

# Registration of Interests in Goods Act 1986 No 37

[1986-37]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**

*[Personal Property Securities \(Commonwealth Powers\) Amendment Bill 2009](#)*

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Registration of Interests in Goods Act 1986 No 37



New South Wales

An Act with respect to the registration, in relation to motor vehicles and any other prescribed goods, of security interests, the interests of lessors and the interests of owners under hire-purchase agreements; and for other purposes.

## 1 Name of Act

This Act may be cited as the *Registration of Interests in Goods Act 1986*.

## 2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

## 3 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**corresponding law** means a law of a participating State that provides for the registration of interests in goods.

**creditor**, in relation to a registrable interest in goods, means the person in whom the registrable interest is vested.

**dealer**, in relation to goods, means:

- (a) where the goods are a motor vehicle—a dealer within the meaning of the *Motor Dealers Act 1974*, or
- (b) in any other case—a person prescribed as a dealer in the goods.

**debtor**, in relation to a registrable interest in goods, means:

- (a) where the registrable interest is a security interest in the goods—the person whose performance of an obligation is secured by the security interest,

- (b) where the registrable interest is the interest in the goods of a lessor—the lessee of the goods,
- (c) where the registrable interest is the interest in the goods of the owner under a hire-purchase agreement to which the goods are subject—the hirer of the goods, or
- (d) where the registrable interest is any other prescribed interest in the goods—the person prescribed as the debtor.

**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\*](#).

**goods** means all chattels personal other than:

- (a) things in action and money, and
- (b) anything that may be the subject of an agreement registrable under the [\*Liens on Crops and Wool and Stock Mortgages Act 1898\*](#).

**hire-purchase agreement** means:

- (a) a letting of goods with an option to purchase the goods, or
- (b) an agreement for the purchase of goods by instalments (whether described as rent or hire or otherwise) not being an agreement whereby the property in the goods being purchased passes at the time of the agreement or upon, or at any time before, delivery of the goods.

**hirer**, in relation to a hire-purchase agreement, means the person to whom goods are let, hired or agreed to be sold under the hire-purchase agreement.

**lease**, in relation to goods, means a contract for the hiring of the goods that is not a hire-purchase agreement.

**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.

**owner**, in relation to a hire-purchase agreement, means the person by whom goods are let, hired or agreed to be sold under the hire-purchase agreement.

**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.

**prescribed goods** means:

- (a) a motor vehicle, or
- (b) any other goods prescribed by the regulations,

whether situated in the State or elsewhere.

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

**purchase**, in relation to goods, means acquire the goods from a person selling or exchanging the goods and having, or purporting to have, authority to dispose of the goods by that means.

**Register** means the Register of Interests in Goods maintained under section 4.

**registered** means recorded in the Register otherwise than in accordance with section 5 (3).

**registrable interest**, in relation to goods, means:

- (a) the interest in the goods of the person to whom is owed the obligation of which the performance is secured by a security interest to which the goods are subject,
- (b) the interest in the goods of a lessor of the goods,
- (c) the interest in the goods of the owner under a hire-purchase agreement relating to the goods, or
- (d) any other prescribed interest in the goods,

whether arising under the law of New South Wales or of a participating State.

**regulations** means regulations made under section 21.

**security interest**, in relation to goods, means an interest or power:

- (a) reserved in or over an interest in the goods, or
- (b) created or otherwise arising in or over an interest in the goods under a bill of sale, mortgage, charge, trust or power,

by way of security for the payment of a debt or other pecuniary obligation or the performance of any other obligation but does not include an interest or a power reserved or created, or otherwise arising, under a lease or hire-purchase agreement or an agreement excluded from this definition by the regulations.

**this Act** includes the regulations.

***Tribunal*** means the Administrative Decisions Tribunal.

- (2) In this Act, a reference to payment of a purchase price is a reference:
  - (a) where the purchase is effected otherwise than by an exchange—to a manner of giving valuable consideration in satisfaction of the purchase price,
  - (b) where the whole of the purchase price is not paid at one time—to the first payment of part of the purchase price, or
  - (c) where the purchase is effected by an exchange—to the making of the exchange.
- (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.
- (4) Notes included in this Act do not form part of this Act.

### **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, inquiries 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.

### 3C Relationship of this Act with [Security Interests in Goods Act 2005](#)

- (1) The [Security Interests in Goods Act 2005](#) provides for the following:
  - (a) the granting of mortgages over certain agricultural goods by means of the execution and registration under that Act of agricultural goods mortgages,
  - (b) the registration of certain other instruments (**security instruments**) by or under which security interests in goods are reserved, created or otherwise arise,
  - (c) that the registration of a security interest in goods under that Act will generally confer priority over unregistered interests and subsequently registered interests over the same goods,
  - (d) that nothing in that Act applies to or affects any security interest in goods that are prescribed goods under this Act.

#### Note—

The term **agricultural goods** is defined in section 3 (1) of the [Security Interests in Goods Act 2005](#) to mean crops, fish, stock or wool.

- (2) The regulations may make provision for or with respect to matters of a savings or transitional nature consequent on goods being prescribed for the purposes of paragraph (b) of the definition of **prescribed goods** in section 3 (1) in circumstances where:
  - (a) the goods are prescribed on or after the commencement of section 5 (Relationship of this Act with general law and other Acts) of the [Security Interests in Goods Act 2005](#), and
  - (b) security instruments in respect of goods of that kind could have been registered under the [Security Interests in Goods Act 2005](#) immediately before the goods were so prescribed.
- (3) Without limiting subsection (2), the regulations may provide for the following:
  - (a) that registered security interests within the meaning of the [Security Interests in Goods Act 2005](#) in respect of goods that have become prescribed goods are, or are



not, to be treated as having been registered under this Act,

(b) that all or specified provisions of the *Security Interests in Goods Act 2005* or this Act are, or are not, to apply to any such registered security interests.

(4) However, nothing in this Act applies to or affects any security interest in agricultural goods within the meaning of the *Security Interests in Goods Act 2005*.

#### **4 Register to be maintained**

(1) The Director-General shall maintain a Register of Interests in Goods for the purposes of this Act.

(2) The Register may be maintained in or upon any medium, or combination of mediums, capable of having information recorded in or upon it or them.

(3) The Director-General may, from time to time, vary the manner or form in which the whole or any part of the Register is maintained.

(4) Section 24 of the *Stamp Duties Act 1920* does not impose any duty or liability on the Director-General in relation to the making under this Act of a recording in the Register, and the Director-General is not concerned to inquire, before making a recording in the Register relating to a registrable interest in goods, whether the instrument giving rise to the registrable interest is liable to stamp duty, or is unstamped, or is insufficiently stamped.

#### **5 Registration of interest in prescribed goods**

(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 Director-General and lodged with the Director-General, 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

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

(2) If an application is properly made, the Director-General 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) The Director-General may record in the Register a reference to other prescribed information, including information received from the Commissioner of Police in relation to prescribed goods reported to the Commissioner of Police as having been stolen or

otherwise unlawfully obtained and may cancel or amend any such recording.

- (4) A recording made under subsection (3) is not a recording of, and does not operate to create, a registrable interest in the goods to which the recording relates.

## **6 Variation of recording**

- (1) Application may be made, in a manner approved by the Director-General, for a variation (otherwise than by cancellation of registration) of the information recorded in the Register in relation to a registrable interest in goods.
- (2) Where an application is made under subsection (1) and the prescribed fee is paid or arrangements have been made with the Director-General for its payment, the Director-General shall, in accordance with the application, vary the information recorded in the Register.
- (3) Where, because of the existence of prescribed circumstances (other than circumstances requiring or permitting a cancellation of registration) the Director-General is satisfied that the information recorded in the Register in relation to a registrable interest in goods is inaccurate, the Director-General may, whether or not an appropriate application has been made under subsection (1), vary the information in a manner that rectifies the inaccuracy.
- (4) The Director-General 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 Director-General 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 Director-General as required by a notice under subsection (4), the Director-General 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 Director-General as required by that further notice.
- (6) If the Director-General makes a variation under subsection (3):
- (a) the Director-General 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 Director-General so requires, pay the prescribed fee to the Director-General.

(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.

## **7 Cancellation of registration**

(1) The Director-General 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 Director-General may cancel the registration of an interest under subsection (1) only if:

(a) the Director-General has given notice in writing to the person registered as the holder of the interest of the Director-General'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.

(2) Where:

(a) a registered interest ceases to be a registrable interest before its registration may be cancelled under subsection (1), and

(b) the prescribed documents are lodged with the Director-General, or the Director-General is, in a manner approved by the Director-General, otherwise notified that paragraph (a) applies,

the Director-General shall cancel the registration of the interest.

(3) Where:

(a) an interest, or a purported interest, in goods has been registered,

(b) it appears to the Director-General:

(i) that the interest has ceased to exist, or

(ii) that the interest never existed, and

(c) the Director-General is not authorised by subsection (1) or (2) to cancel the registration,

the Director-General may, by notice in writing given to the person registered as holder of the interest, require the person, within a period (being not less than 14 days) specified in the notice, to show cause why the registration should not be cancelled.

- (4) If a notice has been given under subsection (3), the Director-General must, not earlier than the expiration of the period specified in the notice, cancel the registration of the interest to which the notice relates unless:
- (a) cause has been shown why the registration should not be cancelled, or
  - (b) an order of the Tribunal staying or prohibiting the cancellation, or written notice of such an order, has been served on the Director-General.
- (4A) A person to whom a notice has been given under subsection (3) may apply to the Tribunal for a review of any decision of the Director-General to cancel the registration of an interest to which the notice relates.
- (5) A notice is sufficiently given to a person under subsection (1A) or (3) if it is given by post, and a proper address for that purpose is the address of the person recorded in the Register.
- (6) The Director-General need not retain any record relating to an interest for more than 7 years after registration of the interest is cancelled.

## **8 Search certificates and notice**

- (1) The Director-General shall, upon application made in relation to specified goods of a class specified in an order in force under section 9 (1), issue a certificate specifying:
- (a) the time and date of certification,
  - (b) whether or not the goods are, at that time, affected by a registered interest, and
  - (c) if the goods are so affected—such particulars as may be prescribed.
- (1A) A certificate may take the form of a statement or such other form as the Director-General approves and may be issued on the date the application is dealt with or on a later date.
- (2) The Director-General may include in a certificate under subsection (1) information relating to matters that may be recorded under section 5 (3).
- (3) For the purposes of this Act and section 164 of the [Conveyancing Act 1919](#), a person, or the Australian legal practitioner or the agent of a person, who obtains a certificate under subsection (1):

- (a) shall be deemed to have made, on the date of certification, a proper search of the Register for registrable interests in the goods to which the certificate relates, the result of the search being correctly reflected in the certificate, and
  - (b) is not affected by notice of any information (other than the information in the certificate) relating to a registrable interest in those goods by reason only of a failure to make a further search in the Register before the end of the day that next succeeds the day of certification.
- (4) For the purposes of this Act, and notwithstanding section 164 of the *Conveyancing Act 1919*, a person is not, by reason only of a failure by the person, or by any other person, to make a search as to:
- (a) interests registered under any Act other than this Act, or
  - (b) instruments registered, deposited, filed or recorded under any Act or registered under the *Corporations Act 2001* of the Commonwealth,
- affected by notice of a registrable interest in goods of a class specified in an order in force under section 9 (1).
- (5) The Director-General may, in relation to specified goods of a class specified in an order in force under section 9 (1), issue a certificate as to the state of the Register in relation to those goods at a particular time, or during a particular period, that preceded the time and date of issue of the certificate.
- (6) The Director-General may charge for a certificate under subsection (1) or (5) such fee as may be prescribed.
- (7) A certificate purporting to have been issued under subsection (1) or (5) is, without proof of the signature (if any) of the Director-General or, as the case may be, the delegate of the Director-General, admissible in evidence in any proceedings and, except in relation to matter that may be recorded under section 5 (3), is evidence of the matters specified in the certificate.
- (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.
- (8) The State is not liable, and the Director-General and other persons engaged in the administration of this Act are not liable, in respect of the reliability of any information given by the Director-General or any such person in relation to a matter that may be recorded under section 5 (3).
- (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.

## 9 Purchase of goods that are subject to registrable interest

- (1) The Minister may, by order published in the Gazette, notify that, on and from a specified day, this section has effect in relation to prescribed goods of a specified class.

### Editorial note—

See Gazette No 57 of 12.5.1995, p 2358 and No 67 of 7.6.1996, p 2920.

- (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.
- (2) Where goods of a class specified in an order in force under subsection (1) are the subject of a registrable interest (whether the registrable interest arose before, or arises on or after, the day specified in the order) and the goods are purchased as provided by subsection (3) or (4):
- (a) the property (if any) in the goods of the creditor who has the registrable interest is divested from the creditor and vested in the purchaser, and
- (b) the purchaser acquires the goods freed and discharged from the registrable interest.
- (3) Goods are purchased as provided by this subsection if the goods are purchased:
- (a) by a person who is not a dealer in the goods from a dealer in the goods,
- (b) except as provided by paragraph (c)—in good faith and for value, and
- (c) with or without notice of the registrable interest.
- (4) Goods are purchased as provided by this subsection if the goods are purchased otherwise than as referred to in subsection (3) (a):
- (a) from the debtor under the registrable interest to which the goods are subject,
- (b) in good faith and for value, and
- (c) without notice, at the time of payment of the purchase price, of the registrable interest.
- (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 Act 2001* of the Commonwealth,
  - (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 Act 2001* of the Commonwealth) 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.
- (7) In subsection (4), a reference to a purchase from the debtor under a registrable interest includes a reference to a purchase from a person other than the debtor who is in possession of the goods in circumstances where the debtor's right to possession of the goods has been lost or the debtor is estopped from asserting that right against the purchaser.

## **10 Rights of creditor and purchaser where registrable interest defeated**

- (1) Where:
- (a) a person who is not a dealer in goods of a class specified in an order in force under section 9 (1) purchases any such goods from such a dealer,
  - (b) at any time before payment of the purchase price, the dealer had notice that the goods were subject to a registrable interest, and
  - (c) immediately before payment of the purchase price, the registrable interest had not been discharged or cancelled,
- the dealer is liable to the creditor who had the registrable interest for loss sustained by the creditor by reason of the operation of section 9 in relation to the registrable interest.

- (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.
- (2) Where, by the operation of section 9, a purchaser of goods acquires the goods freed and discharged from a registrable interest but, at the time of the acquisition, part only of the purchase price is paid to the seller:
- (a) the creditor who had the registrable interest is, to the extent of the amount that was owed by the debtor to the creditor under the registrable interest, subrogated to the rights that, but for the subrogation, the seller would have in relation to payment by the purchaser of the balance of the purchase price of the goods, and
  - (b) the purchaser of the goods obtains a good discharge:
    - (i) as against the debtor—for any payment of part of the purchase price made under paragraph (a) to the creditor, and
    - (ii) as against the debtor and the creditor—for any payment of part of the purchase price made before the purchaser is notified in writing of the rights of the creditor under that paragraph.
- (3) Where:
- (a) by the operation of section 9, a purchase of goods results in the goods being freed and discharged from a registrable interest, and
  - (b) the contract of purchase is subsequently rescinded,
- the registrable interest revives and has effect as if the purchase had not occurred.

#### **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 Act 2001](#)**

An order of priority of registrable interests established by this Act is subject to any express contrary provision of the [Corporations Act 2001](#) of the Commonwealth and to any agreement between the creditors under the registrable interests concerned.

#### **11 Funding arrangements**

- (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”.
- (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 Director-General under this Act, and
  - (b) any amount advanced by the Treasurer under subsection (4), and
  - (c) any amount paid to the Director-General 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 Director-General under this Act, and
  - (b) any amounts required to be paid by the Director-General under an agreement referred to in section 15A, and
  - (b1) any amount authorised by the head of the Department of Fair Trading, with the consent of the Minister, to be paid out of the account in payment of any costs and expenses incurred in the administration of this Act within that Department, and
  - (c) any amount required to repay an advance made by the Treasurer under subsection (4), 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).

## **12 Limited right to compensation following early failure to register**

(1) Where:

- (a) within the period of 6 months that next succeeds the day specified in an order in force under section 9 (1), the creditor under a registrable interest in goods of the class to which the order relates sustains a loss by reason of the operation of that section or a prescribed provision of a corresponding law, and
- (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,

the creditor may apply to the Director-General for an order awarding compensation for the loss.

(2) Where, upon an application under subsection (1), the Director-General is satisfied that the applicant failed to apply for registration of the relevant registrable interest by reason of:

- (a) circumstances beyond the control of the applicant, or
- (b) circumstances from which it might reasonably be inferred that the applicant was not aware of the necessity to register the registrable interest in order to avoid sustaining a loss by reason of the operation of section 9 or a prescribed provision of a corresponding law,

the Director-General may make an order awarding the applicant compensation for the loss.

## **13 Award of compensation for loss by creditor**

(1) Where:

- (a) application is made for registration of a registrable interest in goods,
- (b) whether or not the registrable interest has been registered—a lack of notice of the registrable interest is the result of a certificate issued under section 8 (1) that does not disclose the registrable interest, and
- (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,

the Director-General may, on application by the creditor, make an order awarding the applicant compensation for the loss.

- (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.

#### **14 Assessment of compensation**

- (1) Compensation awarded to a creditor under section 12 or 13 shall be such amount as is determined by the Director-General under that section but shall not in any case exceed the amount of the loss sustained by the creditor by reason of the operation of section 9 or a prescribed provision of a corresponding law or the value of the goods at the time of the purchase that caused the loss, whichever is the lesser amount.
- (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.
- (2) Where, by the operation of section 10 or a prescribed provision of a corresponding law, a creditor has, by subrogation, rights against the purchaser of the goods in relation to which the creditor had a registrable interest, the maximum amount of compensation that may be awarded to the creditor under section 12 or 13 is the amount (if any) by which the creditor's loss exceeds the unpaid balance of the purchase price.

#### **15 Reviews by the Administrative Decisions Tribunal**

- (1) A person aggrieved by a decision of the Director-General on an application under section 12 or 13 may apply to the Tribunal for a review of the decision.
- (2) The Director-General 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 Director-General under this Act in respect of an interest arising under a law of a participating State.

### **15A Agreements with other States and Territories**

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

### **16 Delegation**

- (1) The Director-General may delegate to a person engaged in the administration of this or any other Act administered by the Minister (whether or not by reference to the person for the time being holding a specified office or position) the exercise of any of the functions of the Director-General under this Act, other than this power of delegation.
- (2) A delegation under this section:
  - (a) shall be in writing,
  - (b) may be general or limited, and
  - (c) may be revoked, wholly or partly, by the Director-General.
- (3) A delegate is, in the exercise of a function delegated under this section, subject to such conditions as are specified in the instrument of delegation.
- (4) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the Director-General.
- (5) A delegation under this section does not prevent the exercise of a function by the

Director-General.

- (6) A function purporting to have been exercised by a delegate under this section shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.
- (7) In this section:
  - (a) a reference to a function includes a reference to a power, authority and duty, and
  - (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

#### **16A Account customers**

- (1) The Director-General 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 Director-General 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 Director-General 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 Director-General as a debt in a court of competent jurisdiction.

#### **17 Offences**

- (1) A person shall not, in relation to an application for:
  - (a) registration of an interest in goods, or
  - (b) a variation of information recorded in the Register,make a statement, or provide information, that is false or misleading by reason of the inclusion of false or misleading matter or the omission of any material matter.  
Maximum penalty: 10 penalty units.
- (2) Where a registered interest in goods ceases to be a registrable interest before the Director-General is authorised by section 7 (1) to cancel the registration, the holder of the interest shall, not later than 14 days after the interest ceases to be a registrable

interest, lodge with the Director-General the documents, or other notification, necessary to obtain cancellation of the registration under section 7 (2).

Maximum penalty: 5 penalty units.

- (3) It is a defence to a prosecution of a person for an offence under subsection (1) if it is proved that, when the statement was made or the information was given, the person:
- (a) believed on reasonable grounds that the false matter was true,
  - (b) believed on reasonable grounds that the misleading matter was not misleading, or
  - (c) in the case of an omission:
    - (i) believed on reasonable grounds that material matter had not been omitted, or
    - (ii) did not know that the omitted matter was material.
- (4) Without limiting subsection (2), for the purposes of that subsection a registrable interest that is secured by a security interest that secures the payment of a debt is taken to have ceased to be a registrable interest on the date that all principal and interest payable in respect of the debt is repaid.

## **18 Offence by corporation**

Where an offence against this Act committed by a corporation is proved to have been committed with the consent or connivance of a person who, within the meaning of the [Corporations Act 2001](#) of the Commonwealth, is a director, secretary, executive officer or employee of the corporation, the person is guilty of the same offence.

## **19 Proceedings**

- (1) Proceedings for an offence against this Act may:
- (a) be taken and prosecuted by the Director-General or, in the name of the Director-General, by a person acting with the authority of the Director-General or with the authority of a prescribed officer, and
  - (b) be disposed of before the Local Court.
- (2) In proceedings for an offence against this Act, an authority to prosecute, purporting to have been signed by the Director-General, or by a prescribed officer referred to in subsection (1), is evidence of that authority without proof of the signature of the Director-General or the prescribed officer, as the case may be.
- (3) Proceedings for an offence against this Act may be conducted by:
- (a) the informant in person,
  - (b) an Australian legal practitioner for the informant,

- (c) a person authorised in writing by the informant for the purpose, or
  - (d) an officer of the public service.
- (4) Proceedings for an offence against this Act may be commenced by information laid not later than 3 years after the time of commission of the alleged offence or, with the consent of the Attorney General, at any later time.

**19A Penalty notices for certain offences**

- (1) An authorised officer or a police officer may serve a penalty notice on a person if:
- (a) it appears to the officer that the person has committed an offence under this Act or the regulations, and
  - (b) the regulations prescribe that offence as an offence for which a penalty notice may be issued.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further criminal proceedings for the alleged offence.
- (5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of, the same occurrence.
- (6) The regulations may:
- (a) prescribe an offence for the purposes of this section by specifying the provision creating the offence, and
  - (b) prescribe the amount of penalty for an offence if dealt with under this section, and
  - (c) prescribe different amounts of penalty for different offences or classes of offences.
- (7) The amount of penalty prescribed under this section for an offence may not exceed the maximum amount of penalty which could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences or any other matter under this Act.
- (9) In this section:

**authorised officer** means:

- (a) the Director-General, or
- (b) a person authorised in writing by the Director-General as an authorised officer for the purposes of this section.

## **20 Saving of rights and remedies**

- (1) Except to the extent that this Act expressly provides otherwise, nothing in this Act modifies or excludes a right or remedy that a person would have had if this Act had not been enacted.
- (2) A provision in an agreement (whether or not in writing) with a purchaser under which the operation of a provision of this Act is excluded, modified or restricted is void.
- (3) A person shall not enter into an agreement with a purchaser if the agreement includes a provision that, under subsection (2), is void.

Maximum penalty (subsection (3)): 10 penalty units.

## **21 Regulations**

- (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:
  - (a) fees and other charges, and
  - (b) arrangements for account customers.
- (2) A regulation may impose a penalty not exceeding 10 penalty units for a breach of the regulation.
- (3) A provision of a regulation may:
  - (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,or may do any combination of those things.

## **22 Savings, transitional and other provisions**

Schedule 1 has effect.



## Schedule 1 Savings, transitional and other provisions

(Section 22)

### 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*

*Security Interests in Goods Act 2005* (but only to the extent that it amends this Act)

- (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

#### 1 Certificates

- (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.

#### 2 Restrictions on compensation

- (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.
- (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.

### **3 Purchases by dealers**

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

## **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.