

2000

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

SALE OF MOTOR VEHICLES AMENDMENT BILL 2000

EXPLANATORY MEMORANDUM

**Circulated by authority of
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SALE OF MOTOR VEHICLES AMENDMENT BILL 2000

The Sale of Motor Vehicles Amendment Bill 2000 repeals the *Registration of Interests in Goods Act 1990*. The Bill amends the *Sale of Motor Vehicles Act 1977* to include a new Part 4A dealing with registration of interests in motor vehicles.

This Bill includes the following changes:

1. Part 4A explicitly refers to registration of interests in motor vehicles. The *Registration of Interests in Goods Act 1990* was formulated to accommodate all types of goods that may be prescribed in the future under the NSW scheme. However, in its 10 years of operation, motor vehicles have remained the only goods prescribed. This Bill affirms that practice.
2. The Bill defines notice of a registrable interest in a motor vehicle. Under the *Registration of Interests in Goods Act 1990*, registration of a security interest has the effect of placing a prospective purchaser or a later taker of an interest on constructive notice, and the failure to search the register maintained under the scheme will evidence a lack of good faith so as to prevent any exception to the ordinary legal rules dealing with the transfer of property. This Bill clarifies the meaning of notice to include either:
 - knowledge of a registrable interest in the vehicle; or
 - 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.
3. This Bill also provides for circumstances when a purchaser does not acquire the vehicle free of the registrable interest. The Bill contemplates situations where the purchaser lets, hires or supplies motor vehicles with the intention of entering into a lease, hire-purchase agreement or other contract and the lessee, hirer or purchaser of the vehicle did not act honestly and had notice of the registrable interest.

Under Part 4A (*Registration of Interests in Motor Vehicles*) of the *Sale of Motor Vehicles Act 1977*, the Australian Capital Territory continues to be a participating state under subsection 3(1) of the *Registration of Interests in Goods Act 1986 (NSW)*. As a participating state, interests in motor vehicles arising in the ACT may be made subject to the New South Wales' Register of Encumbered Vehicles Scheme (REVs). A person with an interest in a motor vehicle (generally arising from a credit arrangement) is able to register that interest and may then retain the interest recorded as against a later purchaser or interest taker. A registered interest is protected from extinguishment.

Like the existing law, the Bill provides that if a security interest is not registered, it may be extinguished if the motor vehicle is later purchased by a

purchaser honestly, for value, with no notice of the security interest. The Bill also provides for an exemption where the second purchaser in a chain of sale transactions does not act in good faith.

Financial Considerations

The proposed Bill is cost-neutral.

Details of the Bill

Clause 1 provides for the title of the Bill once enacted to be the *Sale of Motor Vehicles Amendment Act 2000*.

Clause 2 provides for the commencement of the Bill.

Clause 3 provides that the Bill amends the *Sale of Motor Vehicles Act 1977*.

Clause 4 inserts Part 4A after Part 4 of the *Sale of Motor Vehicles Act 1977*.

Part 4A—Registration of Interests in Motor Vehicles

Section 32A Definitions for pt 4A

Section 32A contains definitions of words and phrases found in Part 4A. The definitions mirror those found under subsection 3(1) of the *Registration of Interests in Goods Act 1986 (NSW)*.

This section defines notice of a registrable interest in a motor vehicle as either:

- knowledge of a registrable interest in the vehicle; or
- 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.

Under the existing scheme, registration of a security interest has the effect of placing a prospective purchaser on constructive notice, and the failure to search the register maintained under the scheme will evidence a lack of good faith. The scheme provides that there is no need to search other registers established or maintained under statutes other than the NSW Act. However, this does not deal with a situation where a purchaser has actual knowledge (or should have such knowledge) of the fact that there is a registrable interest (whether or not registered). Accordingly, this Bill uses the term “notice” to encompass:

1. constructive notice;
2. actual knowledge of the registrable interest whether the interest is registered or not; and
3. wilful ignorance.

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

This section provides that an expression used in Part 4A has the same meaning as in the NSW Act.

Section 32C Registration of interests

This section provides that a person may apply for registration under the NSW Act of an interest in motor vehicles that has arisen under a Territory law.

Section 32D Search certificates and notice

Subsection 32D (1) (a) provides that a person who obtains a certificate under section 8 of the NSW Act which provides for the issue of a certificate specifying the state of the register in relation to interests registered at a particular date and time, is taken to have made, on the date of the certificate, a proper search of the register of interests where the certificate correctly reflects the state of the register at the time and place of issue.

Subsection 32D (1) (b) provides that a person who obtains a certificate as in subsection 32D (1) (a) is not affected by notice of information relating to a registrable interest in the vehicle, other than that on the certificate, even if that person does not make a further search of the register before the end of the day after the day of issue of the certificate.

Subsection 32D (2) provides that, for purposes of the Bill, a person is not affected by notice of a registrable interest in a motor vehicle only by reason of the failure to search, inspect or inquire into any other register or record kept under any other statute.

Subsection 32D (3) provides that, for the purposes of subsection 32D (2), a person is not affected by notice of a registrable interest kept under any other statute even if that person ought reasonably to have made the search, inquiry or inspection.

Subsection 32D (4) (a) provides that, in a proceeding, a certificate that appears to have been issued under either subsections 8 (1) or (5) of the NSW Act is evidence of the matters stated in the certificate.

Subsection 32D (4) (b) provides that, in any proceeding, a document which appears to be a certificate issued under either subsections 8 (1) or (5) of the NSW Act is taken to be a certificate, unless proved to the contrary.

Subsection 32D (5) precludes the liability of the Territory, the State of New South Wales, the Director-General under the NSW Act and the person engaged in administering this Bill or the NSW Act in respect of any loss suffered by a person through reliance on information recorded in the register by the Commissioner under subsection 5(3) of the NSW Act.

Where a search certificate fails to disclose a registered interest or the interest is not properly entered in the register, the security interest is extinguished when the motor vehicle is purchased by a person honestly and for value. The interest holder, on the other hand, may, on application with the Director-General, be awarded compensation under section 13 of the NSW Act.

Subsection 14 (1) of the NSW Act provides that the compensation that may be awarded to the interest holder pursuant to section 13 of the Act shall not exceed the amount of the loss sustained by the interest holder or the value of the goods at the time of the purchase that caused the loss, whichever is the lesser amount.

Subsection 14 (1A) of the NSW Act provides that, for purposes of subsection 14 (1), the value of the 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.

Section 32E Purchasing motor vehicle with registrable interest

Subsection 32E (1) prescribes what constitutes a purchase of a motor vehicle that is subject to a registrable interest for purposes of the Bill.

Subsection 32E (2) (a) provides that where a purchaser who is a non-dealer of motor vehicles buys a motor vehicle from a dealer, honestly and for value, the purchaser acquires the motor vehicle free of registrable interest whether or not the purchaser made a search of the register of interests for registrable interests or any other search or inquiry or inspection.

Subsection 32E (2) (b) provides that where a motor vehicle is purchased (whether by a dealer or a non-dealer of motor vehicles) from the debtor under the registrable interest (who is not a dealer), honestly and for value, and without notice of the interest at the time of payment of the purchase price, and if the interest is registered, the purchaser made a proper search of the register of interests for registrable interests, the purchaser obtains the motor vehicle free of registrable interest.

Subsection 32E (3) provides for an exception to subsection 32E (1). It provides that if the purchaser lets, hires or supplies the motor vehicle 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 the lessee, hirer or purchaser of the vehicle under the lease, hire-purchase agreement or other contract did not act in good faith and had notice at the time of payment of the purchase price of the registrable interest to which the vehicle is subject, the purchase does not extinguish the registrable interest.

This subsection includes a situation where A holds an unregistered interest over a vehicle, which is in the possession of B, and B in collusion with C, sells the vehicle to D, a credit provider, with the express intention of having D supply the vehicle on terms to C, where both A and C are aware of A's

unregistered interest. Under the current legislation, D's purchase of the vehicle extinguishes the unregistered interest of A so that when C purchases the vehicle, although s/he did not act in good faith, C obtains the vehicle free of registrable interest. This Bill rectifies this anomaly by providing that the purchase by C, not being in good faith, does not extinguish A's unregistered interest.

Subsection 32(E) (4) provides that, in any proceedings, there is to be a presumption that a purchase is not a purchase under subsection 32E (2) where the purchaser and the seller are related corporations, a corporation and a director or officer of the corporation or are members of the same household.

Under this subsection, the party who makes the assertion that the purchase of the motor vehicle is a purchase free of registrable interest under subsection 32E (2) has the burden of proving that the purchase comes under subsection 32E (2).

Subsection 32E (5) provides that a reference to the motor vehicle being purchased from the debtor under the 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 or the debtor's right to assert a right to possession of the goods against the purchaser has been lost.

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

Section 32F deals with the rights of a creditor and a purchaser where the registrable interest has been defeated.

Subsections 32F (1) and (2) provide that where a dealer sells a motor vehicle to a non-dealer and prior to the payment of the purchase price, the dealer had notice that the vehicle was subject to a registrable interest and immediately prior to payment of the purchase price, the registrable interest had not been discharged or cancelled, the dealer is liable to the creditor who has the registrable interest for any loss sustained by the creditor because of section 32E (Purchasing motor vehicle with registrable interest).

Subsection 32F (3) provides that a dealer of motor vehicles is not liable to a creditor if the dealer purchased the motor vehicle free of and discharged from the registrable interest by the operation of section 32E.

Section 32G Effect of part payment at time of acquisition

Section 32G deals with the effect of a purchase where only part of the purchase price is paid to the seller.

Subsections 32G (a) and (b) provide that where only a part of the purchase price is paid to the seller, the creditor who has the registrable interest may be subrogated, to the extent of the amount that is owed by debtor to the creditor, to the rights the seller would have in relation to the payment by the purchaser

of the balance of the price of the vehicle. The purchaser of the motor vehicle obtains a good discharge as against the debtor for any payment of part of the purchase price made to the creditor and 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 to the subrogation.

Section 32H Revival of registrable interest on rescission of contract

Section 32H provides that a registrable interest revives and has effect as if a purchase of the vehicle had not happened if, by operation of section 32E (Purchasing motor vehicle with registrable interest), the purchase of the vehicle results in the vehicle being freed from and discharged of the registrable interest, and the contract of purchase is later rescinded.

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

Subsection 32I (1) declares void any term of an agreement that purports to exclude, limit or modify the Bill, the NSW Act or regulations made under the NSW Act.

Subsection 32I (2) makes it an offence for a person to enter into an agreement with a purchaser, that includes a provision that would be void under subsection 32I (1) and imposes a monetary penalty not exceeding 50 penalty units.

Clause 5 deals with definitions of words and phrases to be inserted in the dictionary.

Clause 6 provides that the *Registration of Interests in Goods Act 1990* is repealed.