four of the fees currently collected under the *Motor Vehicles Securities Regulation 1995* may be beyond the power of the Act. The Bill, for the avoidance of doubt, will validate these sections and the collection of these fees in the past.

Such a validating provision may be considered retrospective legislation. However, the provision is considered justified as it does not in any practical way change previous rights, obligations or expectations. It is curative in that it confirms the status quo and provides certainty by placing the validity of already existing legislative provisions beyond doubt.

The Bill provides for the transfer of existing security interests over boats from the Bills of Sale register to the REVS register. Security interest holders may apply for the transfer, free of charge. There is a possibility that a financier's rights may be adversely affected if it fails to apply for a transfer and the interest will have the status of an unregistered interest.

Deficiencies in the current Bills of Sale register mean that the security interests cannot be automatically transferred. The Department will be

sending to each security interest holder a list of its current interests on the Bills of Sale register. Each interest holder will then review the list and make application for transfer of any interest over a boat. This implementation process was the subject of consultation, and financiers considered any risk to be small compared with the overall benefits of the new register. Even if an interest is not transferred, there will be no loss to the interest holder unless a dispute arises over the boat.

Consultation

The Working Party for the National Vehicle Security Project consulted widely before preparing its final report. Twenty three submissions were received from a range of persons, groups and government agencies including: the Australian Law Reform Commission, the Commercial Vehicle Industry Association of Queensland, the Australian Bankers Association, the Australian Finance Conference, Credit Union Services Corporation (Aust) Limited and the Consumer Credit Legal Centre Inc (NSW).

First stage consultation on REVS for boats took place with the finance and boating industries in 1997. In February 2000 the Office of Fair Trading circulated a Consultation Paper to industry and consumer groups which canvassed specific implementation options for REVS for boats as well as the implementation of the National Vehicle Security Project recommendations. No consultation was conducted on the further miscellaneous amendments as these confirm current administrative practices.

Feedback on the Consultation Paper was received from the following government agencies: Queensland Treasury, Queensland Transport, the Department of State Development, the former Department of Employment, Training and Industrial Relations, the Department of Attorney-General and Minister for Justice, Queensland Police Service and the New South Wales Department of Fair Trading. Feedback was also received from the following industry and community groups:

- Australian Bankers' Association
- Credit Union Services Corporation
- Boating Industry Association of Queensland
- Australian Finance Conference
- Queensland Marine Brokers Association

Queensland Association of Permanent Building Societies Limited
Royal Queensland Yacht Squadron
Wynnum Manly Yacht Club Inc
Royal Automobile Club of Qld
Motor Trades Association of Queensland
Insurance Council of Australia
Financiers' Association of Australia Limited
Clayton Utz Solicitors

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Short title

Clause 1 sets out the short title of the Act.

Commencement

Clause 2 provides for the commencement of the Act.

PART 2—AMENDMENT OF MOTOR VEHICLES SECURITIES ACT 1986

Act amended in pt 2

Clause 3 provides that Part 2 amends the *Motor Vehicles Securities Act 1986*.

Replacement of title

Clause 4 amends the title of the Act to reflect the inclusion of security interests over boats on the register, and to delete reference to the registration of instruments.

Replacement of s1 (Short title)

Clause 5 inserts a new part heading into the Act and a new short title.

Amendment of s5 (Definitions)

Clause 6(1) deletes the current definition of “motor vehicle.”

Clause 6(2) inserts a definition of “boat” and inserts various cross references to definitions included in other parts of the Act.

Clause 6(3) includes a reference to “boat” in the definition of “security interest.”

Insertion of new ss 5A and 5B and pt heading

Clause 7 inserts new sections 5A and 5B (renumbered in Schedule 1 as sections 3 and 4 respectively). Section 5A moves the definition of “motor vehicle” from the *Motor Vehicles Securities Regulation 1995* into the Act. The drafting has been updated but the meaning is intended to remain the same. Section 5B implements a recommendation of the Duggan Report. It provides that the sections of the Act governing the priority and extinguishment of security interests apply to motor vehicles or boats when those motor vehicles or boats are situated in Queensland. Clause 7 also inserts a new part heading into the Act.

Amendment of s6 (Register)

Clause 8(1) amends subsection 6(2)(d) to provide that information about boats can be included on the register.

Clause 8(2) repeals subsection 6(3) which stipulated that the time on the register must be in New South Wales time. It inserts a new subsection 6(3) which recognises that the register may be kept in any manner, which would include for instance, a computerised register. Clause 8(2) also inserts a new subsection 6(4) which allows the chief executive to include stolen motor vehicle or boat information on the security interest register.

Amendment of s7 (Application for registration, or renewal of registration, of security interest)

Clause 9 repeals subsection 7(1)(b) which provides that an application for registration or renewal of a security interest must include the particulars prescribed in the regulation.

Amendment of s7A (Registration of restraining orders)

Clause 10 adds a reference to boats into section 7A. This means that restraining orders relating to boats under the *Crimes (Confiscation) Act 1989* can be included on the register.

Amendment of s8 (Application for assignment of a registered security interest)

Clause 11 repeals subsection 8(2)(b) which provides that an application for registration of an assignment of a security interest must include the particulars prescribed in the regulation.

Omission of s11 (Effect of failure to register a security interest)

Clause 12 repeals section 11. The Duggan Report recommended the repeal of this section on the basis that its meaning is unclear and it conflicts with other sections of the Act.

Replacement of s12 (Priority of security interests)

Clause 13 replaces the existing section 12 and in so doing inserts new rules into the Act governing the priority of competing security interests. These new rules were recommended by the Duggan Report and are based on those already contained in the *Bills of Sale and Other Instruments Act 1955*. Previously, if a later registered security interest holder had notice of an earlier unregistered security interest, then the earlier unregistered interest would still prevail.

The new rules provide that, with very limited exceptions, a registered interest will always prevail over an unregistered interest. The exceptions relate to: when the unregistered interest holder has possession of the vehicle or boat; when a repairer has a lien over the vehicle or boat; when the *Corporations Law* prevails, or when the two interest holders otherwise agree. The new subsection 12(4) also provides that the priority given to an

interest by the section relates to all existing and future amounts which it secures.

Insertion of pt and div headings

Clause 14 inserts new part and division headings into the Act.

Amendment of s14 (Application for discharge of registered security interest)

Clause 15 repeals subsection 14(1)(b) which provides that an application for discharge of a registered security interest must contain the particulars prescribed in the Regulation.

Replacement of s 18 (Rectification of register)

Clause 16 rewrites section 18 and inserts a new section 18A. Section 18 now provides that a change of particulars entered in the register can be made on application of the security interest holder or someone acting on his or her behalf. Section 18A provides a mechanism for the chief executive to deregister a purported security interest when it comes to his or her attention that the interest is not a true security interest. The holder of the security interest is given 14 days to show cause why the interest should not be deregistered. Both the holder of the interest and the owner of the vehicle or boat will be notified of any decision to deregister. An appeal against a decision to deregister is available to the Magistrates Court.

Insertion of div heading

Clause 17 inserts a new division heading into the Act.

Insertion of pt heading

Clause 18 inserts new part and division headings into the Act.

Amendment of s 22 (Security interest certificate)

Clause 19 amends section 22 to include references to boats so that a person may apply for a security interest certificate relating to a boat. It also deletes the requirement for an application for a certificate to be in the

approved form; provides that an application must be made in the way prescribed in the regulation, and deletes the requirement for the time on the certificate to be in New South Wales time.

Replacement of s 23 (Inspecting the register)

Clause 20 provides that inspection of the register can be done at any departmental office open to the public or by computer.

Insertion of div heading

Clause 21 inserts a new division heading into the Act.

Amendment of s 26 (Extinguishing of security interest)

Clause 22 amends section 26 so that the extinguishment rules apply to security interests over boats as well as over motor vehicles. It also implements a recommendation of the Duggan Report by providing that on extinguishment of a security interest under section 26, the security interest holder has certain rights to receive the unpaid balance of the purchase price of the boat or motor vehicle.

Insertion of new s 26A

Clause 23 inserts a new section 26A to provide for the revival of a security interest extinguished under section 26(1) when a sale is later rescinded (ie when for legal reasons, such as in cases of fraud, the sale may be taken to never have occurred).

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

Clause 24 inserts a reference to “boats” into section 27. It also implements a recommendation of the Duggan Report to provide that section 26 does not apply to extinguish an unregistered security interest in certain cases where the goods are on-sold through a financier to a third party who is acting in bad faith. The amendment will prevent the original seller and the third party from acting fraudulently to extinguish the unregistered security interest.

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

Clause 25 repeals and replaces section 30 and inserts a new section 30A. The former section 30 provided that where a security interest certificate mistakenly failed to show a registered interest, then a purchaser could apply to the accountable officer for compensation for any loss. The new section 30 provides instead that in these cases, the purchaser gets to keep the vehicle free of the interest, and the security interest holder can apply to the accountable officer for compensation. Section 30A provides that a person may apply to the chief executive for approval to pay any fees under the Act according to an approved arrangement.

Amendment of s 39 (Regulations)

Clause 26 amends section 39 to provide that the Regulation may prescribe fees relating to applications to change particulars on the register, applications to correct errors, applications for approval as an account holder and for the inspection of an application. The clause also confirms that there has always been power to make regulations on these matters.

Insertion of new s 40 and pts 6 and 7

Clause 27 gives the chief executive the power to approve forms for use under the Act. Clause 27 also inserts new Parts 6 and 7 into the Act. Part 6 is a transitional provision. It provides a mechanism for the transfer of existing registered bills of sale from the *Bills of Sale and Other Instruments Act 1955* to the *Motor Vehicles Securities Act 1986*, to the extent that those bills of sale relate to boats.

The intention is that this clause as far as it inserts new sections 42(1),(2),(3), will commence by proclamation before those provisions of the Bill which enable and recognise the registration of interests over boats. The security interest holder will apply for the transfer of the interest and the chief executive will register the interest under the *Motor Vehicles and Boats Securities Act 1986* immediately on commencement of the boats register (see ss42(4) and 43). The original date of registration will be preserved. The new section 42(5) provides that in the case of security interests transferred from the *Bills of Sale and Other Instruments Act 1955*, their existing priority will be preserved.

The new section 44 provides that security interests registered before the commencement of the new priority rules in section 12, will still be governed by the former rules.

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Part 7 validates the imposition of certain fees under the *Motor Vehicles Securities Regulation 1995*.

PART 3—AMENDMENT OF BILLS OF SALE AND OTHER INSTRUMENTS ACT 1955

Act amended in pt 3

Clause 28 provides that Part 3 amends the *Bills of Sale and Other Instruments Act 1955*.

Replacement of s7 (Application of pt 2)

Clause 29 amends the *Bills of Sale and Other Instruments Act 1955* to provide that security interests over boats will no longer be able to be registered under that Act.

Insertion of new pt 7

Clause 30 inserts a new Part 7 into the Act. The new section 57 is a transitional provision which will provide that on commencement of the new boats register, any security interest on the bills of sale register will cease to be registered to the extent that it relates to a boat.

PART 4—AMENDMENT OF PROPERTY AGENTS AND MOTOR DEALERS ACT 2000

Act amended in pt 4

Clause 31 provides that Part 4 amends the *Property Agents and Motor Dealers Act 2000*.

Insertion of new ch7, pt 2, div 7A

Clause 32 inserts a new Division 7A into the *Property Agents and Motor Dealers Act 2000*. A new section 230B provides for the provision of a security interest certificate and explanatory notice to a buyer after auction, of a used boat. If the certificate reveals a registered interest, then the buyer has a right to a refund of moneys paid. Offences are included for: failing to provide the certificate and explanatory notice; failing to request acknowledgment of their receipt; failing to retain a copy as required; failing to produce the copy to an inspector and for charging more for the certificate than is permitted by regulation.

Amendment of s 471 (Persons who can not claim)

Clause 33 amends section 471 of the *Property Agents and Motor Dealers Act 2000* to provide that any breach of section 230B will not result in a claim against the fund established under that Act.

Amendment of sch 3 (Dictionary)

Clause 34 inserts into Schedule 3, definitions of terms used in the new sections 230A and 230B.

PART 5—AMENDMENT OF SECOND-HAND DEALERS AND COLLECTORS ACT 1984

Act amended in pt 5

Clause 35 provides that Part 5 amends the *Second-hand Dealers and Collectors Act 1984*.

Amendment of s 6 (Definitions)

Clause 36 inserts cross references to new definitions included in Part 3, Division 3 of the *Second-hand Dealers and Collectors Act 1984*.

Amendment of pt 3 (Conduct of business)

Clause 37 inserts a new Division 3 into Part 3 of the *Second-hand Dealers and Collectors Act 1984*. A new section 48B applies to sales of second-hand boats other than by auction. The dealer or collector must provide the buyer with a security interest certificate immediately before entering into an agreement to sell the boat. If the certificate and accompanying information notice are not provided, and there was an interest registered at that time, then the buyer may later choose to rescind the contract and receive a refund of moneys paid. A new section 48A inserts relevant definitions.

Offences are included for: failing to provide the certificate and explanatory notice; failing to request acknowledgment of their receipt; failing to retain a copy as required; failing to produce the copy to an authorised departmental officer and for charging more for the certificate than is permitted by regulation.

PART 6—OTHER CONSEQUENTIAL AMENDMENTS OF ACTS AND REGULATION

Clause 38 provides that Schedule 1 amends the *Property Agents and Motor Dealers Act 2000* and the *Transport Operations (Road Use Management) Act 1995* to reflect the new name of the Act.

Clause 38 also provides that Schedule 2 amends the *Motor Vehicles Securities Regulation 1995* to delete provisions relating to payment by account. These are now included in the Act (see the new section 30A).