

JUSTICE LEGISLATION (BILLS OF SALE, STOCK MORTGAGES AND LIENS) AMENDMENT BILL 1998

EXPLANATORY NOTES

Title of the Bill

Justice Legislation (Bills of Sale, Stock Mortgages and Liens) Amendment Bill 1998

Objectives of the legislation

The main objective of the Bill is to amend the *Bills of Sale and Other Instruments Act 1955* (BSA) and the *Liens on Crops of Sugar Cane Act 1931* (LCSCA) to modernise and streamline the registration procedures prescribed under each Act.

This is achieved by the:

- centralisation and computerisation of the register prescribed under each Act; and
- introduction of an interest based system of registration.

The interest based registration scheme contained in the Bill is modelled on the registration procedures prescribed in the *Motor Vehicles Securities Act 1986* (MVSA).

In addition to the two substantive amendments mentioned above, a number of minor, consequential amendments have been made to both the BSA and the LCSCA to reflect the new interest based system of registration.

The Bill also contains a number of miscellaneous amendments to the BSA which will help to improve the operation of the Act and include:

- amendments to the witnessing requirements prescribed under the

Act;

- omission of unnecessary provisions due to the:
 - (i) change to an interest based system of registration;
 - (ii) removal of the district divisions from the Act;
 - (iii) change to the reputed ownership provisions in the federal Bankruptcy Act;
- redrafting provisions in accordance with current drafting practice.

Administrative Cost

The estimated capital costs relating to the centralisation of the computerised registries are estimated at \$275 328.00, whilst the interest based registration scheme involves an ongoing estimated annual cost of \$42 466.00.

The introduction of an interest based registration scheme will, however, facilitate and enhance the operation and efficiency of the registries maintained by the Office of Consumer Affairs.

Fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles.

Section 4(3)(b) of the *Legislative Standards Act 1992* provides that one of the fundamental legislative principles is whether legislation is consistent with principles of natural justice.

Under the Bill, where a registration error is made **by the chief executive**, clauses 6 and 28 of the Bill, new section 18J (BSA) and new section 7Q (LCSCA) provide for **the chief executive**, as accountable officer under the *Financial Administration and Audit Act 1977*, to make a compensation payment for loss caused by the registry error. Such a situation could lead to a perception of bias on the part of the chief executive.

Organisationally, the BSA and the LCSCA are administered by the Office of Consumer Affairs and all registrations made by the Office of Consumer Affairs, as delegates of the chief executive.

It is considered appropriate that the chief executive, as accountable officer under the *Financial Administration and Audit Act 1977*, make decisions

with respect to compensation payments. At the present time, this power has not been delegated nor is there any present intention to do so.

Appropriate review/accountability mechanisms of such decisions exist under the *Judicial Review Act 1991* and the *Parliamentary Commissioner Act 1974*.

Consultation

Consultation occurred with the following government agencies and non-government associations:

Government agencies:

Department of Primary Industries
Office of State Revenue

Non-government associations:

Australian Bankers Association
Australian Cane Farmers Association Ltd
Australian Finance Conference
Australian Sugar Milling Council Pty Ltd
Canegrowers
Consumer Law and Reform Association
Credit Union Services Corporation
Finance and Securities Committee of the Queensland Law Society
Insurance Council of Australia
Mallesons Stephen Jaques Solicitors
Queensland Association of Permanent Building Societies
Queensland Consumers Association.

NOTES ON CLAUSES

Part 1—PRELIMINARY

Clause 1 sets out the short title of the amending Act.

Clause 2 provides for the commencement of the amending Act on a date to be fixed by proclamation.

Part 2—AMENDMENT OF BILLS OF SALE AND OTHER INSTRUMENTS ACT 1955

Clause 3 provides that part 2 and the schedule amend the *Bills of Sale and Other Instruments Act 1955*.

Clause 4 omits existing section 2 (Commencement) and replaces it with a new section 2 which extends the Act's operation to the State.

Clause 5 amends section 6 (Meaning of terms) which is the interpretation provision for the Act. The clause makes the following amendments:

- replaces the existing heading for section 6 with a new heading, "Definitions";
- omits a number of redundant terms due to the introduction of the interest based registration scheme;
- replaces the terms "grantee" and "grantor" with the simpler and more understandable terms of "borrower" and "lender";
- inserts new definitions required for the interest based registration scheme; and
- renumbers various subsections of existing section 6 and provides headings for those sections to reflect the application and operation of those sections.

Clause 6 replaces existing part 2 (Registrations) with new PART

2—REGISTRATION AND ITS EFFECTS. New part 2 is structured into 7 divisions and is made up of sections 7 to 18K as follows:

Division 1—Application of part

Section 7 restates the substance of omitted section 11A (Application of Part) by stating that new part 2 does not apply to a security interest, whether created before or after the commencement of the section, that relates to a motor vehicle within the meaning of the *Motor Vehicles Securities Act 1986*.

Division 2—The register and registration

Section 8 is designed to ensure that the register is one of security interests rather than instruments. The section provides that the chief executive must keep a register of security interests and lists the particulars that must be included in the register. When the particulars are included in the register, the security interest is registered.

Section 9 describes how an application for registration of a security interest is to be made and notes that the chief executive is not required to inquire into the validity of information supporting the application. The section states that an application must be made in the way prescribed under a regulation - this will include both electronic lodgment and paper-based lodgment.

Section 10 describes how and when an application for renewal of registration of a security interest is to be made.

Section 11 imposes an obligation on the chief executive, if satisfied that an application for the registration, or renewal of the registration, of a security interest is properly made, to register the application or renew the registration. The section also states that applications for registration, or renewal of registration, of security interests must be registered in the order of time of lodgment with the chief executive.

Section 12 prescribes the expiry dates for the registration of security interests under bills of sale, stock mortgages, and crop or wool liens. A

registration of a security interest in stock under a stock mortgage or a crop under a lien on crops or wool under a lien on wool expires on the day nominated by the lender in the application for registration as the day the security interest expires; however, a registration of a security interest taken under a bill of sale expires 5 years after registration.

Division 3—Other provisions about registration and registered security interests

Section 13 provides that a person may, on payment of the prescribed fee under a regulation, inspect the register at an office of the department prescribed under a regulation when the prescribed office is open to the public. Prescribed offices will be located at Brisbane, Rockhampton, Southport, Townsville, Maroochydore and Cairns. The inspection enables a person to take extracts from, or obtain a copy of details in the register. This information is to be known as a ‘printed search result’.

Further, a printed search result, certified by the chief executive, is evidence of the matters stated in it.

Section 14 is based on section 163 of the *Consumer Credit Code* and imposes an obligation on the lender to provide a copy of the document (or computer generated facsimile) to the borrower within the timeframes specified at the request of the borrower. The section also states that the lender may charge a reasonable amount for providing the copy, which must not be more than the actual cost of providing the copy.

This new section is necessary since the Bill replaces instrument filing with notice filing, thus, access to the instrument from the registry will no longer be available.

Section 15 allows for a restraining order to be registered under the Act and particulars of the restraining order, that may be prescribed under a regulation, to be included in the register.

Section 16 provides for the optional registration of an assignment of a registered security interest in the manner described in subsection 16(2). The section also states that the chief executive is not required to inquire into the validity of information supporting the application.

Section 17 provides that the chief executive, if satisfied that an

application for registration of the assignment of a registered security interest is properly made, must register the assignment in the manner described in subsection 17(1). These applications must be registered in the order of time of lodgment with the chief executive.

Section 18 states that an unregistered security interest has no effect against a person who is not a party to the instrument creating the interest; however, this section is subject to subsection 18B(3) which gives the holder of an unregistered security interest priority over a registered security interest in the circumstances stated in that subsection.

Section 18A provides that a registered security interest has priority according to the time of its registration.

Section 18B outlines the new priority rules appropriate for the interest based registration scheme. The provision is based on a “race statute” approach, which means that priority between competing security interests will be determined according to the order of registration, regardless of which security interest was created first and without reference to ‘notice’ considerations.

The section provides that:

- (i) a registered security interest will prevail over an unregistered interest;
- (ii) a registered security interest will prevail over another registered interest in the same chattels according to the order of registration;
- (iii) an unregistered security interest will prevail over a registered interest in the same chattels if the unregistered lender takes possession of the chattels before the other security interest is registered.

To clarify the relationship between the new priority rules and section 82 (Tacking and further advances) of the *Property Law Act 1974*, the section is stated to have effect for all amounts, including further advances, owing by the borrower to the lender under the security interest despite section 82.

The section also provides for a number of exceptions to the above priority rules. Thus, the rules apply subject to:

- renumbered subsection 6A(2);
- an express contrary provision in the Corporations Law;

- an agreement between the lenders holding the security interests.

Finally, the provision makes it clear that section 18B applies only prospectively to security interests created after the commencement of the section.

Division 4—Discharge of registered security interests

Section 18C provides that the lender may apply for the full or partial discharge of a registered security interest and describes how an application for the discharge of a registered security interest is to be made.

Section 18D provides that the chief executive, if satisfied that an application for the discharge of a registered security interest is properly made, must register the discharge in the manner described.

Section 18E imposes a duty on the lender to file an application for the discharge of a registered security interest within 14 days after the interest is fully discharged. The section includes a monetary penalty for failure to comply with the provision.

Section 18F empowers the borrower to force the lender to take positive steps to maintain a registration. Maintenance of an up-to-date system of records requires an inexpensive and expedient means for discharging registration or amending the stated particulars in the register. The substance of the section provides that where there is a dispute about the discharge of a registered security interest, or changes to the particulars in the register, a court order will need to be sought to maintain the registration or change the stated particulars in the register. Where a copy of the court order maintaining the registration is not given to the chief executive within the notice period, the chief executive must discharge the registration.

Division 5—Changes to register

Section 18G provides that the lender who holds a registered security interest may apply to the chief executive in the way prescribed under a regulation to change stated particulars in the register relating to the interest. The section also states that where the change is other than a change of a

minor and non-controversial nature, the chief executive may require the application to be made jointly by the lender and borrower.

Section 18H provides for the correction of errors in the register.

Division 6—Compensation for loss

Section 18I states that *Division 6-Compensation for loss* applies in the circumstances detailed in that section.

Section 18J provides for the payment of compensation to a person who suffers loss for a reason specified in section 18I. The section states that a person may apply to the accountable officer who may make a payment under the *Financial Administration and Audit Act 1977*, section 106.

Division 7—General

Section 18K provides that the chief executive may deal with the security interest under the Act only if satisfied that stamp duty on the instrument has been paid or accounted for under the *Stamp Act 1894*. Thus, the section has been inserted to reflect the current position with respect to the payment of stamp duty as generally provided for in sections 13A (Duty accounted for by returns) and 30 (Penalty for registering instrument not duly stamped) of the *Stamp Act 1894*.

The section also states that the chief executive may assume stamp duty has been paid or accounted for if the person asking the chief executive to deal with the interest states, in writing, that stamp duty has been paid or accounted for under the Stamp Act.

Clause 7 amends section 19 by simplifying the language in subsections 19(1)(a) and (b) and omitting subsection 19(1)(c). Paragraphs (a) and (b) have been recast to reflect the change in the nature of the register. Paragraph (c), which refers to ‘a description of the place where the chattels are situated...’, has been omitted as it is not relevant to the principal purpose of the Act which is to enable third party purchasers or financiers to determine if chattels are encumbered. Moreover, the requirement to state the location of the chattels is unnecessary in light of the removal of the district divisions

from the Act and the centralisation of the register.

Clause 8 amends section 20 by inserting subsection 20(1A) to enable an employee of a party to the instrument, acting in the ordinary course of business, to witness the execution of the instrument.

Clause 9 omits section 22 which is consequential on the change in the nature of the register.

Clause 10 omits part 4, division 1 of the Act. This amendment relates to the omission of section 24 (Registration of assignments of book debts). Under current section 24, registration of assignments of book debts in Queensland is optional. Failure to register entails no disability under the legislation. Registration itself is expressed not to confer any priority. In other words, the grantee of the assignment obtains no benefit from registration. With the abandonment in the *Bankruptcy Act 1966* (Cth) of the reputed ownership doctrine, the Queensland provision has now lost significance and therefore it is unnecessary to be retained in the Act.

Clause 11 amends section 25 by inserting a more appropriate heading which is consequential on the omission of subsection 25(1). A renumbering change to subsection 25(2) is also consequential on the omission of subsection 25(1).

The reason for the omission of subsection 25(1) is explained in the following paragraphs.

The principal purpose for providing a system of registration of stock mortgages was to confer protection on the grantee against the operation of the doctrine of reputed ownership applied by State insolvency statutes and, between 1924 and 1966 when the current *Bankruptcy Act* was enacted, by the federal Bankruptcy legislation, which accepted the principle that goods in the possession order and disposition of the mortgagor would pass to the latter's trustee in bankruptcy even though they belonged to another person.

The federal Act exempted registered securities from the operation of the reputed ownership rule.

The current federal Act, however, does not apply the doctrine of reputed ownership at all. The reference to "possession order and disposition" in the Act has, therefore, become meaningless and hence it is unnecessary to retain subsection 25(1).

Clause 12 recasts section 27 which is consequential on the change in the nature of the register.

Clause 13 recasts section 30 which is consequential on the change in the nature of the register.

Clause 14 recasts section 31 which is consequential on the change in the nature of the register.

Clause 15 recasts section 32 which is consequential on the change in the nature of the register.

Clause 16 omits section 33 which is consequential on the insertion of new section 12 (Expiry of registration).

Clause 17 recasts section 34 which is consequential on the change in the nature of the register.

Clause 18 recasts section 35 which is consequential on the change in the nature of the register.

Clause 19 recasts section 36 which is consequential on the change in the nature of the register.

Clause 20 recasts section 37 which is consequential on the change in the nature of the register.

Clause 21 inserts the following new sections:

Section 37A provides that it an offence for a person to make false or misleading statements to an official that the person knows is false or misleading. “Official” is defined in section 6 to mean the chief executive, or an officer or employee of the department.

Section 37B provides it is an offence for a person to give to an official a document containing information the person knows is false or misleading. The section does not apply if the person, to the best of their ability, tells the official how it is false, misleading or incomplete and gives the correct information to the official.

Section 37C provides protection from civil liability for an official for an act done, or omission made, honestly and without negligence under the Act. Where the section operates to prevent a civil liability attaching to an official, liability attaches instead to the State.

Clause 22 replaces existing section 38 with a recast ‘delegations’ provision in accordance with current drafting practice.

Clause 23 makes a renumbering change and amends section 49 by inserting a further subsection which states the section expires 9 years after

the commencement of new section 54.

Clause 24 inserts new part 6-TRANSITIONAL AND SAVING PROVISIONS, consequential on the amendments made to the Act. Part 6 inserts the following new sections:

Section 50 is a transitional provision which preserves the register of registered instruments that existed before the commencement of this section and provides that register is taken to be the register under new section 8.

Section 51 is a transitional provision that provides for each instrument registered under the Act, immediately before commencement, to be taken to be a registered security interest. The registered particulars of each instrument, immediately before the commencement of the section, are taken to be included in the register under new section 8.

Section 52 is a transitional provision that continues the operation of section 33 for deciding when the registration of a lien on crops, executed before the commencement of section 52, expires.

Section 53 is a transitional provision that provides that a wool lien, registered under the Act immediately before the commencement of section 53, expires 1 year after the commencement.

Section 54 is a transitional provision that deals with registered stock mortgages and state securities included in the register before the commencement of this section. The section provides for the expiry of those instruments and effectively provides each instrument with a duration of 15 years.

Section 55 is a saving provision that applies to registered security interests, that immediately before the commencement of section 55, were registered instruments.

The purpose of this section is to prevent any retrospective application of the new priority provision—section 18B (Priority of security interests) to these interests.

The section clearly states that the rules for deciding priority, including section 7A(2), as in force immediately before the commencement, continue to have effect for deciding priority of these interests after the commencement.

PART 3—AMENDMENT OF LIENS ON CROPS OF SUGAR CANE ACT 1931

Clause 25 provides that part 3 amends the *Liens on Crops of Sugar Cane Act 1931*.

Clause 26 amends section 2 which is the interpretation provision for the Act. The clause makes the following amendments:

- replaces the existing heading for section 2 with a new heading “Definitions”;
- omits a number of redundant terms due to the introduction of the interest based registration scheme;
- inserts new definitions required for the interest based registration scheme; and
- amends the definition of “owner of a mill” by omitting references to 3 repealed Acts included in that definition.

Clause 27 inserts new sections 3 and 3A. Section 3 recasts in simpler language the introductory words of existing section 2, and section 3A extends the Act’s operation to the Crown.

Clause 28 replaces existing sections 4 to 7 and inserts a number of recast and new provisions, designed to ensure that the register is one of security interests rather than instruments. The recast and new sections are:

Section 4 replaces existing subsections 4(1) and (2) by recasting the language to reflect the change to an interest based registration scheme.

Section 5 provides that the chief executive must keep a register of liens and lists the particulars that must be included in the register. When the particulars are included in the register, the lien is registered.

Section 6 describes how an application for registration of a lien is to be made and notes that the chief executive is not required to inquire into the validity of information supporting the application. The section states that an application must be made in the way prescribed under a regulation—this will include both electronic lodgment and paper-based lodgment.

Section 7 describes how and when an application for renewal of registration of a lien is to be made.

Section 7A imposes an obligation on the chief executive, if satisfied that an application for the registration, or renewal of the registration, of a lien is properly made, to register the application or renew the registration. The section also states that applications for registration, or renewal of registration, of liens must be registered in the order of time of lodgment with the chief executive.

Section 7B provides that the registration of lien expires on the day nominated by the lienee in the application for registration as the day the lien expires.

Section 7C provides that a person may, on payment of the prescribed fee under a regulation, inspect the register at an office of the department, prescribed under a regulation, when the prescribed office is open to the public. Prescribed offices will be located at Brisbane, Rockhampton, Southport, Townsville, Maroochydore and Cairns. The inspection enables a person to take extracts from, or obtain a copy of details in the register. This information is to be known as a 'printed search result'.

Further, a printed search result, certified by the chief executive, is evidence of the matters stated in it.

Section 7D is based on section 163 of the *Consumer Credit Code* and imposes an obligation on the lienee to provide a copy of the instrument creating the lien (or computer generated facsimile) to the lienor within the timeframes specified at the request of the lienor. The section also states that the lienee may charge a reasonable amount for providing the copy, which must not be more than the actual cost of providing the copy.

This new section is necessary since the Bill replaces instrument filing with notice filing, thus, access to the instrument from the registry will no longer be available.

Section 7E provides for the optional registration of an assignment of a registered lien in the manner described in subsection 7E(2). The section also states that the chief executive is not required to inquire into the validity of information supporting the application.

Section 7F provides that the chief executive, if satisfied that an application for registration of the assignment of a registered lien is properly made, must register the assignment in the manner described in subsection 7F(1). These applications must be registered in the order of time of lodgment with the chief executive.

Section 7G states that an unregistered lien has no effect against a person who is not a party to the instrument creating the lien; however, this section is subject to subsection 7I(3) which gives the lienee of an unregistered lien priority over a registered lien in the circumstances stated in that subsection.

Section 7H provides that a registered lien has priority according to the time of its registration.

Section 7I outlines the new priority rules appropriate for the interest based registration scheme. The provision is based on a “race statute” approach, which means that priority between competing liens will be determined according to the order of registration, regardless of which lien was created first and without reference to ‘notice’ considerations.

The section provides that:

- (i) a registered lien will prevail over an unregistered lien;
- (ii) a registered lien will prevail over another registered lien over the same crop according to the order of registration;
- (iii) an unregistered lien will prevail over a registered lien if the unregistered lienee takes possession of the crop before the other lien is registered.

To clarify the relationship between the new priority rules and section 82 (Tacking and further advances) of the *Property Law Act 1974*, the section is stated to have effect for all amounts, including further advances, owing by the lienor to the lienee under the lien despite section 82.

The section also provides for a number of exceptions to the above priority rules. Thus, the rules apply subject to:

- section 12 of the LCSCA;
- an express contrary provision in the Corporations Law;
- an agreement between the lienees holding the liens.

The provision also makes it clear that section 7I applies only prospectively to liens created after the commencement of the section.

The section has been drafted in a way that is consistent with section 18B (Priority of security interests) of the *Bills of Sale and Other Instruments Act 1955*.

Section 7J provides that the lienee may apply for the full or partial

discharge of a registered lien and describes how an application for the discharge is to be made.

Section 7K provides that the chief executive, if satisfied that an application for the discharge of a registered lien is properly made, must register the discharge in the manner described.

Section 7L imposes a duty on the lienee to file an application for the discharge of a registered lien within 14 days after the lien is fully discharged. The section includes a monetary penalty for failure to comply with the provision.

Section 7M empowers the lienor to force the lienee to take positive steps to maintain a registration. Maintenance of an up-to-date system of records requires an inexpensive and expedient means for discharging registration or amending the stated particulars in the register. The substance of the section provides that where there is a dispute about the discharge of a registered lien, or changes to the particulars in the register, a court order will need to be sought to maintain the registration or change the stated particulars in the register. Where a copy of the court order maintaining the registration is not given to the chief executive within the notice period, the chief executive must discharge the registration.

Section 7N provides that the lienee may apply to the chief executive in the way prescribed under a regulation to change stated particulars in the register relating to the lien. The section also states that where the change is other than a change of a minor and non-controversial nature, the chief executive may require the application to be made jointly by the lienee and lienor.

Section 7O provides for the correction of errors in the register.

Section 7P states that section 7Q, which deals with compensation for loss, applies in the circumstances detailed in the section.

Section 7Q provides for the payment of compensation to a person who suffers loss for a reason specified in section 7P. The section states that a person may apply to the accountable officer who may make a payment under the *Financial Administration and Audit Act 1977*, section 106.

Section 7R provides that the chief executive may deal with the lien under the Act only if satisfied that stamp duty on the instrument has been paid or accounted for under the *Stamp Act 1894*. Thus, the section has been inserted to reflect the current position with respect to the payment of stamp

duty as generally provided for in sections 13A (Duty accounted for by returns) and 30 (Penalty for registering instrument not duly stamped) of the *Stamp Act 1894*.

The section states that the chief executive may assume stamp duty has been paid or accounted for if the person asking the chief executive to deal with the lien states, in writing, that stamp duty has been paid or accounted for under the Stamp Act.

Clause 29 amends section 9 by updating a section reference to the *Sugar Industry Act 1991* and by omitting references to the repealed *Wages Act 1918*.

Clause 30 omits section 10 which is consequential on the insertion of new section 7B (Expiry of registration).

Clause 31 amends section 11 which is consequential on the insertion of new section 7 (Application for renewal of registration of lien).

Clause 32 amends section 12 by recasting subsection 12(2) in accordance with current drafting practice.

Clause 33 replaces the existing heading for section 13 with a new heading, “Effect of harvesting crop on lien” as it better reflects the intent of the provision. The section has been recast, which is consequential on the change in the nature of the register, and formatted into paragraphs in accordance with current drafting practice.

Clause 34 omits section 14 as new section 7 deals with renewal of liens.

Clause 35 replaces the existing heading for section 16 with a new heading, “Application of proceeds of crop to costs of sugarcane protection etc.” which is consequential on the omission of subsection 16(1). Subsection 16(1) is unnecessary as new section 7I deals with priority of liens. The clause also omits subsection 16(1A). Subsection 16(1A) has been omitted because of the reference to the repealed *Wages Act 1918* and replaced with new subsection 16(1) which states the Act is subject to chapter 9 (Records and wages), part 2 (Wages and occupational superannuation) of the *Workplace Relations Act 1997*.

Clause 36 replaces section 17 by recasting the provision to reflect the change in the nature of the register. The recast section clarifies the fact that the assignment of the land mentioned in the section is made under the *Sugar Industry Act 1991*. The current section fails to make this clear.

As a consequence of the new interest based registration scheme, the notice of lien to be given to a mill owner, is to be in the form of a certified printed search result.

The section has also been formatted into paragraphs in accordance with current drafting practice.

Clause 37 omits sections 18 to 22. These omissions are consequential on the change in the nature of the register.

Clause 38 amends section 23 by omitting subsection 23(2). This subsection has been recast into new subsections 23(2) and (3) in accordance with current drafting practice. Subsection 23(4) states that subsections 23(2), 23(3) and 23(4) expire 10 years after the commencement of this subsection.

Clause 39 omits existing section 23A and inserts a number of new provisions:

Section 23A provides that it an offence for a person to make false or misleading statements to an official that the person knows is false or misleading. “Official” is defined in section 2 to mean the chief executive, or an officer or employee of the department.

Section 23B provides it is an offence for a person to give to an official a document containing information the person knows is false or misleading. The section does not apply if the person, to the best of their ability, tells the official how it is false, misleading or incomplete and gives the correct information to the official.

Section 23C provides protection from civil liability for an official for an act done, or omission made, honestly and without negligence under the Act. Where civil liability would not attach under this section, liability attaches instead to the State.

Section 23D recasts existing section 23A, the ‘delegations’ provision, in accordance with current drafting practice.

Clause 40 inserts the following new provisions:

Section 26 is a transitional provision, consequential on the amendments made to the Act. The section states that the register of liens on sugarcane kept under the Act immediately before the commencement of this section, from the commencement continues as the register of liens kept under new section 5.

Section 27 is a transitional provision that provides for a registered instrument under the Act, immediately before the commencement, to be taken to be a registered lien. The registered particulars of each lien immediately before the commencement of the section are taken to be recorded in the register under new section 5.

Section 28 is a transitional provision that deals with existing liens included in the register before the commencement of this section. The section provides for the expiry of those liens and effectively provides each existing lien with a duration of 10 years.

Section 29 is a transitional provision that continues the operation of section 10(2) for deciding when the registration of a lien, executed before the commencement of section 29, expires.

Section 30 is a saving provision that applies to registered liens, that immediately before the commencement of this section, were registered instruments.

The purpose of this section is to prevent any retrospective application of the new priority provision—section 71 (Priority of liens) to these registered liens.

The section clearly states that the provisions of the Act for deciding priority, as in force immediately before the commencement, continue to have effect for deciding priority of those registered liens after the commencement.

Schedule

MINOR AMENDMENTS TO BILLS OF SALE AND OTHER INSTRUMENTS ACT 1955

Schedule, clause 1 omits from the definition of “bill of sale” in section 6(1), paragraph (b) the unnecessary words, ‘and transfers’, as the new definition of “assign” in section 6(1) includes transfer.

Schedule, clause 2 is consequential on the amendment to current section 6(1) and simplifies the language by replacing ‘grantor’ with ‘borrower’.

Schedule, clause 3 is consequential on the amendment to current section

6(1) and simplifies the language by replacing ‘grantor’ with ‘borrower’.

Schedule, clause 4 omits from the definition of “book debts” in section 6(1), the unnecessary words ‘or transfer’. This is consequential on the new definition of “assign” in section 6(1) which is defined to include transfers.

Schedule, clause 5 is consequential on the amendment to section 6(1) and simplifies the language by replacing ‘grantor’ with ‘borrower’.

Schedule, clause 6 is consequential on the amendment to section 6(1) and simplifies the language by replacing ‘grantor’s’ with ‘borrower’s’.

Schedule, clause 7 is consequential on the amendment to section 6(1) and simplifies the language by replacing ‘grantee’ with ‘lender’.

Schedule, clause 8 is consequential on the amendment to section 6(1) and simplifies the language by replacing ‘grantee’s’ with ‘lender’s’.

Schedule, clause 9 is consequential on the amendment to section 6(1) and simply replaces ‘grantee’ with ‘lender’ in the sections and schedules listed.

Schedule, clause 10 is consequential on the amendment to section 6(1) and simply replaces ‘grantor’ with ‘borrower’ in the sections and schedules listed.

Schedule, clause 11 is consequential on the new definition of “assign” in section 6(1).

Schedule, clause 12 is consequential on the amendment to section 22 which has been omitted.

Schedule, clause 13 is consequential on the amendment to section 6(1) and replaces ‘grantors’ in section 42 with ‘borrowers’.

Schedule, clause 14 is consequential on the amendment to section 6(1) and replaces ‘grantees’ in section 42 with ‘lenders’.

Schedule, clause 15 amends section 49 by replacing ‘Registrar’ in the heading with ‘Chief executive’. This is consequential on the amendment to section 6(1) and on the definition of “chief executive” contained in section 36 of the *Acts Interpretation Act 1954*.

Schedule, clause 16 amends section 49(1) by replacing ‘registrar under this Act’ with ‘chief executive’. This is consequential on the amendment to section 6(1) and on the definition of “chief executive” contained in section 36 of the *Acts Interpretation Act 1954*.

Schedule, clause 17 is consequential on the amendment to section 6(1) and replaces 'grantee's' in schedule 5, sections 1, 3, 4 and 5 with 'lender's'.

Schedule, clause 18 is consequential on the amendment to section 6(1) and replaces 'grantor's' in schedule 5, sections 1 and 3 and schedule 6 with 'borrower's'.