

**REGISTRATION OF INTERESTS IN GOODS (AMENDMENT)
ACT 1989 No. 213**

NEW SOUTH WALES



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SCHEDULE 1 - AMENDMENTS

**REGISTRATION OF INTERESTS IN GOODS (AMENDMENT)
ACT 1989 No. 213**

NEW SOUTH WALES



Act No. 213, 1989

An Act to amend the Registration of Interests in Goods Act 1986 to make provision for participation by other jurisdictions in the Register of Interests in Goods; to make further provision in relation to the administration of the Register and the effect of registration of interests in goods; and for other purposes. [Assented to 21 December 1989]

Registration of Interests in Goods (Amendment) 1989

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Registration of Interests in Goods (Amendment) Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Registration of Interests in Goods Act 1986 No. 37

3. The Registration of Interests in Goods Act 1986 is amended as set out in Schedule 1.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

(1) Section 3 (**Definitions**):

(a) After the definition of "Commissioner" in section 3 (1), insert:

"corresponding law" means a law of a participating State that provides for the registration of interests in goods;

(b) Omit the definition of "motor vehicle" in section 3 (1), insert instead:

"motor vehicle" means any motor car, motor carriage, motor cycle, tractor, or other vehicle propelled wholly or partly by any volatile spirit, steam, gas, oil or electricity, or by any means other than human or animal power, and includes a trailer or caravan, but does not include any vehicle used on a railway or tramway;

(c) After the definition of "owner" in section 3 (1), insert:

"participating State" means a State or Territory that is prescribed for the purposes of this definition, being a State or Territory which has enacted legislation that provides for the registration of interests in goods that arise under the law of that State or Territory;

SCHEDULE 1 - AMENDMENTS - *continued*

- (d) Omit the definition of "prescribed goods" from section 3 (1), insert instead:

"prescribed goods" means:

- (a) a motor vehicle; or
- (b) any other goods prescribed by the regulations, whether situated in the State or elsewhere;

- (e) Before the definition of "purchase" in section 3 (1), insert:

"prime identifier", in relation to goods, means the particulars of those goods prescribed as the prime identifier for the purposes of this Act;

- (f) Omit paragraph (d) of the definition of "registrable interest" in section 3 (1), insert instead:

(d) any other prescribed interest in the goods, whether arising under the law of New South Wales or of a participating State;

- (g) After section 3 (2), insert:

(3) For the purposes of this Act, a person is without notice of a registrable interest only if under section 164 of the Conveyancing Act 1919 (read subject to section 8 of this Act) the person is not prejudicially affected by notice of the interest.

- (2) Section 5 (**Registration of interest in prescribed goods**):

Omit section 5 (1) and (2), insert instead:

(1) Application may be made for registration of a registrable interest in prescribed goods.

(1A) Such an application is not properly made unless:

- (a) it is made in a manner approved by the Commissioner and lodged with the Commissioner; and
- (b) it specifies the prime identifier of the goods concerned and such other information relating to the goods and the interest concerned as may be prescribed; and

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SCHEDULE 1 - AMENDMENTS - *continued*

(c) it is accompanied by the prescribed fee payable in respect of an application for registration or arrangements have been made with the Commissioner for payment of the fee.

(2) If an application is properly made, the Commissioner is to register the interest to which the application relates by recording in the Register the prime identifier of the goods and the prescribed information relating to the goods and interest.

(3) Section 6 (**Variation of recording**):

After section 6 (3), insert:

(4) The Commissioner is not to make a variation under subsection (3) involving the prime identifier of goods or 2 or more particulars of goods:

(a) without first giving written notice of the proposed variation to the person registered as holder of the interest concerned, requiring the person to advise the Commissioner in writing within a specified period as to whether the variation should be made; and

(b) until the period specified in the notice for the giving of that advice has expired.

(5) If a person fails to advise the Commissioner as required by a notice under subsection (4), the Commissioner may:

(a) by further notice in writing to the person require the person to furnish that advice within a specified further period and warn that a failure to do so may lead to cancellation of registration of the person's interest; and

(b) cancel the registration of the interest concerned if the person fails to advise the Commissioner as required by that further notice.

(6) If the Commissioner makes a variation under subsection (3):

SCHEDULE 1 - AMENDMENTS - *continued*

- (a) the Commissioner is to give notice of the variation to the person who is registered as holder of the interest concerned; and
- (b) that person must, if the Commissioner so requires, pay the prescribed fee to the Commissioner.

(7) A notice is sufficiently given to a person under this section if it is given by post, and a proper address for that purpose is the address of the person recorded in the Register.

(4) Section 7 (**Cancellation of registration**):

(a) Omit section 7 (1), insert instead:

(1) The Commissioner may cancel the registration of an interest after the date ("the expiry date") specified in the Register as the date on which the interest ceases to be a registrable interest and may cancel that registration before the expiry date if:

- (a) a period of at least 7 years has elapsed since the current registration of the interest commenced; and
- (b) (if the expiry date has been varied) a period of at least 7 years has elapsed since the date of the most recent variation of the expiry date.

(1A) The Commissioner may cancel the registration of an interest under subsection (1) only if:

- (a) the Commissioner has given notice in writing to the person registered as the holder of the interest of the Commissioner's intention to cancel the registration unless application is made for variation of the date specified in the Register as the date on which the interest ceases to be a registrable interest; and
- (b) the person has not, within the period required by the notice, properly made application for the variation under section 6.

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SCHEDULE 1 - AMENDMENTS - *continued*

- (b) In section 7 (5), after "subsection", insert "(1A) or".
- (c) After section 7 (5), insert:
 - (6) The Commissioner need not retain any record relating to an interest for more than 7 years after registration of the interest is cancelled.
- (5) Section 8 (**Search certificates and notice**):
 - (a) After section 8 (1), insert:
 - (1A) A certificate may take the form of a statement or such other form as the Commissioner approves.
 - (b) In section 8 (7), after "signature", insert "(if any)".
 - (c) After section 8 (7), insert:
 - (7A) If a certificate under this section specifies that goods are not affected by a registered interest, the certificate is evidence only in relation to the goods identified by the prime identifier specified in the certificate despite any other information used to identify goods that is also specified in the certificate.
- (6) Section 10 (**Rights of creditor and purchaser where registrable interest defeated**):
 - After section 10 (1), insert:
 - (1A) A dealer is not liable to a creditor in the circumstances referred to in subsection (1) if the dealer purchased the goods concerned freed and discharged from the registrable interest of the creditor by the operation of section 9.
- (7) Section 11:
 - Omit the section, insert instead:
 - Funding arrangements**
 - 11. (1) There is to be established in the Special Deposits Account in the Treasury an account to be called the "Registration of Interests in Goods Account".

SCHEDULE 1 - AMENDMENTS - *continued*

- (2) Subject to this section, the account is to be considered to be a working account under section 13A of the Public Finance and Audit Act 1983.
- (3) There is to be paid into the account:
 - (a) the fees and charges paid to the Commissioner under this Act; and
 - (b) any amount advanced by the Treasurer under subsection (4); and
 - (c) any amount paid to the Commissioner under an agreement referred to in section 15A.
- (4) The Treasurer may pay money into the account by way of advance.
- (5) There is payable out of the account:
 - (a) compensation payable by the Commissioner under this Act; and
 - (b) any amounts required to be paid by the Commissioner under an agreement referred to in section 15A; and
 - (c) any amount required to repay an advance made by the Treasurer under subsection (4).
- (8) **Section 12 (Limited right to compensation following early failure to register):**
 - (a) In section 12 (1) (a), after "of that section", insert "or a prescribed provision of a corresponding law".
 - (b) Omit section 12 (1) (b), insert instead:
 - (b) there was not, immediately before that day, an order in force under section 9 (1) relating to goods of that class; and
 - (c) the creditor did not, before sustaining the loss, apply for registration of the registrable interest,
 - (c) In section 12 (2) (b), after "section 9", insert "or a prescribed provision of a corresponding law".

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SCHEDULE 1 - AMENDMENTS - *continued*

- (9) Section 13 (**Award of compensation for loss by creditor**):
- (a) Omit section 13 (c), insert instead:
 - (c) as a result of the lack of notice, the operation of section 9 or a prescribed provision of a corresponding law, in relation to a purchase of the goods, causes the creditor under the registrable interest to sustain a loss,
 - (b) At the end of section 13, insert:
 - (2) Compensation is not payable under this section if the lack of notice referred to in subsection (1) resulted from:
 - (a) the prime identifier of the goods concerned being incorrectly specified in the application for registration of the registrable interest concerned; or
 - (b) the fact that the interest concerned was not registered before the end of the next day following the making of the application for registration; or
 - (c) the cancellation in accordance with the provisions of this Act of the registration of the registrable interest concerned; or
 - (d) the rejection of the application for registration of the registrable interest because it was not properly made.
- (10) Section 14 (**Assessment of compensation**):
- (a) In section 14 (1), after "section 9", insert "or a prescribed provision of a corresponding law".
 - (b) In section 14 (2), after "section 10", insert "or a prescribed provision of a corresponding law".

SCHEDULE 1 - AMENDMENTS - *continued*

(11) Section 15 (**Appeals**):

After section 15 (2), insert:

(3) The Commissioner is to give effect to:

- (a) any such order of the Tribunal; and
- (b) any order made under a prescribed provision of a corresponding law concerning compensation payable by the Commissioner under this Act in respect of an interest arising under a law of a participating State.

(12) Section 15A:

After section 15, insert:

Agreements with other States and Territories

15A. (1) The Minister may, on behalf of the State, enter into an agreement with another person acting on behalf of another State or a Territory, providing for:

- (a) administrative arrangements in connection with the operation of this Act in respect of the registration of interests in goods arising under the law of the other State or the Territory (including arrangements for the use of facilities and personnel); and
- (b) payments to be made to reimburse New South Wales in respect of payments of compensation under this Act to persons who are residents of the other State or the Territory; and
- (c) the payment of money to or by the Commissioner in connection with any such administrative arrangements, including provision for the sharing of receipts in respect of fees and charges payable under this Act; and
- (d) such other matters as the Minister considers necessary or convenient in connection with the operation of this Act in respect of the other State or the Territory.

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SCHEDULE 1 - AMENDMENTS - *continued*

(2) The Commissioner is authorised to exercise functions conferred or imposed on the Commissioner by an agreement under this section, and is accordingly authorised to exercise functions outside the State.

(13) Section 16A:

After section 16, insert:

Account customers

16A. (1) The Commissioner may approve of a person being an account customer for the purposes of this Act and may make arrangements for the person to pay, on a monthly or other basis, any fees and charges payable by the person under this Act.

(2) Such an approval may be given subject to conditions.

(3) The Commissioner may withdraw an approval by notice in writing to the person:

- (a) if any amount so required to be paid has not been paid within 60 days after it was required to be paid under the arrangements; or
- (b) if the Commissioner is satisfied that the person has breached any conditions of the approval; or
- (c) in such other circumstances as the regulations may provide.

(4) Any fee or charge payable by a person under this Act may be recovered by the Commissioner as a debt in a court of competent jurisdiction.

(14) Section 21 (**Regulations**):

Omit section 21 (1), insert instead:

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed, for carrying out or giving effect to this Act and, in particular, for or with respect to:

SCHEDULE 1 - AMENDMENTS - *continued*

- (a) fees and other charges; and
- (b) arrangements for account customers.

(15) Section 22, Schedule 1:

After section 21, insert:

Savings, transitional and other provisions

- 22. Schedule 1 has effect.

**SCHEDULE 1 - SAVINGS, TRANSITIONAL
AND OTHER PROVISIONS**

(Sec. 22)

Registration of Interests in Goods (Amendment) Act 1989

Certificates

1. (1) A certificate issued in the form of a statement under section 8 before the commencement of section 8 (1A) is to be considered to have been validly issued.

(2) Section 8 (7A) applies to a certificate issued before (as well as after) that subsection commences.

Restrictions on compensation

2. (1) Section 13 (2) (a) (no compensation where incorrect prime identifier supplied by creditor in an application for registration) does not apply in respect of an application for registration made before the commencement of that provision.

(2) Section 13 (2) (b) (no compensation merely because interest not registered by end of next business day) does not apply in respect of an application for registration made before that provision commences.

(3) Section 13 (2) (c) (no compensation where registration cancelled) applies whether the cancellation concerned occurred before or after the commencement of that provision but does not apply in respect of an award of compensation applied for before that commencement.

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SCHEDULE 1 - AMENDMENTS - *continued*

(4) Section 13 (2) (d) (no compensation where application for registration rejected) does not apply where the application for registration concerned was rejected before the commencement of that provision.

Purchases by dealers

3. Section 10 (1A) does not apply to a purchase by a dealer of goods before that provision commences.

[*Minister's second reading speech made in -
Legislative Assembly on 22 November 1989
Legislative Council on 5 December 1989*]