

**REGISTRATION OF INTERESTS IN GOODS (AMENDMENT)
BILL 1989**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Registration of Interests in Goods Act 1986:

- (a) to enable arrangements to be made for the recording, in the Register of Interests in Goods maintained under the Act, of interests in goods arising under the law of other States and Territories; and**
- (b) to require the recording in the Register of a prescribed "prime identifier" of goods in which an interest is registered and to provide that, in certain circumstances, a creditor or purchaser cannot rely on the protection afforded by the Act if the prime identifier of the goods is not correctly lodged or searched; and**
- (c) to enable cancellation of the registration of an interest after 7 years from registration of the interest or the last variation of the expiry date of the registration; and**
- (d) to provide that the Commissioner for Consumer Affairs need not retain records relating to an interest for more than 7 years after cancellation of the registration of the interest; and**
- (e) to enable the Commissioner to vary particulars in the Register in certain circumstances and to charge a fee for the variation; and**
- (f) to enable the Commissioner to make account facilities available to persons who make use of services provided under the Act; and**
- (g) to provide for the issue of statements of the results of searches of the Register as an alternative to the issue of signed certificates of the Commissioner; and**
- (h) to allow the Commissioner a period of 1 full day to process applications for registration of an interest; and**

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- (i) to establish the "Registration of Interests in Goods Account" in the Special Deposits Account in the Treasury and to provide for the payment into that account of application and other fees and the payment out of that account of compensation payments and other payments; and
 - (j) to specify circumstances in which compensation is not payable to a creditor who suffers loss under the Act; and
 - (k) to clarify certain expressions and provisions in the Act; and
 - (l) to enable regulations to be made with respect to fees and charges under the Act; and
 - (m) to make provision for consequential matters; and
 - (n) to enact savings and transitional provisions.
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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a proclaimed day or days.

Clause 3 is a formal provision which gives effect to the Schedule of amendments.

SCHEDULE 1 - AMENDMENTS

Use of the Register by other States and Territories

Schedule 1 (1) (a), (c), (d) and (f), (8) (a) and (c), (9) (a), (10), (11) and (12) make provision whereby another State or a Territory can make use of the Register by being prescribed by the regulations as a "participating State". Interests in goods that arise under the law of the participating State will be able to be registered on the NSW Register and will be given protection by the law of the participating State as a result of being registered. Compensation will be payable under the Act to creditors in participating States who suffer a loss because of the scheme (in the same circumstances as NSW creditors can be compensated). There will be provision for the Minister to enter into an agreement with a participating State to provide for administrative arrangements (including fee sharing) and reimbursement of NSW for compensation costs.

"Prime identifier"

Schedule 1 (1) (e), (2), (5) (c) and (9) (b) make provision for a "prime identifier" of goods for the purposes of the registration of interests in those goods. In relation to motor vehicles, it is envisaged that the prime identifier will be the chassis number or the vehicle identification number (VIN). Entries on the register in respect of goods will have to specify the prime identifier. A search of the Register that reveals no encumbrances will be evidence only in relation to the goods identified by the prime identifier even if there is a discrepancy between the prime identifier and other information (such as engine and registration numbers, which can change). A creditor who gives the wrong prime identifier when lodging an application for registration will lose the right to claim compensation.

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Renewal or cancellation of registration after 7 years

Schedule 1 (4) (a) and (b) enable the Commissioner to cancel the registration of an interest after 7 years from registration of the interest or the last variation of the expiry date of the registration, after giving the holder of the interest notice and an opportunity to apply for variation of the expiry date.

Records

Schedule 1 (4) (c) provides that the Commissioner need not retain records relating to a registered interest in goods for more than 7 years after registration of the interest was cancelled.

Variation of particulars in the Register

Section 6 of the Principal Act currently allows the Commissioner to vary information relating to an interest on the Register if the Commissioner is satisfied that the information is inaccurate.

Schedule 1 (3) requires notification to be given of such a variation and enables the Commissioner to charge the creditor concerned a fee.

If the prime identifier of goods or 2 or more other particulars relating to goods is or are proposed to be varied, the Commissioner must seek confirmation of the variation from the holder of the registered interest in the goods and, if the proposed variation is not confirmed, may cancel the registration of the interest.

Statements

Schedule 1 (5) (a) and (b) make it clear that a certificate relating to a search of the Register can be issued in the form of a statement or in another form approved by the Commissioner and need not be signed by the Commissioner.

Account customers

Schedule 1 (13) inserts into the Act proposed section 16A which enables arrangements with respect to account facilities to be made with the Commissioner. The Commissioner will be able to withdraw those facilities if an account customer is more than 60 days in arrears or any condition of the account arrangements is not complied with.

Registration of Interests in Goods Account

Schedule 1 (7) provides for the establishment of a Special Deposits Account in the Treasury to be called the Registration of Interests in Goods Account. Fees under the Act will be paid into the account which will be used to pay compensation claims and any amounts payable under administrative and fee sharing arrangements with a participating State. If the funds in the account are insufficient, provision is made for the Treasurer to advance money to cover the shortfall. Any such advance will be repaid when there are sufficient funds in the account to do so.

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Processing of applications

Schedule 1 (9) (b) (proposed section 13 (2) (b)) provides that compensation is not payable for loss sustained by a creditor in respect of a registrable interest in goods between the time that the application for registration is lodged and the end of the next day after lodgment. This will give the Commissioner time to process applications.

Compensation not payable in certain cases

Schedule 1 (9) (b) inserts proposed section 13 (2) into the Principal Act which lists circumstances in which compensation is not payable under the Act.

Two of those circumstances have been dealt with under the heading "Prime identifier" and "Processing of applications". Others are:

- (a) where an application for registration of an interest has been rejected because it does not provide the required information or is otherwise not properly made;
- (b) the registration of an interest has been properly cancelled under the Act.

Clarification of certain expressions and provisions

Schedule 1 (1) (b) sets out in full the definition of "motor vehicle". The definition currently refers to the definition under the Traffic Act 1909.

Schedule 1 (1) (g) clarifies the concept of "without notice" of an interest in goods for the purposes of the Act.

Schedule 1 (6) provides, for the purpose of removing any doubt, that a dealer is not liable to a creditor with a registrable interest in goods for loss caused by the sale of the goods by the dealer if the dealer acquired the goods free of the registrable interest because of the operation of section 9 of the Act.

Fees and charges

Schedule 1 (14) enables regulations to be made by the Governor-in-Council to require payment of fees and charges under the Act.

Savings and other provisions

Schedule 1 (15) contains provisions of a savings and transitional nature consequent on the proposed amendments.
