

1990

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

**REGISTRATION OF INTERESTS IN GOODS BILL 1990**

**EXPLANATORY MEMORANDUM**

**Circulated by Authority of the Attorney-General**

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12499/90 Cat. No. 90 4444 4

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## REGISTRATION OF INTERESTS IN GOODS BILL 1990

The Registration of Interests in Goods Bill 1990 ( the Bill ) will introduce into the Territory a system for the registration of interests in goods. The Bill will follow provisions of the Registration of Interests in Goods Act 1986 ( NSW ) ( the NSW Act ) to allow for a system of public recording, by the filing of a notice, of a mortgage or similar financial interest held over a chattel.

Subsection 3 (1) of the NSW Act provides for a participating State. Such a State or Territory is one that has enacted legislation to provide for the registration of interests in goods that arise under the law of that jurisdiction. The Bill is intended to provide legislation that will bring the ACT within the definition in the NSW Act of a participating State so that interests arising in the ACT may be made subject to the NSW scheme of registration and to overcome any ACT law which would conflict with the purposes of the registration scheme.

NSW, the Northern Territory and the ACT are to be participants in the scheme of registration. It is intended that an interest recorded on the NSW Register will be recognised by each participating jurisdiction with reciprocity of rights and common benefits between the participants. Initially, through the Register of Encumbered Vehicles Scheme ( REVS ) established under the NSW Act, the system is to provide a register of interests held over motor vehicles; interests held over other goods may be included in the in future.

Registration through REVS is to have the effect of placing a prospective purchaser on notice, and failure to search the Register maintained under the scheme will evidence a lack of good faith so as to prevent any exception to the *nemo dat* rule applying to the transaction. Registration is to fix a prospective purchaser of, or later taker of an interest in a chattel with constructive notice of the interest registered. A person with an interest in a motor vehicle may register that interest and may then retain the interest recorded as against a later purchaser or interest taker.

Through REVS an intending purchaser of a motor vehicle may check whether there is an encumbrance recorded over the vehicle and avoid the possibility of the vehicle being repossessed by a creditor at a date after purchase. An interest holder who fails to register his or her interest in a motor vehicle will lose the interest held over that vehicle to a later interest taker or purchaser but will retain the right to pursue the debt against the original debtor.

The Bill will provide the Territory with a major advance in consumer protection economically and quickly by enabling the Territory to become a participant in the NSW REVS. An agreement between the Territory and New South Wales is to regulate the maintenance of the scheme.

#### Financial Considerations

An initial fee of \$110,000 will be paid to New South Wales to cover the costs of including the ACT in the scheme. The costs of the scheme in operation will be covered by fees paid by users of the scheme.

Details of the Bill are set out in the Attachment.

## ATTACHMENT

**REGISTRATION OF INTERESTS IN GOODS BILL 1990**

Clause 1 provides for the short title of the Bill once enacted, to be the Registration of Interests in Goods Act 1990.

Clause 2 makes provision for the commencement of the Bill.

Clause 3 declares the objects of the Bill.

Subclause 3 (a) provides that an object is the facilitation of the operation in the Territory of a system of registration of interests in goods that arise under Territory law, the system to be that established under the Registration of Interests in Goods Act 1986 ( NSW ) (the NSW Act).

Subclause 3 (b) provides that an object is to ensure, as far as is practicable, that the consequences of the system of registration of interests in goods established under the NSW Act are the same in the Territory as in New South Wales.

Clause 4 provides for interpretation.

Subclause 4 (1) provides for the interpretation of terms used in the Bill, including "Register" to mean the register established under the NSW Act, and 'the NSW Act' to mean the Registration of Interests in Goods Act 1986 (NSW).

Subclause 4 (2) provides that, unless the contrary intention appears in the Bill, an expression used in the Bill and in the NSW Act has the same meaning it has in the NSW Act.

Clause 5 provides that a person may apply for registration under the NSW Act of an interest in goods that has arisen under the law of the Territory.

Clause 6 provides for notice under the Bill.

Paragraph 6 (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, shall be taken to have made a proper search of the Register where the certificate accurately records the state of the register at the time and date of issue.

Paragraph 6 (1) (b) provides that a person who obtains a certificate as in paragraph 6 (1) (a) is not affected by notice of information relating to the registrable interest in the goods, other than that on the certificate, even where 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.

Subclause 6 (2) provides that, for the purposes of the Bill, a person is not affected by notice of a registrable interest only by reason of the failure of that person to search, inspect or inquire into any other register or record kept under any other statute.

Subclause 6 (3) provides that in any proceedings a certificate issued under subsection 8 (1) or 8 (5) of the NSW Act is to be taken to be such a certificate and to be evidence of the matters specified in the certificate unless proved to the contrary.

Subclause 6 (4) precludes the liability of the Territory, the State of New South Wales and the Commissioner for Consumer Affairs of New South Wales 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.

Clause 7 provides for the declaration of goods which are to be subject to the Bill.

Subclause 7 (1) provides that the Minister may, by notice in the Gazette, declare goods, which are to be goods prescribed under the NSW Act, to be goods to which the Bill applies.

Subclause 7 (2) provides for the commencement of a declaration under subclause 7 (1).

Subclause 7 (3) provides that a declaration under Clause 7 is to be a disallowable instrument for the purposes of section 10 of the Subordinate Laws Act 1989.

Clause 8 prescribes what constitutes a purchase of goods that are subject to a registrable interest for the purposes of the Bill.

Paragraphs 8 (1) (a) and (b) provide that where declared goods subject to a registrable interest are purchased as provided for in subclauses 8 (2) or 8 (3), the property in the goods will pass unencumbered from the creditor to the purchaser.

Subclause 8 (2) provides for a purchase to be a prescribed purchase if declared goods are the subject of the transaction and are subject to a registrable interest, and the transaction, provided it is made in good faith and for value, is made with or without notice between a person who is a dealer in the goods and a person who is not such a dealer.

Subclause 8 (3) provides for a purchase to be a prescribed purchase where declared goods are the subject of the transaction, are subject to a registrable interest and are not purchased from a dealer, but are purchased from the debtor under the registrable interest in good faith and for value and without notice of the registrable interest at the time of the payment of the purchase price.

**Subclause 8 (4) provides that there is to be a presumption in any proceedings that a purchase is not a purchase under subclause 8 (2) or 8 (3) where the purchaser and the seller are related corporations, a corporation and an officer of the corporation or are within a relationship prescribed by Regulations made under the NSW Act.**

**Subclause 8 (5) provides that, in subclause 8 (3), the reference to a purchase 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.**

**Clause 9 deals with the rights of a creditor and a purchaser where the registrable interest has been defeated.**

**Subclause 9 (1) provides that where a dealer sells goods subject to a registrable interest to a person who is not a dealer in goods of the kind sold and prior to the payment of the purchase price the dealer had notice that the goods were subject of a valid registrable interest, the dealer will be liable to the creditor who had the registrable interest for any loss sustained by the creditor.**

**Subclause 9 (2) provides that a dealer is not liable to a creditor in the circumstances referred to in subclause 9 (1) if the dealer purchased the goods concerned free and discharged from the registrable interest by the operation of section 8.**

**Subclause 9 (3) provides for circumstances where part only of the purchase price is paid to the seller.**

Paragraphs 9 (3) (a) and 9 (3) (b) provide that where part only 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 outstanding, to the rights the seller would have in relation to the payment by the purchaser of the balance of the price of the goods; and the purchaser of the goods 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 subrogation.

Subclause 9 (4) provides that a registrable interest revives and has effect where a purchase of the goods results, by the operation of section 8, in the goods being freed and discharged of the registrable interest and the contract of purchase is subsequently rescinded.

Clause 10 saves rights and remedies available to a person other than those rights and remedies expressly modified or excluded in the Bill.

Subclause 11 (1) declares void any term of an agreement that purports to exclude, limit or modify the Bill, the NSW Act or any regulations made under either the Bill or the NSW Act.

Subclause 11 (2) makes it an offence for a person to enter with a purchaser into an agreement that includes a provision that would be void under subclause 11 (1) and imposes a monetary penalty not exceeding \$5,000 if the offender is a natural person, and not exceeding \$25,000 if the offender is a body corporate.

Clause 12 allows for regulations to be made under the Bill.