

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

**Registration of Interests in Goods Bill
1990**

No. of 1990

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1990
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

Presented, 29 May 1990

(Attorney-General)

**Registration of Interests in Goods Bill
1990**

A BILL

FOR

**An Act relating to the registration, under New South
Wales law, of security and other interests in goods that
arise under Territory law**

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

PART I—PRELIMINARY

Short title

- 5 **1.** This Act may be cited as the *Registration of Interests in Goods
Act 1990*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) Subject to subsection (3), the remaining provisions of this Act commence on a day fixed by the Minister by notice in the *Gazette*. 5

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision shall, by force of this subsection, commence on the first day after the end of that period. 10

Objects

3. The objects of this Act are—

(a) to facilitate the operation in the Territory of a system for the registration under the NSW Act of interests that arise under Territory law; and 15

(b) to ensure, as far as practicable, that the consequences of such registration are the same in the Territory as they would be in New South Wales.

Interpretation

4. (1) In this Act, unless the contrary intention appears— 20
“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 of the State of New South Wales or the *Sale of Motor Vehicles Act 1977*; and 25

(b) in any other case—a dealer within the meaning of the NSW Act;

“declared goods” means goods in respect of which a declaration under section 7 is in force;

“NSW prescribed goods” means goods prescribed under the NSW Act; 30

“Register” means the Register of Interests in Goods maintained under section 4 of the NSW Act;

“the NSW Act” means the Registration of Interests in Goods Act 1986 of the State of New South Wales. 35

(2) Unless the contrary intention appears, an expression that is used in this Act and the NSW Act and that is given a particular meaning by the NSW Act, has in this Act the same meaning that it has in the NSW Act.

PART II—REGISTRATION

Registration

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

Search certificates and notice

10 6. (1) For the purposes of this Act and any other law of the Territory, a person who obtains a certificate under section 8 of the NSW Act—

(a) shall be taken to have made 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

15 (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 issue of the certificate.

20 (2) For the purposes of this Act, a person is not to be taken to be affected by notice of a registrable interest in declared goods, or goods to which an order in force under subsection 9 (1) of the NSW Act applies, by reason only of the failure of that person—

(a) to search any register or record kept under an Act (other than this Act) or a Commonwealth Act; or

25 (b) to make any other search, inquiry or inspection; whether or not the person ought reasonably to have done so.

(3) In any proceedings—

30 (a) a certificate purporting to have been issued under subsection 8 (1) or (5) of the NSW Act is evidence of the matters specified in the certificate; and

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

35 (4) No action lies against the Territory, the State of New South Wales, the Commissioner or any person engaged in the administration of this Act or the NSW Act in respect of loss sustained by a person as a result of reliance upon information contained in a certificate that has been recorded under subsection 5 (3) of the NSW Act.

PART III—RIGHTS OF PURCHASERS AND CREDITORS

40 Declaration of goods

7. (1) The Minister may, by notice published in the *Gazette*, declare goods of a kind specified in the declaration, being NSW prescribed goods, to be goods to which this Part applies.

(2) A declaration takes effect—

- (a) on the day of its publication in the *Gazette*; or
- (b) if a later day is specified in the notice—on that later day.

(3) A declaration is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

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Purchase of goods subject to a registrable interest

8. (1) Where declared goods subject to a registrable interest are purchased as provided by subsection (2) or (3)—

- (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 10
- (b) the purchaser acquires the goods freed and discharged from the registrable interest.

(2) Declared goods subject to a registrable interest are purchased as provided by this subsection if they are purchased— 15

- (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. 20

(3) Declared goods subject to a registrable interest are purchased as provided by this subsection if the goods are purchased otherwise than as referred to in paragraph (2) (a)—

- (a) from the debtor under the registrable interest;
- (b) in good faith and for value; and 25
- (c) without notice, at the time of payment of the purchase price, of the registrable interest.

(4) In any proceedings it shall be presumed, unless the contrary is proved, that a purchase is not a purchase as provided by subsection (2) or (3) if— 30

- (a) the purchaser and the seller are corporations that are, for the purposes of the *Companies Act 1981* of the Commonwealth, deemed to be related to each other;
- (b) one of the purchaser and the seller is a corporation and the other a natural person who, within the meaning of the *Companies Act 1981* of the Commonwealth, is a director or officer of the corporation; or 35
- (c) the purchaser and the seller are related to, or associated with, each other as prescribed by regulations made under the NSW Act. 40

(5) In subsection (3), a reference to a purchase from the debtor under a registrable interest shall be read as including 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.

5 **Rights of creditor and purchaser where registrable interest defeated**

9. (1) Where—

- (a) a person purchases declared goods of a particular kind from a dealer in declared goods of that kind;
- (b) the purchaser is not a dealer in declared goods of that kind;
- 10 (c) at any time before payment of the purchase price, the dealer had notice that the goods were subject to a registrable interest; and
- (d) immediately before payment of the purchase price, the registrable interest had not been discharged or cancelled;
- 15 the dealer is liable to the creditor who had the registrable interest for any loss sustained by the creditor by reason of the operation of section 8 in relation to the registrable interest.

(2) 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 8.

(3) Where, by the operation of section 8, 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
- 30 (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
 - 35 (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.

40 (4) Where—

- (a) by the operation of section 8, 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.

PART IV—MISCELLANEOUS

Saving of rights and remedies

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10. Except to the extent that this Act expressly provides otherwise, nothing in this Act shall be taken to modify or exclude a right or remedy that a person would have had if this Act had not been enacted.

Contracting out of operation of Act

11. (1) A term of any agreement or contract that purports to exclude, limit or modify the operation of this Act, the regulations (if any), the NSW Act or regulations made under the NSW Act has no effect.

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(2) A person who enters into an agreement with a purchaser that includes a provision that, by virtue of subsection (1), has no effect is guilty of an offence punishable—

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(a) if the offender is a natural person—by a fine not exceeding \$5,000; and

(b) if the offender is a body corporate—by a fine not exceeding \$25,000.

Regulations

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12. The Executive may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

