

2000

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Sale of Motor Vehicles Amendment Bill 2000

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2000

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Sale of Motor Vehicles Amendment Bill 2000

A BILL

FOR

An Act to amend the *Sale of Motor Vehicles Act 1977*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

5 This Act is the *Sale of Motor Vehicles Amendment Act 2000*.

2 Commencement

(1) Section 5 commences on a day fixed by the Minister by notice in the Gazette.

Sale of Motor Vehicles Amendment No , 2000

Note 1 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see *Interpretation Act 1967*, s 10C (1)).

5 *Note 2* If a provision has not commenced within 6 months beginning on the date of notification of the Act, it automatically commences on the first day after that period (see *Interpretation Act 1967*, s 10E (2)).

(2) The remaining provisions commence on the day this Act is notified in the Gazette.

3 Act amended

This Act amends the *Sale of Motor Vehicles Act 1977*.

10 **4 Insertion**

After Part 4 the following Part is inserted:

“PART 4A—REGISTRATION OF INTERESTS IN MOTOR VEHICLES

“32A Definitions for pt 4A

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

debtor, in relation to a registrable interest in a motor vehicle, means—

- 20 (a) if the registrable interest is a security interest in the vehicle—the person whose performance of an obligation is secured by the security interest; or
- (b) if the registrable interest is the interest in the vehicle of a lessor—the lessee of the vehicle; or
- 25 (c) if the registrable interest is the interest in the vehicle of the owner under a hire-purchase agreement to which the vehicle is subject—the hirer of the goods; or
- (d) if the registrable interest is any other interest in the vehicle prescribed under the regulations under the NSW Act—the person prescribed under those regulations as the debtor.

director-general means the Director-General under the NSW Act.

30 *hire-purchase agreement*, in relation to a motor vehicle, means—

- 5
- (a) a letting of the vehicle with an option to purchase the vehicle; or
 - (b) an agreement for the purchase of the vehicle by instalments (whether described as rent or hire or otherwise), other than an agreement under which the property in the vehicle passes at the time of the agreement or on, or at any time before, delivery of the vehicle.

10 **hirer**, in relation to a hire-purchase agreement for a motor vehicle, means the person to whom the vehicle is let, hired or agreed to be sold under the hire-purchase agreement.

lease, of a motor vehicle, means a contract for hiring the vehicle that is not a hire-purchase agreement.

non-dealer means a person who is not a dealer.

15 **notice**—a person has **notice** of a registrable interest in a motor vehicle if the person has—

- (a) knowledge of a registrable interest in the vehicle; or
- (b) knowledge that an inquiry might reasonably be expected to reveal a registrable interest in the vehicle, even though the person has deliberately not made the inquiry.

20 **owner**, in relation to a hire-purchase agreement for a motor vehicle, means the person by whom the vehicle is let, hired or agreed to be sold under the hire-purchase agreement.

participating State—see the NSW Act, subsection 3 (1).

payment, of a purchase price, means—

- 25
- (a) if the purchase is not by an exchange—giving valuable consideration for the purchase price; or
 - (b) if all of the purchase price is not paid at the same time—the first payment of part of the purchase price; or
 - (c) if the purchase is by an exchange—making the exchange.

30 **purchase**, of a motor vehicle, means acquiring the vehicle from a person selling or exchanging the vehicle who has, or appears to have, authority to dispose of the vehicle in that way.

register of interests means the Register of Interests in Goods under section 4 of the NSW Act.

registered means recorded in the register of interests otherwise than under subsection 5 (3) of the NSW Act.

5 *Note* Subsection 5 (3) deals with the recording of information on the director-general's own initiative, including information received from the police about stolen motor vehicles.

10 **registrable interest**, in a motor vehicle, means any of the following interests in the vehicle, whether arising under the law of the ACT, New South Wales or another participating State:

- (a) the interest of a person who is owed an obligation the performance of which is secured by a security interest to which the vehicle is subject;
- (b) the interest of a lessor of the vehicle;
- 15 (c) the interest of the owner under a hire-purchase agreement for the vehicle;
- (d) any other interest prescribed under regulations under the NSW Act.

20 **security interest**, in relation to a motor vehicle, means an interest or power—

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

25 by way of security for the payment of a debt or other financial obligation or the performance of any other obligation, but does not include an interest or power reserved or created, or otherwise arising, under a lease, hire-purchase agreement or agreement excluded from the definition of **security interest** in subsection 3
30 (1) of the NSW Act by regulations under the NSW Act.

the NSW Act means the *Registration of Interests in Goods Act 1986* (NSW).

“32B Expressions in pt 4A have same meanings as in NSW Act

An expression used in this Part and in the NSW Act has the same meaning in this Part as it has in the NSW Act.

“32C Registration of interests

5 A person may apply for registration under the NSW Act of a registrable interest that arises under a Territory law.

“32D Search certificates and notice

“(1) For this Act and any other Territory law, a person who obtains a certificate under section 8 of the NSW Act for a motor vehicle—

10 (a) is taken to have made, on the date of the certificate, a proper search of the register of interests, for registrable interests in the vehicle, if the result of the search is correctly reflected in the certificate; and

15 (b) is not affected by notice of information (other than the information in the certificate) about a registrable interest in the vehicle only because the person fails to do a further search in the register of interests before the end of the day after the day the certificate is issued.

20 “(2) For this Act or any other Territory law, a person is not taken to be affected by notice of a registrable interest in a motor vehicle only because the person or anyone else fails—

(a) to search a register or record kept under any law in force in the Territory (other than a search under the NSW Act); or

(b) to make any other search, inquiry or inspection.

25 “(3) For subsection (2), it does not matter that the person ought reasonably to have made the search, inquiry or inspection.

“(4) In a proceeding—

30 (a) a certificate that appears to be issued under subsection 8 (1) or (5) of the NSW Act is evidence of the matters stated in the certificate; and

- (b) a document that appears to be a certificate issued under subsection 8 (1) or (5) of the NSW Act is taken to be a certificate, unless the contrary is proved.

5 “(5) An action does not lie against the Territory, New South Wales, the director-general or a person engaged in the administration of this Act or the NSW Act, for the reliability of any information given by the director-general or an administrator in relation to a matter that may be recorded under subsection 5 (3) of the NSW Act.

“32E Purchasing motor vehicle with registrable interest

10 “(1) This section applies to the purchase of a motor vehicle that is subject to a registrable interest.

“(2) The purchaser acquires the vehicle free of the registrable interest if—

15 (a) the motor vehicle is purchased from a dealer by a non-dealer honestly and for value, whether or not the purchaser made—

(i) a search of the register of interests for registrable interests in the vehicle; or

(ii) any other search or any inquiry or inspection; or

20 (b) the motor vehicle is purchased from the debtor under the registrable interest—

(i) honestly and for value; and

(ii) without notice of the interest at the time of the payment of the purchase price; and

25 (iii) if the interest is registered—the purchaser made a proper search of the register of interests for registrable interests in the vehicle.

“(3) However, the purchaser does not acquire the vehicle free of the registrable interest if—

30 (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 motor vehicle or purchased the vehicle with the intention of entering into a lease, hire-purchase agreement or other contract; and

(b) the lessee, hirer or purchaser of the vehicle under the lease, hire-purchase agreement or other contract has failed to act honestly and had notice at the time of payment of the purchase price of the registrable interest to which the vehicle is subject.

5 “(4) In a proceeding it is presumed, unless the contrary is proved, that subsection (2) does not apply to the purchase if—

(a) the purchaser and the seller are corporations that are related to each other under the Corporations Law; or

10 (b) either the purchaser or the seller is a corporation and the other is an individual who is a director or officer of the corporation within the meaning of the Corporations Law; or

(c) the purchaser is a member of the same household as the seller.

15 “(5) In this section, a reference to the motor vehicle being *purchased from the debtor* under the registrable interest includes a reference to the motor vehicle being purchased from someone else who is in possession of the vehicle in circumstances where the debtor’s right to possession of the vehicle has been lost or the debtor is estopped from asserting that right against the purchaser.

“32F Liability of dealer to creditor if registrable interest defeated

20 “(1) This section applies if—

(a) a motor vehicle is purchased from a dealer by a non-dealer; and

(b) at any time before payment of the purchase price, the dealer had notice that the vehicle was subject to a registrable interest; and

25 (c) immediately before payment of the purchase price, the registrable interest had not been discharged or cancelled.

“ (2) The dealer is liable to the creditor who had the registrable interest for any loss of the creditor because of the operation of section 32E (Purchasing motor vehicle with registrable interest) in relation to the registrable interest.

30 “(3) However, the dealer is not liable to the creditor if the dealer purchased the motor vehicle free from the registrable interest of the creditor because of section 32E.

“32G Effect of part payment at time of acquisition

If, under section 32E (Purchasing motor vehicle with registrable interest) the purchaser of a motor vehicle acquires the vehicle free from a registrable interest but, at the time of the acquisition, only part 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 is owed by the debtor to the creditor under the interest, subrogated to the rights that, apart from the subrogation, the seller would have in relation to payment by the purchaser of the balance of the purchase price; and
- (b) the purchaser 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 has written notice of the rights of the creditor under that paragraph.

“32H Revival of registrable interest on rescission of contract

A registrable interest in a motor vehicle revives, and has effect as if a purchase of the vehicle had not happened, if—

- (a) under section 32E (Purchasing motor vehicle with registrable interest), the purchase of the vehicle results in the vehicle being freed from a registrable interest; and
- (b) the contract of purchase is later rescinded.

“32I Contracting out of operation of pt 4A etc

“(1) A provision of an agreement or contract that purports to exclude, limit or modify the operation of this Part, the regulations, the NSW Act or regulations under the NSW Act has no effect.

“(2) A person must not enter into an agreement with a purchaser that includes a provision of a kind mentioned in subsection (1).

Maximum penalty: 50 penalty units.”

5 **Insertion of definitions**

The following definitions are inserted in the dictionary:

“*creditor*, for pt 4A (Registration of interests in motor vehicles)—see section 32A.

5 *debtor*, for pt 4A (Registration of interests in motor vehicles)—see section 32A.

director-general, for pt 4A (Registration of interests in motor vehicles)—see section 32A.

10 *hire-purchase agreement*, for pt 4A (Registration of interests in motor vehicles)—see section 32A.

hirer, for pt 4A (Registration of interests in motor vehicles)—see section 32A.

lease, for pt 4A (Registration of interests in motor vehicles)—see section 32A.

15 *non-dealer*, for pt 4A (Registration of interests in motor vehicles)—see section 32A.

notice, for pt 4A (Registration of interests in motor vehicles)—see section 32A.

20 *owner*, for pt 4A (Registration of interests in motor vehicles)—see section 32A.

participating State, for pt 4A (Registration of interests in motor vehicles)—see section 32A.

payment, of a purchase price, for pt 4A (Registration of interests in motor vehicles)—see section 32A.

25 *purchase*, for pt 4A (Registration of interests in motor vehicles)—see section 32A.

registered, for pt 4A (Registration of interests in motor vehicles)—see section 32A.

30 *register of interests*, for pt 4A (Registration of interests in motor vehicles)—see section 32A.

registrable interest, for pt 4A (Registration of interests in motor vehicles)—see section 32A.

security interest, for pt 4A (Registration of interests in motor vehicles)—see section 32A.

the NSW Act, for pt 4A (Registration of interests in motor vehicles)—see section 32A.”.

5 **6 Repeal of Registration of Interests In Goods Act**

The *Registration of Interests in Goods Act 1990* is repealed.

Endnote

Act amended

- 1 Republished as in force on 31 March 1999 (Republication No 3). See also Act 1999 No 79