

Queensland



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



Queensland



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

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**2001**

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**A BILL**

**FOR**

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

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Bill 2001*

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**The Parliament of Queensland enacts—** 1

**PART 1—PRELIMINARY** 2

**Clause 1 Short title** 3

This Act may be cited as the *Motor Vehicles Securities and Other Acts Amendment Act 2001*. 4  
5

**Clause 2 Commencement** 6

(1) The following provisions commence on assent— 7

- section 25 (to the extent it inserts section 30A into the *Motor Vehicles Securities Act 1986*); 8  
9
- section 26; 10
- section 27 (to the extent it inserts section 45 into the *Motor Vehicles Securities Act 1986*); 11  
12
- section 38(2) and schedule 2. 13

(2) The remaining provisions commence on a day to be fixed by proclamation. 14  
15

**PART 2—AMENDMENT OF MOTOR VEHICLES  
SECURITIES ACT 1986** 16  
17

**Clause 3 Act amended in pt 2** 18

This part amends the *Motor Vehicles Securities Act 1986*. 19

**Clause 4 Replacement of title** 20

Title— 21

*omit, insert—* 22



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‘An Act to provide for the registration of security interests in motor vehicles and boats, and for other purposes’. 1  
2

Clause 5 Replacement of s 1 (Short title) 3

Section 1— 4

*omit, insert—* 5

**‘PART 1—PRELIMINARY** 6

**‘1 Short title** 7

‘This Act may be cited as the *Motor Vehicles and Boats Securities Act 1986*.’. 8  
9

Clause 6 Amendment of s 5 (Definitions) 10

(1) Section 5, definition “**motor vehicle**”— 11

*omit.* 12

(2) Section 5— 13

*insert—* 14

‘**“approved form”** means a form approved by the chief executive under section 40.<sup>1</sup> 15  
16

“**boat**” means a ship within the meaning of the *Transport Operations (Marine Safety) Act 1994* that is registered under that Act. 17  
18

“**existing security interest**”, for part 6, see section 41. 19

“**holder**”, for part 6, see section 41. 20

“**motor vehicle**” see section 3. 21

“**primary section**”, for part 6, see section 41. 22

“**transferred security interest**”, for part 6, see section 41.’. 23

(3) Section 5, definition “**security interest**”, after ‘motor vehicle’— 24

*insert—* 25

‘or boat’. 26

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1 Section 40 (Approved forms)

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|                 |   |                      |
|-----------------|---|----------------------|
| <b>Clause 7</b> | <b>Insertion of new ss 5A and 5B and pt hdg</b>   | 1                    |
|                 | After section 5—  | 2                    |
|                 | <i>insert—</i>  | 3                    |
|                 | <b>‘5A Meaning of “motor vehicle”</b>   | 4                    |
|                 | ‘(1) <b>“Motor vehicle”</b> means a land vehicle that moves on wheels and is propelled by a motor that is part of the vehicle.  | 5<br>6               |
|                 | ‘(2) <b>“Motor vehicle”</b> also includes a caravan or trailer designed to be attached to, or drawn by, a motor vehicle of a type mentioned in subsection (1).  | 7<br>8<br>9          |
|                 | ‘(3) <b>“Motor vehicle”</b> does not include the following—   | 10                   |
|                 | (a) a vehicle designed for use primarily in the mining industry;  | 11                   |
|                 | (b) farm machinery;   | 12                   |
|                 | (c) a vehicle designed for use on a railway or tramway.   | 13                   |
|                 | <b>‘5B Application of declared sections</b>   | 14                   |
|                 | ‘(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. | 15<br>16<br>17<br>18 |
|                 | ‘(2) For subsection (1), it does not matter whether the interest is created within or outside Queensland.   | 19<br>20             |
|                 | ‘(3) In this section—   | 21                   |
|                 | <b>“declared section”</b> means each of the following—  | 22                   |
|                 | • section 12  | 23                   |
|                 | • section 13  | 24                   |
|                 | • section 26  | 25                   |
|                 | • section 26A   | 26                   |
|                 | • section 27. <sup>2</sup>  | 27                   |

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2 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)

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

|                  |  |                |
|------------------|--|----------------|
|                  |  | 1              |
|                  |  | 2              |
| <b>Clause 8</b>  | <b>Amendment of s 6 (Register)</b>   | 3              |
|                  | (1) Section 6(2)(d), after ‘motor vehicle’—  | 4              |
|                  | <i>insert—</i>   | 5              |
|                  | ‘or boat’.   | 6              |
|                  | (2) Section 6(3)—  | 7              |
|                  | <i>omit, insert—</i>   | 8              |
|                  | ‘(3) The register may be kept in the way the chief executive considers appropriate.  | 9<br>10        |
|                  | ‘(4) The chief executive may also include in the register any particulars of stolen motor vehicles or boats the chief executive considers appropriate.’. | 11<br>12<br>13 |
| <b>Clause 9</b>  | <b>Amendment of s 7 (Application for registration, or renewal of registration, of security interest)</b>   | 14<br>15       |
|                  | (1) Section 7(1)(b)—   | 16             |
|                  | <i>omit.</i>   | 17             |
|                  | (2) Section 7(1)(c)—   | 18             |
|                  | <i>renumber</i> as section 7(1)(b).  | 19             |
| <b>Clause 10</b> | <b>Amendment of s 7A (Registration of restraining orders)</b>  | 20             |
|                  | Section 7A(2), (3) and (4) after ‘motor vehicle’—  | 21             |
|                  | <i>insert—</i>   | 22             |
|                  | ‘or boat’.   | 23             |
| <b>Clause 11</b> | <b>Amendment of s 8 (Application for assignment of a registered security interest)</b>   | 24<br>25       |
|                  | (1) Section 8(2)(b)—   | 26             |
|                  | <i>omit.</i>   | 27             |

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|                  |  |                |
|------------------|--|----------------|
|                  | (2) Section 8(2)(c)—   | 1              |
|                  | <i>renumber</i> as section 8(2)(b).  | 2              |
| <b>Clause 12</b> | <b>Omission of s 11 (Effect of failure to register a security interest)</b>  | 3              |
|                  | Section 11—  | 4              |
|                  | <i>omit.</i>   | 5              |
| <b>Clause 13</b> | <b>Replacement of s 12 (Priority of security interests)</b>  | 6              |
|                  | Section 12—  | 7              |
|                  | <i>omit, insert—</i>   | 8              |
|                  | <b>‘12 Priority of security interests</b>  | 9              |
|                  | ‘(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.   | 10<br>11<br>12 |
|                  | ‘(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.   | 13<br>14<br>15 |
|                  | ‘(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—  | 16<br>17<br>18 |
|                  | (a) under the unregistered security interest the holder of the interest takes possession of the motor vehicle or boat; and   | 19<br>20       |
|                  | (b) the taking of possession happens before the registered security interest is registered.  | 21<br>22       |
|                  | ‘(4) Despite the <i>Property Law Act 1974</i> , section 82, <sup>3</sup> the priority given to a security interest under this section has effect for all amounts, including further advances, owing to the holder of the security interest under it. | 23<br>24<br>25 |
|                  | ‘(5) Subsections (1) to (4) apply subject to the following—  | 26             |
|                  | (a) an express contrary provision in the Corporations Law;   | 27             |
|                  | (b) an agreement between the holders of security interests.  | 28             |

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

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‘(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.’.

**Clause 14 Insertion of pt and div hdgs** 11

After section 13— 12

*insert—* 13

**‘PART 3—DISCHARGE OF REGISTERED SECURITY INTERESTS** 14  
15

*‘Division 1—Discharge of registered security interest’.* 16

**Clause 15 Amendment of s 14 (Application for discharge of registered security interest)** 17  
18

(1) Section 14(1)(b)— 19

*omit.* 20

(2) Section 14(1)(c), ‘(if any)’— 21

*omit.* 22

(3) Section 14(1)(c)— 23

*renumber* as section 14(1)(b). 24

**Clause 16 Replacement of s 18 (Rectification of register)** 25

Section 18— 26

*omit, insert—* 27

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**‘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;

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(b) the particulars included in the register will be removed from the register unless the holder obtains a court order maintaining the registration. 1  
2  
3

‘(7) The chief executive must remove the particulars included in the register if— 4  
5

(a) before the end of the notice period, the holder has not— 6

(i) satisfied the chief executive that the holder has filed an application for an order maintaining the registration; or 7  
8

(ii) given the chief executive a copy of a court order maintaining the registration; or 9  
10

(b) a court orders, on application under subsection (8), that the particulars included on the register be removed. 11  
12

‘(8) On application by the holder, a court may order— 13

(a) that the registration be maintained; or 14

(b) that the particulars included in the register be removed. 15

‘(9) In this section— 16

“notice period” means a period of 14 days after giving a notice under subsection (5).’ 17  
18

**Clause 17 Insertion of div hdg** 19

After section 20— 20

*insert—* 21

*‘Division 2—False or misleading information or documents’.* 22

**Clause 18 Insertion of pt hdg** 23

After section 21A— 24

*insert—* 25

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**‘PART 4—SECURITY INTERESTS**

1

*‘Division 1—Security interest certificates’.*

2

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

3

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

4

*omit, insert—*

5

‘motor vehicle or boat if the person—

6

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

7

8

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

9

*insert—*

10

‘or boat’.

11

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

12

*omit, insert—*

13

‘the motor vehicle or boat’.

14

(4) Section 22(5)—

15

*omit.*

16

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

17

Section 23—

18

*omit, insert—*

19

**‘23 Inspecting register**

20

‘(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—

21

22

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

23

24

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

25

26

‘(2) In this section—

27



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“**computer**” means a mechanical, electronic or other device that processes data.’. 1  
2

**Clause 21 Insertion of div hdg** 3

After section 24— 4

*insert—* 5

***‘Division 2—Extinguishment of security interests’.*** 6

**Clause 22 Amendment of s 26 (Extinguishing of security interest)** 7

(1) Section 26(1), after ‘motor vehicle’, first mention— 8

*insert—* 9

‘or boat (the “**holder**”)’. 10

(2) Section 26(1), after ‘motor vehicle’, second, third and fourth mention— 11  
12

*insert—* 13

‘or boat’. 14

(3) Section 26(1), ‘person’, second and third mention— 15

*omit, insert—* 16

‘purchaser’. 17

(4) Section 26(2) to (4)— 18

*renumber* as 26(4) to (6). 19

(5) Section 26(4) as renumbered, after ‘motor vehicle’— 20

*insert—* 21

‘or boat’. 22

(6) Section 26— 23

*insert—* 24

‘(2) If a security interest is extinguished under subsection (1), the holder 25  
of the security interest is, to the extent of the amount owing to the holder 26  
under the security interest, subrogated to the rights, if any, of the seller, or a 27  
predecessor in title of the seller, in the motor vehicle or boat, including the 28  
right to receive any unpaid purchase price for it. 29

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- ‘(3) The purchaser obtains a good discharge— 1
- (a) as against the seller—for any payment of part of the purchase 2  
price made to the holder because of the holder’s rights under 3  
subsection (2); and 4
- (b) as against the seller and the holder—for any payment of part of 5  
the purchase price made by the purchaser before the purchaser 6  
receives notice of the holder’s rights mentioned in 7  
subsection (2).’ 8

**Clause 23 Insertion of new s 26A** 9

After section 26— 10

*insert—* 11

**‘26A Revival of extinguished security interest** 12

‘(1) This section applies if— 13

(a) a security interest in a motor vehicle or boat is extinguished 14  
under section 26(1); and 15

(b) after the security interest is extinguished, the contract under 16  
which the purchaser purchased or putatively purchased an 17  
interest in the motor vehicle or boat is rescinded. 18

‘(2) On the rescission, the security interest in the motor vehicle or boat is 19  
revived and is taken not to have been extinguished by the purchase or 20  
putative purchase of an interest in the motor vehicle or boat.’ 21

**Clause 24 Amendment of s 27 (Purchases to which s 26 does not apply)** 22

(1) Section 27(1), after ‘motor vehicle’— 23

*insert—* 24

‘or boat’. 25

(2) Section 27— 26

*insert—* 27

‘(3) Also for section 26, the purchase or putative purchase of an interest 28  
in the motor vehicle or boat by the purchaser is taken not to have been 29  
made for value and in good faith and without notice of a security interest in 30  
the motor vehicle or boat if— 31

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- (a) the purchaser is— 1
- (i) a lessor, owner or supplier of motor vehicles or boats who 2  
supplies them to anyone else as a user under a facility 3  
agreement; or 4
- (ii) another person who purchases motor vehicles or boats with 5  
the intention of supplying them to others as users under 6  
facility agreements; and 7
- (b) before the purchaser purchased the interest in the motor vehicle 8  
or boat from the seller, the user under a facility agreement for the 9  
supply of the motor vehicle or boat— 10
- (i) had negotiated for the supply of the motor vehicle or boat 11  
with the seller; and 12
- (ii) had notice of an existing security interest in the motor 13  
vehicle or boat and has not acted in good faith. 14

‘(4) In this section— 15

“**facility agreement**” means a lease, hire purchase agreement or other 16  
contract for the supply of a motor vehicle or boat. 17

“**user**” means a lessee, hirer or buyer.’. 18

**Clause 25 Replacement of s 30 (Compensation for loss etc. by purchaser) 19**

Section 30— 20

*omit, insert— 21*

**‘30 Effects of incorrect certificate 22**

‘(1) This section applies if— 23

- (a) a purchaser purchases an interest in a motor vehicle or boat for 24  
value and in good faith; and 25
- (b) a certificate issued under section 22 for the motor vehicle or 26  
boat— 27
- (i) if the interest is purchased at auction—is given to the 28  
purchaser by the auctioneer within 48 hours after property 29  
in the interest passes to the purchaser; or 30
- (ii) if the interest is purchased other than at auction—is 31  
obtained by or for the purchaser on the day the interest is 32  
purchased, but before the purchase is completed; and 33

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- 
- (c) the certificate does not contain particulars of a security interest that was registered at the time the certificate was issued; and 1  
2
- (d) the purchaser does not, at the time of the purchase, have notice of the security interest as mentioned in section 13(a) or (c)<sup>4</sup>. 3  
4
- ‘(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. 5  
6  
7  
8
- ‘(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. 9  
10  
11
- ‘(4) The accountable officer may make a payment to the person under the *Financial Administration and Audit Act 1977*, section 106.<sup>5</sup> 12  
13

## ‘PART 5—GENERAL 14

### ‘30A Arrangements for fees 15

‘(1) A person may apply to the chief executive for approval of an arrangement for the payment of fees under this Act. 16  
17

*Example—* 18

An arrangement may be for the payment of fees in advance or in arrears. 19

‘(2) The application must be— 20

(a) in writing stating the particulars of the proposed arrangement; 21  
and 22

(b) accompanied by the prescribed fee. 23

‘(3) If the chief executive approves the proposed arrangement, the person may pay fees under this Act in accordance with the arrangement.’. 24  
25

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4 Section 13 (Notice of security interest)

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

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|                  |   |    |
|------------------|---|----|
| <b>Clause 26</b> | <b>Amendment of s 39 (Regulations)</b>  | 1  |
|                  | (1) Section 39, heading—  | 2  |
|                  | <i>omit, insert—</i>  | 3  |
|                  | <b>‘39 Regulation-making power’.</b>  | 4  |
|                  | (2) Section 39(2)(a)—   | 5  |
|                  | <i>omit.</i>  | 6  |
|                  | (3) Section 39(2)(b) and (c)—   | 7  |
|                  | <i>renumber as section 39(2)(a) and (b).</i>  | 8  |
|                  | (4) Section 39—   | 9  |
|                  | <i>insert—</i>  | 10 |
|                  | ‘(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— | 11 |
|                  | (a) an application to change particulars of a registered security interest entered in the register;   | 12 |
|                  | (b) an application for correction of an error, omission or failure mentioned in section 19; <sup>6</sup>  | 13 |
|                  | (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;                                 | 14 |
|                  | (d) the inspection of an application made to the chief executive, other than an application mentioned in paragraph (c).’.   | 15 |
| <b>Clause 27</b> | <b>Insertion of new s 40 and pts 6 and 7</b>  | 16 |
|                  | After section 39—   | 17 |
|                  | <i>insert—</i>  | 18 |
|                  | <b>‘40 Approved forms</b>   | 19 |
|                  | ‘The chief executive may approve forms for use under this Act.  | 20 |

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6 Section 19 (Correction of errors)

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|  |                      |
|--|----------------------|
| <b>‘PART 6—TRANSITIONAL PROVISIONS FOR MOTOR VEHICLES SECURITIES AND OTHER ACTS AMENDMENT ACT 2001</b>   | 1<br>2<br>3          |
| <b>‘41 Definitions for pt 6</b>  | 4                    |
| ‘In this part—   | 5                    |
| <b>“existing security interest”</b> see section 42(1).   | 6                    |
| <b>“holder”</b> see section 42(1).   | 7                    |
| <b>“primary section”</b> see section 42(4).  | 8                    |
| <b>“transferred security interest”</b> see section 42(4)(a).   | 9                    |
| <br>   |                      |
| <b>‘42 Registration of existing security interest under Bills of Sale and Other Instruments Act 1955</b>   | 10<br>11             |
| ‘(1) This section applies if, immediately before the commencement of this section, a person ( <b>“holder”</b> ) holds a security interest ( <b>“existing security interest”</b> ), that is registered under the Bills of Sale Act, in a boat.  | 12<br>13<br>14       |
| ‘(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.  | 15<br>16<br>17<br>18 |
| ‘(3) No fee is payable for the application.  | 19                   |
| ‘(4) On the commencement of section 8 (the <b>“primary section”</b> ) of the <i>Motor Vehicles Securities and Other Acts Amendment Act 2001</i> , 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)— | 20<br>21<br>22<br>23 |
| (a) is taken to be a security interest registered under this Act ( <b>“transferred security interest”</b> ) from the time of its registration under the Bills of Sale Act; and   | 24<br>25<br>26       |
| (b) ceases to be a registered security interest under the Bills of Sale Act.   | 27<br>28             |
| ‘(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      | 29<br>30<br>31<br>32 |

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|---|----------------------------|
| purposes of the priority of the existing security interest continue to apply to the transferred security interest after the commencement.   | 1<br>2                     |
| ‘(6) In this section—   | 3                          |
| “ <b>Bills of Sale Act</b> ” means the <i>Bills of Sale and Other Instruments Act 1955</i> .  | 4<br>5                     |
| <b>‘43 Chief executive to register transferred security interest</b>  | 6                          |
| ‘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.  | 7<br>8<br>9                |
| <b>‘44 Transitional rules for deciding priority of security interests</b>   | 10                         |
| ‘(1) The provisions of this Act for deciding the priority of existing security interests and the <i>Property Law Act 1974</i> , section 82, <sup>7</sup> as those provisions and that section were in force immediately before the commencement, continue to have effect after the commencement for deciding priority as between— | 11<br>12<br>13<br>14<br>15 |
| (a) the holders of existing security interests; and   | 16                         |
| (b) the holder of an existing security interest and the holder of a new security interest.  | 17<br>18                   |
| ‘(2) Subsection (1) applies subject to an agreement between the holders.  | 19                         |
| ‘(3) In this section—   | 20                         |
| “ <b>commencement</b> ” means the commencement of this section.   | 21                         |
| “ <b>existing security interest</b> ” means a security interest in force immediately before the commencement.   | 22<br>23                   |
| “ <b>new security interest</b> ” means a security interest created after the commencement.  | 24<br>25                   |

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<sup>7</sup> *Property Law Act 1974*, section 82 (Tacking and further advances)

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**‘PART 7—VALIDATION PROVISION**

1

**‘45 Validation**

2

‘(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.

3

4

5

6

7

‘(2) In this section—

8

“**matter**” includes fee.

9

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

10

11

(a) sections 9(3), 11(b) and 12;

12

(b) schedule, items 6, 7, 8 and 12.

13

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

14

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

15

16

**Clause 28 Act amended in pt 3**

17

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

18

**Clause 29 Replacement of s 7 (Application of pt 2)**

19

Section 7—

20

*omit, insert*—

21

**‘7 Application of pt 2**

22

‘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.’.

23

24

25

26



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|                  |  |                          |
|------------------|--|--------------------------|
| <b>Clause 30</b> | <b>Insertion of new pt 7</b>   | 1                        |
|                  | After section 56—  | 2                        |
|                  | <i>insert—</i>   | 3                        |
|                  | <b>‘PART 7—TRANSITIONAL PROVISIONS FOR MOTOR<br/>VEHICLES SECURITIES AND OTHER ACTS<br/>AMENDMENT ACT 2001</b>   | 4<br>5<br>6              |
|                  | <b>‘57 Ending of registration of security interest over boat</b>   | 7                        |
|                  | ‘(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 <i>Motor Vehicles and Boats Securities Act 1986</i> has not applied to the chief executive to have the interest, to the extent it relates to the boat, registered under the <i>Motor Vehicles and Boats Securities Act 1986</i> . | 8<br>9<br>10<br>11<br>12 |
|                  | ‘(2) To the extent the existing security interest relates to the boat—   | 13                       |
|                  | (a) the existing security interest ceases to be registered under this Act; and   | 14<br>15                 |
|                  | (b) part 2 no longer applies to the security interest.   | 16                       |
|                  | ‘(3) In this section—  | 17                       |
|                  | <b>“prescribed period”</b> means the period prescribed under a regulation under the <i>Motor Vehicles and Boats Securities Act 1986</i> , section 42(2). <sup>8</sup> .  | 18<br>19                 |
|                  | <b>PART 4—AMENDMENT OF PROPERTY AGENTS AND<br/>MOTOR DEALERS ACT 2000</b>  | 20<br>21                 |
| <b>Clause 31</b> | <b>Act amended in pt 4</b>   | 22                       |
|                  | This part amends the <i>Property Agents and Motor Dealers Act 2000</i> .   | 23                       |

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<sup>8</sup> *Motor Vehicles and Boats Securities Act 1986*, section 42 (Registration of existing security interest under Bills of Sale and Other Instruments Act 1955)

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|                  |  |          |
|------------------|--|----------|
| <b>Clause 32</b> | <b>Insertion of new ch 7, pt 2, div 7A</b>   | 1        |
|                  | After section 230—   | 2        |
|                  | <i>insert—</i>   | 3        |
|                  | <b><i>‘Division 7A—Sales of used boats</i></b>   | 4        |
|                  | <b>‘230A Definitions for div 7A</b>  | 5        |
|                  | ‘In this division—   | 6        |
|                  | <b>“boat”</b> means a ship within the meaning of the <i>Transport Operations (Marine Safety) Act 1994</i> that is registered under that Act. | 7<br>8   |
|                  | <b>“boat registration law”</b> means any of the following—   | 9        |
|                  | (a) the <i>Transport Operations (Marine Safety) Act 1994</i> ;   | 10       |
|                  | (b) the repealed <i>Queensland Marine Act 1958</i> ;   | 11       |
|                  | (c) a law of another State or a foreign country that corresponds to a law mentioned in paragraph (a) or (b).                                 | 12<br>13 |
|                  | <b>“disposer”</b> means a collector or dealer under the <i>Second-hand Dealers and Collectors Act 1984</i> .                                 | 14<br>15 |
|                  | <b>“used boat”</b> means a boat that has, at any time, been licensed or registered under a boat registration law.                            | 16<br>17 |
|                  | <b>‘230B Sales of used boats</b>   | 18       |
|                  | ‘(1) This section applies if a used boat is to be sold by an auctioneer at auction to someone else ( <b>“buyer”</b> ).                       | 19<br>20 |
|                  | ‘(2) The auctioneer must, within 48 hours after property in the boat passes to the buyer, give the buyer—                                    | 21<br>22 |
|                  | (a) a security interest certificate for the boat issued after property in the boat passes; and   | 23<br>24 |
|                  | (b) a notice ( <b>“explanatory notice”</b> ) in the approved form.   | 25       |
|                  | Maximum penalty—200 penalty units.   | 26       |
|                  | ‘(3) If the security interest certificate for the boat shows that a security interest is registered for the boat—                            | 27<br>28 |
|                  | (a) the sale is ineffective from the time it is made; and  | 29       |

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|   |                      |
|---|----------------------|
| (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—                          | 1<br>2<br>3<br>4     |
| (i) the amount the buyer paid for the boat; and   | 5                    |
| (ii) any amount the buyer paid for boat inspection, auctioneer’s charges or stamp duty.   | 6<br>7               |
| ‘(4) An amount payable to the buyer under subsection (3)(b) may be recovered as a debt.   | 8<br>9               |
| ‘(5) The auctioneer must ask the buyer to sign the acknowledgment of receipt of the security interest certificate included in the explanatory notice.   | 10<br>11             |
| Maximum penalty—200 penalty units.  | 12                   |
| ‘(6) The auctioneer must—   | 13                   |
| (a) give the original of the explanatory notice to the buyer; and   | 14                   |
| (b) keep a copy of the explanatory notice; and  | 15                   |
| (c) make the copy available for immediate inspection by an inspector who asks to see it.  | 16<br>17             |
| Maximum penalty—200 penalty units.  | 18                   |
| ‘(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.  | 19<br>20<br>21       |
| ‘(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.  | 22<br>23<br>24       |
| Maximum penalty—200 penalty units.  | 25                   |
| ‘(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. | 26<br>27<br>28<br>29 |
| ‘(10) In this section—  | 30                   |
| “responsible person” means—   | 31                   |
| (a) if the auctioneer (“seller”) owns the boat or is auctioning the boat for someone other than a disposer or another auctioneer—the seller;  | 32<br>33<br>34       |

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- (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.’. 1  
2  
3

**Clause 33 Amendment of s 471 (Persons who can not claim)** 4

Section 471(2)— 5

*insert—* 6

- ‘(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.’. 7  
8  
9

**Clause 34 Amendment of sch 3 (Dictionary)** 10

Schedule 3— 11

*insert—* 12

‘**“boat”** for chapter 7, part 2, division 7A, see section 230A. 13

**“disposer”** for chapter 7, part 2, division 7A, see section 230A. 14

**“used boat”** for chapter 7, part 2, division 7A, see section 230A.’. 15

**PART 5—AMENDMENT OF SECOND-HAND DEALERS  
AND COLLECTORS ACT 1984** 16  
17

**Clause 35 Act amended in pt 5** 18

This part amends the *Second-hand Dealers and Collectors Act 1984*. 19

**Clause 36 Amendment of s 6 (Definitions)** 20

Section 6— 21

*insert—* 22

‘**“boat”**, for part 3, division 3, see section 48A. 23

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“**disposer**”, for part 3, division 3, see section 48A. 1

“**security interest certificate**”, for part 3, division 3, see section 48A.’. 2

**Clause 37 Insertion of new pt 3, div 3** 3

Part 3— 4

*insert—* 5

*‘Division 3—Sales of second hand boats, other than by auction* 6

**‘48A Definitions for div 3** 7

‘In this division— 8

“**boat**” means a boat as defined in the *Motor Vehicles and Boats Securities Act 1986* that is second-hand goods. 9  
10

“**disposer**” means a collector or dealer. 11

“**security interest certificate**” means a security interest certificate issued under the *Motor Vehicles and Boats Securities Act 1986*, section 22.<sup>9</sup> 12  
13

**‘48B Sale of boat by disposer other than by auction** 14

‘(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**”). 15  
16

‘(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— 17  
18

(a) a notice (“**explanatory notice**”) in the approved form; and 19

(b) a security interest certificate for the boat issued on that day (“**sale day**”). 20  
21

Maximum penalty—200 penalty units. 22

‘(3) The disposer must ask the buyer to sign the acknowledgment of receipt of the security interest certificate included in the explanatory notice. 23  
24

Maximum penalty—200 penalty units. 25

‘(4) The disposer must— 26

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

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|  |                |
|--|----------------|
| (a) give the original of the explanatory notice to the buyer; and  | 1              |
| (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          | 2<br>3<br>4    |
| (c) make the copy available for immediate inspection by an authorised officer who asks to see it.  | 5<br>6         |
| Maximum penalty—200 penalty units.   | 7              |
| ‘(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.   | 8<br>9<br>10   |
| ‘(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.  | 11<br>12<br>13 |
| Maximum penalty—200 penalty units.   | 14             |
| ‘(7) Subsection (8) applies if—  | 15             |
| (a) the disposer contravenes subsection (2); and   | 16             |
| (b) on the sale day a registered security interest existed over the boat.  | 17             |
| ‘(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.                   | 18<br>19<br>20 |
| ‘(9) If the buyer rescinds the agreement under subsection (8)—   | 21             |
| (a) the sale is ineffective from the time it is made; and  | 22             |
| (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—                   | 23<br>24<br>25 |
| (i) the amount the buyer paid for the boat; and  | 26             |
| (ii) any amount the buyer paid for boat inspection, registration transfer fees or stamp duty.  | 27<br>28       |
| ‘(10) An amount payable to the buyer under subsection (9) may be recovered as a debt.  | 29<br>30       |
| ‘(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.’ | 31<br>32<br>33 |

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**PART 6—OTHER CONSEQUENTIAL AND MINOR  
AMENDMENTS OF ACTS AND REGULATION** 1  
2

**Clause 38 Amendments** 3

(1) Schedule 1 amends the Acts mentioned in it. 4

(2) Schedule 2 amends the regulation mentioned in it. 5

|  |        |
|--|--------|
| <b>SCHEDULE 1</b>  | 1      |
| <b>CONSEQUENTIAL AND MINOR AMENDMENTS OF<br/>ACTS</b>                  | 2<br>3 |
| section 38(1)  | 4      |
| <b>MOTOR VEHICLES SECURITIES ACT 1986</b>                              | 5      |
| <b>1 Sections 5, 5A, 5B, 6, 7, 7AA, 7AB, 7AC and 7A—</b>               | 6      |
| <i>renumber</i> as sections 2, 3, 4, 5, 6, 7, 7A, 7B and 7C.           | 7      |
| <b>2 Section 2, as renumbered, definition “register”, ‘section 6’—</b> | 8      |
| <i>omit, insert—</i>   | 9      |
| ‘section 5’.   | 10     |
| <b>3 Section 7(1), as renumbered, ‘section 7’—</b>                     | 11     |
| <i>omit, insert—</i>   | 12     |
| ‘section 6’.   | 13     |
| <b>4 Section 7(1), as renumbered, ‘section 6(2)’—</b>                  | 14     |
| <i>omit, insert—</i>   | 15     |
| ‘section 5(2)’.  | 16     |



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SCHEDULE 1 (continued)

|   |   |        |
|---|---|--------|
|   | <b>PROPERTY AGENTS AND MOTOR DEALERS ACT 2000</b>                                     | 1      |
| 1 | Schedule 3, definition “security interest certificate”, after<br>‘ <i>Vehicles</i> ’— | 2<br>3 |
|   | <i>insert</i> —   | 4      |
|   | ‘ <i>and Boats</i> ’.   | 5      |
|   | <b>TRANSPORT OPERATIONS (ROAD USE<br/>MANAGEMENT) ACT 1995</b>                        | 6<br>7 |
| 1 | Section 135(8), definition “security interest”, ‘Securities’ to<br>‘5(1)’—            | 8<br>9 |
|   | <i>omit, insert</i> —   | 10     |
|   | ‘ <i>and Boats Securities Act 1986, section 2</i> ’.                                  | 11     |

|  |   |
|--|---|
| <b>SCHEDULE 2</b>                                | 1 |
| <b>CONSEQUENTIAL AMENDMENT OF REGULATION</b>     | 2 |
| section 38(2)                                    | 3 |
| <b>MOTOR VEHICLES SECURITIES REGULATION 1995</b> | 4 |
| <b>1 Section 12—</b>                             | 5 |
| <i>omit.</i>                                     | 6 |
|  | 7 |