



New South Wales

Registration of Interests in Goods Amendment Act 1999 No 28

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Registration of Interests in Goods Amendment Act 1999 No 28

Act No 28, 1999

An Act to amend the *Registration of Interests in Goods Act 1986* to make further provision with respect to notice of registrable interests, extinguishment of interests, burden of proof, priority of interests, assessment of compensation, and funding; and for other purposes. [Assented to 7 July 1999]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Registration of Interests in Goods Amendment Act 1999*.

2 Commencement

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

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

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

Schedule 1 Amendments

(Section 3)

[1] Section 3 Definitions

Omit the definition of *Commissioner* from section 3 (1).

[2] Section 3 (1)

Insert in alphabetical order:

Director-General means the Director-General of the Department of Fair Trading holding office as such under Part 2 of the *Public Sector Management Act 1988*.

[3] Section 3 (4)

Insert after section 3 (3):

(4) Notes included in this Act do not form part of this Act.

[4] Sections 3A and 3B

Insert after section 3:

3A Wilful ignorance constitutes knowledge

In the application of section 164 of the *Conveyancing Act 1919* for the purposes of this Act, a registrable interest is considered to be within a person's own knowledge or to have come to a person's knowledge if:

- (a) the person has actual knowledge of the registrable interest, or
- (b) the person has been put upon inquiry as to the existence of the registrable interest and has deliberately abstained from inquiry or further inquiry when the person might reasonably have expected the inquiry or further inquiry to reveal the registrable interest.

Note. Section 9 provides that in certain circumstances if goods are purchased without notice of an interest in the goods the interest is extinguished by the purchase. Sections 3 (3), 3A and 8 (3) and (4) provide for what constitutes a purchase without notice.

Section 3 (3) provides (through the application of section 164 of the *Conveyancing Act 1919*), that a person is only without notice of an interest if the interest is not within the person's **own knowledge** and would not have been discovered by searches of registers, inquires and inspections that ought reasonably have been made by the person.

Section 3A expands (beyond actual knowledge) what constitutes a person's **own knowledge** to include matters about which the person has been put upon inquiry if the person has deliberately abstained from inquiry or further inquiry that might reasonably have been expected to reveal the matter.

Section 8 (4) limits the effect of section 3 (3) by providing that the Register of Interests in Goods kept under this Act is the only register that need be searched.

Section 8 (3) further provides that a search of the Register can be made by obtaining a search certificate and that the certificate can be relied on until the end of the day after it is obtained.

3B Repairers' liens

- (1) A repairer's lien on goods (whether or not registered) ranks in priority over any registrable interest in the goods whether or not the registrable interest is registered and whether the registrable interest arose before or after the repairer's lien arose.
- (2) A *repairer's lien* is a lien on goods in the possession of a person as security for payment for services or materials furnished in respect of those goods by that person in the ordinary course of business.

[5] Section 8 Search certificates and notice

Omit "*Companies (New South Wales) Code*" from section 8 (4).
Insert instead "*Corporations Law*".

[6] Section 8 (9)

Insert after section 8 (8):

- (9) Neither the State nor a prescribed authority is liable in respect of any information that is provided in good faith to the Director-General by or on behalf of the prescribed authority in relation to a matter that may be recorded under section 5 (3). A **prescribed authority** is any person or body prescribed by the regulations for the purposes of this subsection.

[7] Section 9 Purchase of goods that are subject to registrable interest

Insert after section 9 (1):

- (1A) This section applies to a purchase of goods only if the goods are situated in New South Wales at the time of the purchase.

[8] Section 9 (5)–(6A)

Omit section 9 (5) and (6). Insert instead:

- (5) In any civil proceedings, the onus of proving that goods were purchased as provided by subsection (3) or (4) lies on the person seeking to establish that the goods were so purchased. The standard of proof is proof on the balance of probabilities, except as provided by subsection (6).
- (6) The standard of proof is proof beyond reasonable doubt in each of the following cases:
- (a) if the purchaser is a member of the same household as the seller,
 - (b) if the purchaser and the seller are bodies corporate that are related to each other within the meaning of section 50 of the *Corporations Law*,
 - (c) if either the purchaser or the seller is a body corporate and the other a natural person who (within the meaning of the *Corporations Law*) is a director or officer of the body corporate.
- (6A) Goods the subject of a registrable interest are not purchased as provided by subsection (3) or (4) if:
- (a) the purchaser lets, hires or supplies the goods to a person under a lease, hire-purchase agreement or other contract for the supply of the goods or purchased the goods with the intention of entering into such a lease, hire-purchase agreement or other contract, and
 - (b) the lessee, hirer or buyer of the goods under that lease, hire-purchase agreement or other contract has failed to act in good faith and had notice at the time of payment of the purchase price of the registrable interest to which the goods are subject.

[9] Sections 10A and 10B

Insert after section 10:

10A Priority of registrable interests

- (1) A registered interest ranks in priority over any unregistered interest, with respect to all debts or other pecuniary obligations (including contingent obligations) and all other obligations secured under the registered interest whenever arising.
- (2) Registered interests rank in priority in the order in which they are registered, with respect to all debts or other pecuniary obligations (including contingent obligations) and all other obligations respectively secured under them whenever arising.
- (3) If the creditor in whom a registrable interest is vested (whether or not it is a registered interest) takes possession of the goods, that registrable interest ranks in priority over any registered interest with respect to those goods that was registered after possession of the goods was taken. This subsection applies despite subsections (1) and (2).
- (4) This section is subject to section 3B (Repairers' liens).
- (5) In this section:
registered interest means a registrable interest that is registered.
unregistered interest means a registrable interest that is not registered.

10B Effect on priorities of agreements and Corporations Law

An order of priority of registrable interests established by this Act is subject to any express contrary provision of the *Corporations Law* and to any agreement between the creditors under the registrable interests concerned.

[10] Section 11 Funding arrangements

Insert at the end of section 11 (5) (c):

- , and
- (d) any amount authorised by the Director-General, with the consent of the Minister, to be paid out of the account in payment of any costs and expenses incurred within the Department of Fair Trading (including, but not limited to, costs and expenses incurred in the administration of any Act).

[11] Section 14 Assessment of compensation

Omit “the amount of the price paid in respect of the purchase that caused the loss” from section 14 (1).

Insert instead “the value of the goods at the time of the purchase that caused the loss”.

[12] Section 14 (1A)

Insert after section 14 (1):

- (1A) For the purposes of subsection (1), the value of goods at the time of a purchase is, in the absence of evidence to the contrary, presumed to be the amount of the price paid in respect of that purchase.

[13] Section 18 Offence by corporation

Omit “within the meaning of the *Companies (New South Wales) Code*, is a director, manager, secretary or other officer”.

Insert instead “within the meaning of the *Corporations Law*, is a director, secretary, executive officer or employee”.

[14] Schedule 1 Savings, transitional and other provisions

Omit the heading “*Registration of Interests in Goods (Amendment) Act 1989*”.

Insert instead:

Part 1 Preliminary

1A Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Registration of Interests in Goods Amendment Act 1999.

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Registration of Interests in Goods (Amendment) Act 1989

[15] Schedule 1, Part 3

Insert at the end of the Schedule:

**Part 3 Registration of Interests in Goods
Amendment Act 1999**

4 Constructive notice

Section 3A does not apply to a registrable interest that arose before the commencement of that section.

5 Repairers' liens

Section 3B does not apply to a repairer's lien that arose before the commencement of that section.

6 Protection from liability

Section 8 (9) does not apply in respect of information provided before the commencement of that subsection.

7 Operation of section 9 amendments

An amendment made to section 9 by the *Registration of Interests in Goods Amendment Act 1999* does not apply in respect of a purchase of goods that occurred before the commencement of the amendment, and that section continues to apply in respect of such a purchase as if the amendment had not been made.

8 Priority of registrable interests

Section 10A does not apply to a registrable interest that arose before the commencement of that section.

9 Assessment of compensation

An amendment made to section 14 by the *Registration of Interests in Goods Amendment Act 1999* does not apply to the determination of compensation in respect of a purchase that occurred before the commencement of the amendment, and that section continues to apply in respect of such a determination as if the amendment had not been made.

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Schedule 1 Amendments

[16] Whole Act

Omit “Commissioner” or “Commissioner’s” wherever occurring except where occurring as “Commissioner of Police”.

Insert instead “Director-General” or “Director-General’s” respectively.

[Minister's second reading speech made in—
Legislative Assembly on 23 June 1999
Legislative Council on 1 July 1999]

BY AUTHORITY