

Queensland



**BILLS OF SALE AND OTHER
SECURITIES AMENDMENT
ACT 1999**

Act No. 4 of 1999

Queensland



**BILLS OF SALE AND OTHER
SECURITIES AMENDMENT ACT 1999**

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**MINOR AMENDMENTS OF BILLS OF SALE AND OTHER
INSTRUMENTS ACT 1955**

Queensland



Bills of Sale and Other Securities Amendment Act 1999

Act No. 4 of 1999

**An Act to amend the *Bills of Sale and Other Instruments Act 1955*, the
Liens on Crops of Sugar Cane Act 1931 and the *Motor Vehicles
Securities Act 1986***

[Assented to 18 march 1999]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Bills of Sale and Other Securities Amendment Act 1999*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

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

Act amended in pt 2

3. This part and the schedule amend the *Bills of Sale and Other Instruments Act 1955*.

Replacement of s 2 (Commencement)

4. Section 2—

omit, insert—

‘Act binds all persons

‘2. This Act binds all persons, including the State, and, so far as the legislative power of Parliament permits, the Commonwealth and the other States.’.

Amendment of s 6 (Meaning of terms)

5.(1) Section 6, heading—

omit, insert—

‘Definitions’.

(2) Section 6(1), definitions “**central district**”, “**far northern district**”, “**grantee**”, “**grantor**”, “**northern district**”, “**office of the registrar**”, “**registrar**”, “**southern district**” and “**unregistered instrument**”—

omit.

(3) Section 6(1)—

insert—

“**assign**” includes transfer.

“**borrower**”, in relation to a security interest, means—

- (a) a person who gives a security interest to a lender; or
- (b) the personal representative of a person mentioned in paragraph (a); or
- (c) if the person mentioned in paragraph (a) is a corporation—its successors in title and permitted assigns.

“**incorrect information**” see section 18J(e)(ii).

“**lender**”, in relation to a security interest, means—

- (a) a person holding a security interest or a person who holds a security interest for the benefit of someone else; or
- (b) the personal representative of a person mentioned in paragraph (a); or
- (c) if the person mentioned in paragraph (a) is a corporation—its successors in title and permitted assigns.

“**official**” means the chief executive, or an officer or employee of the department.

“**printed search result**” see section 13.

“**register**” means the register kept under section 8.

“**registered**” means included in the register.

“security interest” means an interest in—

- (a) a chattel under a bill of sale; or
- (b) stock under a stock mortgage; or
- (c) a crop under a lien on crops; or
- (d) wool under a lien on wool.

“unregistered security interest” means a security interest that—

- (a) is not registered under this Act; or
- (b) has expired.’.

(4) Section 6(2), as a heading—

insert—

‘Application of Act to bills of sale’.

(5) Section 6(2) and (2A)—

renumber as section 6A(1) and (2).

(6) Section 6(3), as a heading—

insert—

‘Limitation on separate assignment etc.’.

(7) Section 6(3)—

renumber as section 6B.

(8) Section 6(4), as a heading—

insert—

‘Rents and profits’.

(9) Section 6(4), (4A) and (4B)—

renumber as section 6C(1), (2) and (3).

(10) Section 6(5) and (6)—

renumber as section 6D(1) and (2).

(11) Section 6(6), ‘For the purposes of subsection (5)’—
omit, insert—
‘In this section’.

Replacement of pt 2 (Registrations)

6. Part 2—
omit, insert—

‘PART 2—REGISTRATION AND ITS EFFECTS

‘Division 1—Application of part

‘Application of pt 2

‘7. This part does not apply to a security interest, whether created before or after the commencement of this section, to the extent that the interest relates to a motor vehicle within the meaning of the *Motor Vehicles Securities Act 1986*.

‘Division 2—The register and registration

‘Register

‘8.(1) The chief executive must keep a register of security interests.

‘(2) The register must include the following particulars in relation to each security interest included in the register—

- (a) the name and address of the lender and the borrower;
- (b) whether the interest is given under a bill of sale, stock mortgage or lien;
- (c) the day and time the particulars are included in the register;
- (d) other particulars that may be prescribed under a regulation.

‘(3) The security interest is “**registered**” when the particulars are included in the register.

‘**Application for registration of security interest**

‘9.(1) An application for the registration of a security interest must—

- (a) be made in the way prescribed under a regulation; and
- (b) if the security interest is an interest in stock under a stock mortgage or a crop under a lien on crops or wool under a lien on wool—nominate the day the security interest expires; and
- (c) be accompanied by the fee that may be prescribed under a regulation.

‘(2) The application must include a description of the chattels to which the interest relates, to the extent to which the chattels are ascertainable.

Examples of suitable descriptions of chattels—

1. One blue Ace (8 blades) plough, serial number 0001.
2. Stock-in-trade of AZ Pty Ltd.
3. Book debts of JB and Co.

‘(3) The chief executive is not required to inquire into the validity of information supporting the application.

‘**Application for renewal of registration of security interest**

‘10.(1) An application for the renewal of registration of a security interest must—

- (a) be made in the way prescribed under a regulation; and
- (b) if the security interest is an interest in stock under a stock mortgage or a crop under a lien on crops or wool under a lien on wool—nominate the day the security interest expires; and
- (c) be accompanied by the fee that may be prescribed under a regulation.

‘(2) The chief executive is not required to inquire into the validity of information supporting the application.

‘(3) The registration of a security interest must be renewed before the registration expires.

‘Registration, or renewal of registration, of security interest

‘11.(1) If the chief executive is satisfied that an application for the registration, or renewal of the registration, of a security interest is properly made, the chief executive must register, or renew the registration of, the security interest by including in the register the relevant particulars mentioned in section 8(2).

‘(2) Applications for registration, or renewal of registration, of security interests must be registered in the order of time of lodgment with the chief executive.

‘Expiry of registration

‘12.(1) A registration of a security interest after the commencement of this section expires—

- (a) for a security interest in stock under a stock mortgage or a crop under a lien on crops or wool under a lien on wool—the day nominated by the lender in the application for registration as the day the security interest expires; or
- (b) otherwise—the day 5 years after the registration takes effect.

‘(2) In this section—

“**registration**” includes renewal of registration.

‘Division 3—Other provisions about registration and registered security interests

‘Inspecting the register

‘13.(1) A person may, on payment of the fee prescribed under a regulation—

- (a) inspect the register at an office of the department prescribed under a regulation when the office is open to the public; and

- (b) take extracts from, or obtain a copy of the particulars in, the register (a “**printed search result**”).

‘(2) A printed search result certified by the chief executive is evidence of the matters stated in it.

‘Copies of documents to which security interest relates

‘14.(1) The lender must, at the written request of the borrower, give the borrower a copy of the bill of sale, stock mortgage or lien to which the interest relates.

Maximum penalty—30 penalty units.

‘(2) For subsection (1), the copy must be given—

- (a) within 14 days, if the original came into existence 1 year or less before the request is given; or
- (b) within 30 days, if the original came into existence more than 1 year before the request is given.

‘(3) The copy may be a computer generated facsimile containing the same information contained in the original document.

‘(4) The lender may charge a reasonable amount for providing the copy, which must not be more than the actual cost of providing the copy.

‘Registration of restraining orders

‘15.(1) A restraining order under the *Crimes (Confiscation) Act 1989* made in relation to chattels of a person may be registered.

‘(2) Registration of the restraining order has effect for the duration of the restraining order.

‘(3) The chief executive must, on receipt of a request accompanied by a certified copy of the restraining order, include in the register particulars of the restraining order for the chattels that may be prescribed under a regulation.

‘Application for registration of assignment of registered security interest

‘**16.(1)** An assignment of a registered security interest may be registered, but is not required to be registered.

‘**(2)** An application for registration of the assignment of a registered security interest must be—

- (a) made in the way prescribed under a regulation; and
- (b) accompanied by the fee that may be prescribed under a regulation.

‘**(3)** The chief executive is not required to inquire into the validity of information supporting the application.

‘Registration of assignment of a registered security interest

‘**17.(1)** If the chief executive is satisfied that an application for registration of the assignment of a registered security interest is properly made, the chief executive must register the assignment by including in the register particulars of the assignment.

‘**(2)** Applications for registration of assignments of registered security interests must be registered in the order of time of lodgment with the chief executive.

‘Effect of failure to register a security interest

‘**18.(1)** An unregistered security interest has no effect against a person who is not a party to the instrument creating the interest.

‘**(2)** Subsection (1) is subject to section 18B(3).

‘Priority given from time of registration

‘**18A.** A registered security interest has priority, for any title, or right to possession, to chattels conferred by the interest, according to the time of its registration.

‘Priority of security interests

‘18B.(1) A registered security interest in chattels ranks in priority over an unregistered security interest in the same chattels.

‘(2) A registered security interest in chattels ranks in priority over another registered security interest in the same chattels according to the order of registration.

‘(3) An unregistered security interest in chattels ranks in priority over a registered security interest in the same chattels if—

- (a) under the unregistered security interest the lender takes possession of the chattels; and
- (b) the taking of possession happens before the registered security interest is registered.

‘(4) Despite the *Property Law Act 1974*, section 82,¹ the priority given to a security interest under this section has effect for all amounts, including further advances, owing by the borrower to the lender under the security interest.

‘(5) Subsections (1), (2), (3) and (4) apply subject to the following—

- (a) section 6A(2);²
- (b) an express contrary provision in the Corporations Law;
- (c) an agreement between the lenders holding the security interests.

‘(6) It is declared that the priority given to security interests under this section applies only to security interests created after the commencement of this section.

¹ *Property Law Act 1974*, section 82 (Tacking and further advances)

² Section 6A (Application of Act to bills of sale)

‘Division 4—Discharge of registered security interests**‘Application for discharge of registered security interest**

‘18C.(1) The lender may apply for the full or partial discharge of a registered security interest.

‘(2) The application must be—

- (a) made in the way prescribed under a regulation; and
- (b) accompanied by the fee that may be prescribed under a regulation.

‘(3) The chief executive is not required to inquire into the validity of information supporting the application.

‘(4) In this section—

“partial discharge”, of a registered security interest, means—

- (a) a discharge of a borrower under the security interest from the borrower’s performance of a stated part of the borrower’s obligation under the security interest; or
- (b) if the security interest relates to a number of chattels—a discharge of the security interest in relation to any of the chattels.

‘Registration of discharge of registered security interest

‘18D. If the chief executive is satisfied that an application for the full or partial discharge of a registered security interest is properly made, the chief executive must register the discharge by—

- (a) including in the register the particulars that may be prescribed under a regulation; and
- (b) doing anything else that may be prescribed under a regulation.

‘Duty after interest fully discharged

‘18E. The lender who holds a registered security interest that is fully discharged must, within 14 days after the discharge—

- (a) file an application under section 18C³ for the full discharge of the interest; and
- (b) do anything else that may be necessary to effect the registration of the discharge.

Maximum penalty—20 penalty units.

‘Borrower may seek registration of discharge or change in particulars

‘18F.(1) A borrower may, in relation to a registered security interest, ask the lender—

- (a) to file an application under section 18C for the full or partial discharge of the interest if the interest has been fully or partially discharged; or
- (b) to join with the borrower to file an application under section 18G to change the particulars included in the register.

‘(2) A lender who receives a request under subsection (1) must, within 30 days after receiving the request—

- (a) file the application or join with the borrower in filing the application; or
- (b) apply to a Magistrates Court for an order maintaining the registration.

‘(3) If, at the end of the time allowed under subsection (2), the lender has not complied with subsection (2)(a) or (b), the borrower may ask the chief executive in the approved form to give the lender a notice under subsection (4).

‘(4) The notice must state that, unless the lender obtains a court order maintaining the registration before the end of the notice period, at the end of the notice period—

³ Section 18C (Application for discharge of registered security interest)

- (a) the discharge will be registered; or
- (b) stated particulars will be changed under section 18G.

‘(5) If a lender who has been given notice under subsection (4) has not—

- (a) filed an application for the discharge or the change to particulars in accordance with the request under subsection (1); or
- (b) given the chief executive a copy of a court order maintaining the registration;

before the end of the notice period, the chief executive must register the discharge or change the particulars included in the register as requested.

‘(6) On application by the lender, the court may make any of the following orders—

- (a) an order that the registration be maintained;
- (b) an order that the discharge be registered;
- (c) an order that the particulars included in the register be changed;
- (d) another order, including an order for costs, the court considers appropriate.

‘(7) In this section—

“**notice period**” means a period of 30 days after giving a notice under subsection (4).

‘Division 5—Changes to register

‘Changes to particulars in register

‘**18G.(1)** The lender who holds a registered security interest may apply to the chief executive to change stated particulars included in the register relating to the interest.

‘(2) The application must be—

- (a) made in the way prescribed under a regulation; and
- (b) accompanied by the fee that may be prescribed under a regulation.

‘(3) The chief executive may change the particulars and must include in the register the date on which the particulars were changed.

‘(4) If 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.

‘Correction of errors

‘**18H.(1)** This section applies if the chief executive is satisfied that an error, omission or failure to comply with this Act has happened in relation to—

- (a) a registered security interest; or
- (b) the register.

‘(2) The chief executive must do everything necessary to correct the error, omission or failure.

‘Removal of particulars of improperly registered interests

‘**18I.(1)** This section applies if, after registering an interest that appears to the chief executive to be a security interest, the chief executive, whether on the basis of information given to the chief executive or otherwise, reasonably believes the interest is not a security interest.

‘(2) The chief executive may, by written notice, require the party to the interest who appears to be the lender under the interest to give to the chief executive within a stated reasonable time, of at least 14 days, stated reasonable information the chief executive considers to be reasonably necessary to enable the chief executive to decide whether the interest is a security interest.

‘(3) The party must comply with the requirement within the time stated in the notice or the longer time that the chief executive may allow in writing.

Maximum penalty—30 penalty units.

‘(4) After considering all the information given to the chief executive, the chief executive may, if reasonably satisfied the interest is not a security interest, remove the particulars of the interest included in the register.

‘(5) However, before removing the particulars, the chief executive must give to the lender and the borrower under the interest written notice of the decision and the reasons for the decision.

‘(6) The notice must state—

- (a) that the person may apply to a Magistrates Court before the end of the notice period for an order maintaining the registration; and
- (b) that the particulars included in the register will be removed from the register unless the person obtains a court order before the end of the notice period.

‘(7) If a person given notice under subsection (5) has not—

- (a) filed an application for an order maintaining the registration; or
- (b) given the chief executive a copy of a court order maintaining the registration;

before the end of the notice period, the chief executive must remove the particulars included in the register.

‘(8) On application by a person given notice under subsection (4), the court may make an order—

- (a) that the registration be maintained; or
- (b) that the particulars included in the register be removed.

‘(9) In this section—

“**notice period**” means a period of 14 days after giving a notice under subsection (5).

Division 6—Compensation for loss

‘Application of div 6

‘18J. This division applies if a person suffers loss because—

- (a) a security interest in relation to which an application for registration had been filed with the chief executive had not been registered; or

- (b) particulars of a security interest were incorrectly entered in the register; or
- (c) a registered security interest had been discharged incorrectly under section 18F;⁴ or
- (d) a discharge of a security interest under section 18F, of which the chief executive has notice, had not been included in the register; or
- (e) the person—
 - (i) searches the register for a security interest or particulars of a security interest; and
 - (ii) there is an error in the register because of a negligent act or omission by the chief executive (the “**incorrect information**”); and
 - (iii) the person relies on the incorrect information contained in a printed search result issued by the chief executive.

‘Compensation for loss

‘**18K.(1)** A person who suffers loss for a reason stated in section 18J may apply to the accountable officer for payment of compensation to the person.

‘**(2)** The accountable officer may make a payment to the applicant under the *Financial Administration and Audit Act 1977*, section 106.⁵

‘**(3)** The accountable officer must not make a payment in relation to a loss for a reason mentioned in section 18J(e) if the applicant at the time of suffering the loss—

- (a) had actual notice of the security interest; or

⁴ Section 18F (Borrower may seek registration of discharge or change in particulars)

⁵ *Financial Administration and Audit Act 1977*, section 106 (Losses and special payments)

- (b) had been put on inquiry as to the existence of the security interest and had abstained from inquiry or further inquiry when the person might reasonably have expected the inquiry or further inquiry to reveal the security interest.

‘(4) Compensation paid under section 18J(a), (b), (c) or (d) must not be more than the lesser of the following, worked out as at the time the loss was suffered—

- (a) the amount of the debt or other pecuniary obligation or the value of any other obligation secured by the security interest;
- (b) the value of the chattels in which was held the security interest in relation to which compensation was applied for.

‘(5) Compensation paid under section 18J(e) must not be more than the actual loss attributable to reliance by the person on the incorrect information, worked out as at the time the loss was suffered.

‘(6) The accountable officer must give to the person written notice of the decision on the application and the reasons for the decision.

‘(7) In this section—

“**accountable officer**” means the accountable officer of the department under the *Financial Administration and Audit Act 1977*.

Division 7—General

‘Chief executive to be satisfied stamp duty has been accounted for

‘**18L.(1)** If an instrument relating to a security interest is chargeable with stamp duty under the *Stamp Act 1894*, the chief executive may deal with the security interest under this Act only if the chief executive is satisfied that stamp duty on the instrument has been paid or accounted for⁶ under that Act.

⁶ See, for example, the *Stamp Act 1894*, section 13A (Duty accounted for by returns)

‘(2) The chief executive may assume stamp duty on the instrument has been paid or accounted for if the person asking the chief executive to deal with the interest states, in writing, that the stamp duty has been paid or accounted for under that Act.’.

Amendment of s 19 (Contents of instruments)

7. Section 19(1)(a) to (c)—

omit, insert—

- ‘(a) the name and address of each borrower and lender; and
- (b) a description of the chattels to which the interest relates, to the extent to which the chattels are ascertainable; and’.

Amendment of s 20 (Instrument to be attested and when registered to have effect of a deed)

8. Section 20—

insert—

‘(1A) However, a person is not excluded from being a witness for subsection (1) merely because the person is an employee of a party to the instrument acting in the ordinary course of business.’.

Omission of s 22 (Instrument subject to defeasance etc. of no effect in certain cases)

9. Section 22—

omit.

Omission of pt 4, div 1 (Optional registration of assignments of book debts)

10. Part 4, division 1—

omit.

Amendment of s 25 (Stock mortgages)

11.(1) Section 25, heading—

omit, insert—

‘Stock under stock mortgage are chattels’.

(2) Section 25(1)—

omit.

(3) Section 25(2), **‘(2)’**—

omit.

Amendment of s 27 (Stock to include increase of stock etc.)

12.(1) Section 27(1), ‘A stock mortgage properly registered under this Act’—

omit, insert—

‘A registered security interest in stock under a stock mortgage’.

(2) Section 27(1), after ‘instrument’ (first mention)—

insert—

‘creating the security interest’.

(3) Section 27(1), ‘in it wherever’—

omit, insert—

‘in the instrument wherever’.

(4) Section 27(1), ‘continuance of the security’—

omit, insert—

‘continuance of the registered security’.

Amendment of s 30 (Grantor may provide for grantee to have wool from mortgaged sheep)

13.(1) Section 30, ‘the registration under this Act of such instrument’—
omit, insert—

‘a registered security interest in the sheep under the mortgage’.

(2) Section 30, ‘to possess a registered lien’—

omit, insert—

‘to have a registered security interest in wool under a lien’.

(3) Section 30, after ‘grantor and’—

insert—

‘a security interest in wool under a lien on wool had been’.

(4) Section 30, ‘lien’ (last mention)—

omit, insert—

‘registered security interest’.

Amendment of s 31 (Liens may be given on crops)

14. Section 31(1A), from ‘under this Act’ to ‘mentioned’—

omit, insert—

‘of a security interest in the crops entitle the lender to the crops to which the interest relates’.

Amendment of s 32 (Savings of existing mortgages etc.)

15.(1) Section 32(2), ‘lien on crops being registered under this Act’—

omit, insert—

‘registered security interest in a crop under a lien on crops’.

(2) Section 32(2), from ‘described’—

omit, insert—

‘, particulars of which are included in the register.’.

Omission of s 33 (Duration of registration of liens on crops)

16. Section 33—

omit.

Amendment of s 34 (Security may be given over wool)

17. Section 34(1), ‘under this Act’—

omit, insert—

‘of a security interest in the wool under the lien on wool’.

Amendment of s 35 (Wool to continue subject to lien despite subsequent sale or mortgage)

18.(1) Section 35, ‘lien on wool being registered under this Act’—

omit, insert—

‘registered security interest in wool under a lien on wool’.

(2) Section 35, ‘referred to in the lien’—

omit, insert—

‘, particulars of which are included in the register’.

Amendment of s 36 (Grantee may take possession and shear sheep subject to the lien if grantor neglects to do so)

19.(1) Section 36, ‘subject to a lien’—

omit, insert—

‘subject to a registered security interest in wool under a lien’.

(2) Section 36, ‘registered under this Act’—

omit.

(3) Section 36, ‘registered lien’—

omit, insert—

‘lien’.

Replacement of s 37 (Instrument by way of security securing an account current)

20. Section 37—

omit, insert—

‘Security interest securing account current

‘37. The registration of a security interest securing an account current is not affected merely because the borrower may from time to time be in credit on the account.’.

Insertion of new ss 37A–37C

21. After section 37—

insert—

‘False or misleading statements

‘37A.(1) A person must not state anything to an official the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units or 1 year’s imprisonment.

‘(2) It is enough for a complaint for an offence against subsection (1) to state the statement made was ‘false or misleading’ to the person’s knowledge, without stating which.

‘False or misleading documents

‘37B.(1) A person must not give an official a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units or 1 year’s imprisonment.

‘(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the official, to the best of the person’s ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

‘(3) It is enough for a complaint for an offence against subsection (1) to state the document was ‘false or misleading’ to the person’s knowledge, without stating which.

‘Protection from liability

‘37C.(1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

‘(2) If subsection (1) prevents a civil liability attaching to an official, liability attaches instead to the State.’.

Replacement of s 38 (Delegations)

22. Section 38—

omit, insert—

‘Delegations

‘38.(1) The chief executive may delegate the chief executive’s powers under this Act to an appropriately qualified officer or employee of the department.

‘(2) In this section—

“**appropriately qualified**”, for a person to whom a power under this Act may be delegated, includes having the qualifications, experience or standing appropriate to exercise the power.

Example of ‘standing’—

A person’s classification level in the public service.’.

Amendment of s 49 (Registrar is registrar for repealed State Securities Registration Act 1925)

23.(1) Section 49(4)—

renumber as section 49(2).

(2) Section 49—

insert—

‘(3) This section expires 9 years after section 54⁷ commences.’.

Insertion of new pt 6

24. After section 49—

insert—

‘PART 6—TRANSITIONAL AND SAVING PROVISIONS FOR BILLS OF SALE AND OTHER SECURITIES AMENDMENT ACT 1999

‘Transitional provisions about register

‘50. The register of registered instruments kept under the Act immediately before the commencement is taken to be the register of security interests kept under section 8.

‘Transitional provision about registered instruments

‘51.(1) Each instrument registered under the Act immediately before the commencement is taken to be a registered security interest.

‘(2) The particulars of each instrument registered in the register of registered instruments immediately before the commencement are taken to be included in the register of security interests kept under section 8.

‘Transitional provision about crop liens

‘52. Section 33 of this Act, as in force immediately before the commencement of this section, continues to have effect after the commencement but only for deciding when the registration of a lien on crops executed before the commencement expires.

⁷ Section 54 (Transitional provision about stock mortgages and certain other securities)

‘Transitional provision about expiry of liens on wool

‘53. A lien on wool registered under this Act immediately before the commencement of this section expires 1 year after the commencement.

‘Transitional provision about stock mortgages and certain other securities

‘54.(1) This section applies to the following instruments included in the register kept under this Act before the commencement of this section (“existing instruments”)—

- (a) stock mortgages;
- (b) securities under the repealed *State Securities Registration Act 1925*.

‘(2) Each existing instrument registered under the Act expires as follows—

- (a) if registered before 1 January 1978—6 months after the commencement;
- (b) if registered after 1977 but before 1984—9 months after the commencement;
- (c) if registered in 1984—1 year after the commencement;
- (d) if registered in 1985—2 years after the commencement;
- (e) if registered in 1986—3 years after the commencement;
- (f) if registered in 1987—4 years after the commencement;
- (g) if registered in 1988—5 years after the commencement;
- (h) if registered in 1989—6 years after the commencement;
- (i) if registered in 1990—7 years after the commencement;
- (j) if registered in 1991—8 years after the commencement;
- (k) if registered in 1992—9 years after the commencement;
- (l) if registered in 1993—10 years after the commencement;
- (m) if registered in 1994—11 years after the commencement;
- (n) if registered in 1995—12 years after the commencement;

- (o) if registered in 1996—13 years after the commencement;
- (p) if registered in 1997—14 years after the commencement;
- (q) if registered after 1997 but before the commencement—15 years after the commencement.

‘Saving of priority

‘55.(1) This section applies to registered security interests that immediately before the commencement of this section were instruments registered under this Act.

‘(2) The rules for deciding priority, including section 7A(2), as in force immediately before the commencement continue to have effect for deciding priority of those registered security interests after the commencement.

‘(3) This section applies despite section 18B.⁸.

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

Act amended in pt 3

25. This part amends the *Liens on Crops of Sugar Cane Act 1931*.

Amendment of s 2 (Interpretation)

26.(1) Section 2, heading and words before definition “**crop**”—
omit, insert—

‘Definitions

‘2. In this Act—’.

⁸ Section 18B (Priority of security interests)

(2) Section 2, definitions “**far northern district**”, “**northern district**”, “**Register**”, “**registrar**” and “**southern district**”—

omit.

(3) Section 2—

insert—

‘**“incorrect information”** see section 7P(e)(ii).

“**official**” means the chief executive, or an officer or employee of the department.

“**printed search result**” see section 7C.

“**register**” means the register kept under section 5.

“**registered**” means included in the register.

“**unregistered lien**” means a lien that—

- (a) is not registered under this Act; or
- (b) has expired.’.

(4) Section 2, definition “**owner of a mill**”, from ‘and includes’ to ‘1914’—

omit.

Insertion of new ss 3–3A

27. After section 2—

insert—

‘Application of s 2 to certain instruments

‘3. Section 2 applies to instruments made or executed under this Act, unless the contrary intention appears.

‘Act binds all persons

‘3A. This Act binds all persons, including the State, and, so far as the legislative power of Parliament permits, the Commonwealth and the other States.’.

Replacement of ss 4–7

28. Sections 4 to 7—

omit, insert—

‘Charge on crop to be created by instrument

‘4.(1) An owner of a crop may charge the crop as security for the payment or satisfaction of any debt or liability (whether past or present or future, and whether vested or contingent), by signed instrument.

‘(2) The instrument—

- (a) must adequately identify the land on which the crop intended to be charged is growing or is about to grow; and
- (b) must be witnessed.

‘Register

‘5.(1) The chief executive must keep a register of liens.

‘(2) The register must include the following particulars in relation to each lien included in the register—

- (a) the name and address of the lienee and the lienor;
- (b) the day and time the particulars are included in the register;
- (c) other particulars that may be prescribed under a regulation.

‘(3) The lien is **“registered”** when the particulars are included in the register.

‘Application for registration of lien

‘6.(1) An application for the registration of a lien must be—

- (a) made in the way prescribed under a regulation; and
- (b) accompanied by the fee that may be prescribed under a regulation.

‘(2) The application must include a description of the land to which the lien relates.

‘(3) The chief executive is not required to inquire into the validity of information supporting the application.

‘Application for renewal of registration of lien

‘7.(1) An application for the renewal of registration of a lien must—

- (a) be made in the way prescribed under a regulation; and
- (b) nominate the day the lien expires; and
- (c) be accompanied by the fee that may be prescribed under a regulation.

‘(2) The chief executive is not required to inquire into the validity of information supporting the application.

‘(3) The registration of a lien must be renewed before the registration expires.

‘Registration, or renewal of registration, of lien

‘7A.(1) If the chief executive is satisfied that an application for the registration, or renewal of the registration, of a lien is properly made, the chief executive must register, or renew the registration of, the lien by including in the register the relevant particulars mentioned in section 5(2).

‘(2) Applications for registration, or renewal of registration, of liens must be registered in the order of time of lodgment with the chief executive.

‘Expiry of registration

‘7B.(1) A registration of a lien after the commencement of this section expires on the day nominated by the lienee in the application for registration as the day the lien expires.

‘(2) In this section—

“**registration**” includes renewal of registration.

‘Inspecting the register

‘7C.(1) A person may, on payment of the fee that may be prescribed under a regulation—

- (a) inspect the register at an office of the department prescribed under a regulation when the office is open to the public; and

- (b) take extracts from, or obtain a copy of details in, the register (a **“printed search result”**).

‘(2) A printed search result certified by the chief executive is evidence of the matters stated in it.

‘Copies of instrument creating lien

‘7D.(1) The lienee must, at the written request of the lienor, give the lienor a copy of the instrument creating the lien.

Maximum penalty—30 penalty units.

‘(2) For subsection (1), the copy must be given—

- (a) within 14 days, if the original came into existence 1 year or less before the request is given; or
- (b) within 30 days, if the original came into existence more than 1 year before the request is given.

‘(3) The copy may be a computer generated facsimile containing the same information contained in the original document.

‘(4) The lienee may charge a reasonable amount for providing the copy, which must not be more than the actual cost of providing the copy.

‘Application for registration of assignment of registered lien

‘7E.(1) An assignment of a registered lien may be registered, but is not required to be registered.

‘(2) An application for registration of the assignment of a registered lien must be—

- (a) made in the way prescribed under a regulation; and
- (b) accompanied by the fee that may be prescribed under a regulation.

‘(3) The chief executive is not required to inquire into the validity of information supporting the application.

‘Registration of assignment of a registered lien

‘7F.(1) If the chief executive is satisfied that an application for registration of the assignment of a registered lien is properly made, the chief executive must register the assignment by including in the register particulars of the assignment.

‘(2) Applications for registration of assignments of registered liens must be registered in the order of time of lodgment with the chief executive.

‘Effect of failure to register lien

‘7G.(1) An unregistered lien has no effect against a person who is not a party to the instrument creating the lien.

‘(2) Subsection (1) is subject to section 7I(3).

‘Priority given from time of registration

‘7H. A registered lien has priority, for any title to, or right to possession of, crops conferred by the lien, according to the time of its registration.

‘Priority of liens

‘7L.(1) A registered lien over a crop ranks in priority over an unregistered lien over the same crop.

‘(2) A registered lien over a crop ranks in priority over another registered lien over the same crop according to the order of registration.

‘(3) An unregistered lien over a crop ranks in priority over a registered lien over the same crop if—

- (a) under the unregistered lien the lienee takes possession of the crop; and
- (b) the taking of possession happens before the registered lien is registered.

‘(4) Despite the *Property Law Act 1974*, section 82,⁹ the priority given to a lien under this section has effect for all amounts, including further advances, owing by the lienor to the lienee under the lien.

‘(5) Subsections (1), (2), (3) and (4) apply subject to the following—

- (a) section 12;¹⁰
- (b) an express contrary provision in the Corporations Law;
- (c) an agreement between the lienees holding the liens.

‘(6) It is declared that the priority given to registered liens under this section applies only to liens created after the commencement of this section.

‘**Application for discharge of registered lien**

‘**7J.(1)** The lienee may apply for the full or partial discharge of a registered lien.

‘(2) The application must be—

- (a) made in the way prescribed under a regulation; and
- (b) accompanied by the fee that may be prescribed under a regulation.

‘(3) The chief executive is not required to inquire into the validity of information supporting the application.

‘(4) In this section—

“**partial discharge**”, of a registered lien, means—

- (a) a discharge of a lienor under the lien from the lienor’s performance of a stated part of the lienor’s obligation under the lien; or
- (b) if the lien relates to a number of crops—a discharge of the lien in relation to any of the crops.

⁹ *Property Law Act 1974*, section 82 (Tacking and further advances)

¹⁰ Section 12 (Provisions as to priority where 2 or more liens given)

‘Registration of discharge of registered lien

‘7K. If the chief executive is satisfied that an application for a full or partial discharge of a registered lien is properly made, the chief executive must register the discharge by—

- (a) including in the register the particulars that may be prescribed under a regulation; and
- (b) doing anything else that may be prescribed under a regulation.

‘Duty after lien fully discharged

‘7L. The lienee under a registered lien at the time the lien is fully discharged must, within 14 days after the lien is fully discharged—

- (a) file an application under section 7J¹¹ for the full discharge of the lien; and
- (b) do anything else that may be necessary to effect the registration of the discharge.

Maximum penalty—20 penalty units.

‘Lienor may seek registration of discharge or change in particulars

‘7M.(1) A lienor may, in relation to a registered lien, ask the lienee—

- (a) to file an application under section 7J for the full or partial discharge of the lien if the lien has been fully or partially discharged; or
- (b) to join with the lienor to file an application under section 7N to change the particulars in the register.

‘(2) A lienee who receives a request under subsection (1) must, within 30 days after receiving the request—

- (a) file the application or join with the lienor in filing the application; or
- (b) apply to a Magistrates Court for an order maintaining the registration.

¹¹ Section 7J (Application for discharge of registered lien)

‘(3) If, at the end of the time allowed under subsection (2), the lienee has not complied with subsection (2)(a) or (b), the lienor may ask the chief executive in the approved form to give the lienee a notice under subsection (4).

‘(4) The notice must state that, unless the lienee obtains a court order maintaining the registration before the end of the notice period, at the end of the notice period—

- (a) the discharge will be registered; or
- (b) stated particulars will be changed under section 7N.

‘(5) If a lienee who has been given notice under subsection (4) has not—

- (a) filed an application for the discharge or the change to particulars in accordance with the request under subsection (1); or
- (b) given the chief executive a copy of a court order maintaining the registration;

before the end of the notice period, the chief executive must register the discharge or change the particulars included in the register as requested.

‘(6) On application by the lienee, the court may make any of the following orders—

- (a) an order that the registration be maintained;
- (b) an order that the discharge be registered;
- (c) an order that the particulars included in the register be changed;
- (d) another order, including an order for costs, the court considers appropriate.

‘(7) In this section—

“**notice period**” means a period of 30 days after giving a notice under subsection (4).

‘Changes to particulars in register

‘7N.(1) A lienee may apply to the chief executive to change stated particulars included in the register relating to the lien.

‘(2) The application must be—

- (a) made in the way prescribed under a regulation; and
- (b) accompanied by the fee that may be prescribed under a regulation.

‘(3) The chief executive may change the particulars and must include in the register the date on which the particulars were changed.

‘(4) If 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.

‘Correction of errors

‘70.(1) This section applies if the chief executive is satisfied that an error, omission or failure to comply with this Act has happened in relation to—

- (a) a registered lien; or
- (b) the register.

‘(2) The chief executive must do everything necessary to correct the error, omission or failure.

‘Application of compensation provision

‘7P. Section 7Q applies if a person suffers loss because—

- (a) a lien in relation to which an application for registration had been filed with the chief executive had not been registered; or
- (b) particulars of a lien were incorrectly entered in the register; or
- (c) a lien had been discharged incorrectly under section 7M; or
- (d) a discharge of a lien under section 7M, of which the chief executive has notice, had not been included in the register; or
- (e) the person—
 - (i) searches the register for a lien or particulars of a lien; and
 - (ii) there is an error in the register because of a negligent act or omission by the chief executive (the “**incorrect information**”); and

- (iii) the person relies on the incorrect information contained in a printed search result issued by the chief executive.

‘Compensation for loss

‘7Q.(1) A person who suffers loss for a reason stated in section 7P may apply to the accountable officer for payment of compensation to the person.

‘(2) The accountable officer may make a payment to the applicant under the *Financial Administration and Audit Act 1977*, section 106.¹²

‘(3) The accountable officer must not make a payment in relation to a loss for a reason mentioned in section 7P(e) if the applicant, at the time of suffering the loss—

- (a) had actual notice of the lien; or
- (b) had been put on inquiry as to the existence of the lien and had abstained from inquiry or further inquiry when the person might reasonably have expected the inquiry or further inquiry to reveal the lien.

‘(4) Compensation paid under section 7P(a), (b), (c) or (d) must not be more than the lesser of the following, worked out as at the time the loss was suffered—

- (a) the amount of the debt or other pecuniary obligation or the value of any other obligation secured by the lien;
- (b) the value of the crop in which was held the lien in relation to which compensation was applied for.

‘(5) Compensation paid under section 7P(e) must not be more than the actual loss attributable to reliance by the person on the incorrect information, worked out as at the time the loss was suffered.

‘(6) The accountable officer must give to the person written notice of the decision on the application and the reasons for the decision.

¹² *Financial Administration and Audit Act 1977*, section 106 (Losses and special payments)

‘(7) In this section—

“**accountable officer**” means the accountable officer of the department under the *Financial Administration and Audit Act 1977*.

‘Chief executive to be satisfied stamp duty has been accounted for

‘**7R.(1)** If an instrument relating to a lien is chargeable with stamp duty under the *Stamp Act 1894*, the chief executive may deal with the lien under this Act only if the chief executive is satisfied that stamp duty on the instrument has been paid or accounted for¹³ under that Act.

‘(2) The chief executive may assume stamp duty on the instrument has been paid or accounted for if the person asking the chief executive to deal with the lien states, in writing, that the stamp duty has been paid or accounted for under that Act.’.

Amendment of s 9 (Application of proceeds of sugarcane)

29.(1) Section 9(1)(a), from ‘section 8.12’ to ‘1991’—

omit, insert—

‘the *Sugar Industry Act 1991*, section 129¹⁴’.

(2) Section 9(1)(c) and (g), ‘under the *Wages Act 1918* or otherwise’—

omit, insert—

‘for wages or otherwise’.

Omission of s 10 (Restriction as to continuance of lien)

30. Section 10—

omit.

¹³ See, for example, the *Stamp Act 1894*, section 13A (Duty accounted for by returns)

¹⁴ *Sugar Industry Act 1991*, section 129 (Mill owner may harvest sugarcane)

Amendment of s 11 (Further provisions regarding liens)

31. Section 11, from ‘unless renewed’—

omit, insert—

‘unless renewed under section 7.¹⁵’.

Amendment of s 12 (Provisions as to priority where 2 or more liens given)

32. Section 12(2)—

omit, insert—

‘(2) However, subsection (1) does not affect the priority of a lien whose registration is renewed because of section 13(1).’.

Replacement of s 13 (Renewal of liens)

33. Section 13—

omit, insert—

‘Effect of harvesting crop on lien

‘**13.(1)** A lien over a crop that, when the lien expires, has not been fully harvested, may be renewed under section 7.

‘(2) However, if the crop covered by a lien is fully harvested when the lien expires under section 7B,¹⁶ it is not necessary to renew the lien for the lien to remain effective against the proceeds of the crop.’.

Omission of s 14 (Provision as to renewal of liens)

34. Section 14—

omit.

¹⁵ Section 7 (Application for renewal of registration of lien)

¹⁶ Section 7B (Expiry of registration)

Amendment of s 16 (Priority)

35.(1) Section 16, heading—

omit, insert—

‘Application of proceeds of crop to costs of sugarcane protection etc.’.

(2) Section 16(1) and (1A)—

omit, insert—

‘16.(1) This Act is subject to the *Workplace Relations Act 1997*, chapter 9, part 2.¹⁷’.

Replacement of s 17 (Production of lien to owner of mill)

36.(1) Section 17—

omit, insert—

‘Notice of lien to be given to mill owner

‘17.(1) This section applies if—

- (a) a lienee holds a lien over a crop that is growing, or will be grown, on land all or part of which is assigned to a mill under the *Sugar Industry Act 1991*; and
- (b) the lien is registered; and
- (c) the lienee after the registration, or the renewal, transfer or assignment of the registration, gives to the owner of the mill a certified printed search result relating to the registration, renewal, transfer or assignment.

‘(2) The lienee or the assignee under the lien is entitled to be paid from the proceeds of the crop then next available the amount secured by the lien to the extent the proceeds allow.

‘(3) If the lien is discharged, the lienee must give to the owner of the mill a certified printed search result relating to the discharge of the registration as soon as possible after the discharge is registered.

¹⁷ *Workplace Relations Act 1997*, chapter 9 (Records and wages), part 2 (Wages and occupational superannuation)

‘(4) The owner of the mill is not affected by the registration, renewal, assignment, transfer or discharge of the lien until a certified printed search result relating to the registration, renewal, assignment, transfer or discharge is given to the owner by the lienee.

‘(5) In this section—
“assignee” includes a transferee.’.

Omission of ss 18–22

37. Sections 18 to 22—

omit.

Replacement of s 23 (Non-application of Bills of Sale Act etc.)

38. Section 23—

omit, insert—

‘Relationship of other Acts to liens under this Act

‘23.(1) To remove any doubt, it is declared that a lien under this Act is not a bill of sale under the *Bills of Sale and Other Instruments Act 1955*.

‘(2) The provisions of this Act relating to registration do not apply to any lien on crops of sugarcane given by any person to the Crown as defined by the repealed *State Securities Registration Act 1925* and the provisions of the repealed Act relating to those liens continue to have effect.

‘(3) Also, for deciding priority under this Act between or among liens, a lien registered under the repealed *State Securities Registration Act 1925* is taken to be registered under this Act.

‘(4) Subsections (2) and (3) and this subsection expire 10 years after the commencement of this subsection.

‘False or misleading statements

‘23A.(1) A person must not state anything to an official the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units or 1 year’s imprisonment.

‘(2) It is enough for a complaint for an offence against subsection (1) to state the statement made was ‘false or misleading’ to the person’s knowledge, without stating which.

‘False or misleading documents

‘**23B.(1)** A person must not give an official a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units or 1 year’s imprisonment.

‘(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the official, to the best of the person’s ability, how it is false, misleading or incomplete; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

‘(3) It is enough for a complaint for an offence against subsection (1) to state the document was ‘false or misleading’ to the person’s knowledge, without stating which.

‘Protection from liability

‘**23C.(1)** An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

‘(2) If subsection (1) prevents a civil liability attaching to an official, liability attaches instead to the State.

‘Delegations

‘**23D.(1)** The chief executive may delegate the chief executive’s powers under this Act to an appropriately qualified officer or employee of the department.

‘(2) In this section—

“**appropriately qualified**”, for a person to whom a power under this Act may be delegated, includes having the qualifications, experience or standing appropriate to exercise the power.

Example of ‘standing’—

A person’s classification level in the public service.’.

Insertion of new ss 26–30

39. After section 25—

insert—

‘Transitional provisions about register—Bills of Sale and Other Securities Amendment Act 1999

‘**26.** The register of liens on sugarcane kept under this Act immediately before the commencement of this section from the commencement continues as the register of liens kept under section 5.

‘Transitional provision about registered instruments—Bills of Sale and Other Securities Amendment Act 1999

‘**27.(1)** Each instrument registered under this Act immediately before the commencement of this section is taken to be a registered lien.

‘**(2)** The particulars of each lien registered in the register of liens on sugarcane immediately before the commencement are taken to be included in the register of liens kept under section 5.

‘Transitional provisions about existing liens—Bills of Sale and Other Securities Amendment Act 1999

‘**28.(1)** This section applies to each instrument registered under this Act before the commencement of this section (“**existing liens**”).

‘**(2)** Each existing lien expires as follows—

- (a) if registered in 1993—5 years after the commencement;
- (b) if registered in 1994—6 years after the commencement;
- (c) if registered in 1995—7 years after the commencement;
- (d) if registered in 1996—8 years after the commencement;
- (e) if registered in 1997—9 years after the commencement;

- (f) if registered after 1997 but before the commencement—10 years after the commencement.

‘Transitional provision about expiry of registered liens—Bills of Sale and Other Securities Amendment Act 1999

‘29. Section 10(2) of this Act, as in force immediately before the commencement of this section, from the commencement continues to have effect, but only for deciding when the registration of a lien executed before the commencement expires.

‘Saving of priority—Bills of Sale and Other Securities Amendment Act 1999

‘30.(1) This section applies to registered liens that immediately before the commencement of this section were instruments registered under this Act.

‘(2) The provisions of this 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.

‘(3) This section applies despite section 7I.¹⁸’.

**PART 4—AMENDMENT OF MOTOR VEHICLES
SECURITIES ACT 1986**

Act amended in pt 4

40. This part amends the *Motor Vehicles Securities Act 1986*.

Amendment of s 30 (Compensation for loss etc. by purchaser)

41. Section 30(3)(a), ‘evidenced by the registered instrument’—
omit.

¹⁸ Section 7I (Priority of liens)

SCHEDULE**MINOR AMENDMENTS OF BILLS OF SALE AND
OTHER INSTRUMENTS ACT 1955**

section 3

1. Section 6(1), definition “bill of sale”, paragraph (b), ‘and transfers’—*omit.***2. Section 6(1), definition “bill of sale”, paragraph (i), ‘grantor’—***omit, insert—*

‘borrower’.

3. Section 6(1), definition “bill of sale”, paragraph (l), ‘grantor’—*omit, insert—*

‘borrower’.

4. Section 6(1), definition “book debts”, ‘or transfer’—*omit.***5. Section 6(1), definition “executed”, ‘grantor’—***omit, insert—*

‘borrower’.

SCHEDULE (continued)

6. Section 6(1), definition “executed”, ‘grantor’s’—*omit, insert—*

‘borrower’s’.

7. Section 6(1), definition “executed”, ‘grantee’—*omit, insert—*

‘lender’.

8. Section 6(1), definition “executed”, ‘grantee’s’—*omit, insert—*

‘lender’s’.

9. Sections 6(2) and (2A), 27(2), 29(1), 30, 31(1A), 32(3), 34(1), 36, 45(1), schedule 4, sections 1 to 4, schedule 5, sections 1, 2, 3, 4 and 5 and schedule 6, ‘grantee’—*omit, insert—*

‘lender’.

10. Sections 6(2A), 21, 27(1), 29(1), 30, 31(1), 32(3), 34(1), 35, 36, 39, 45(2), schedule 4, sections 1 to 4, schedule 5, section 1, 3, 4 and 5 and schedule 6, ‘grantor’—*omit, insert—*

‘borrower’.

11. Section 20(1), ‘a transfer’—*omit, insert—*

‘an assignment’.

SCHEDULE (continued)

12. Section 23, ‘sections 21 and 22’—*omit, insert—*

‘section 21’.

13. Section 42, ‘grantors’—*omit, insert—*

‘borrowers’.

14. Section 42, ‘grantees’—*omit, insert—*

‘lenders’.

15. Section 49, heading, ‘Registrar’—*omit, insert—*

‘Chief executive’.

16. Section 49(1), ‘registrar under this Act’—*omit, insert—*

‘chief executive’.

17. Schedule 5, sections 1, 3, 4 and 5, ‘grantee’s’—*omit, insert—*

‘lender’s’.

SCHEDULE (continued)

- 18. Schedule 5, sections 1 and 3 and schedule 6 ‘grantor’s’—**
omit, insert—
‘borrower’s’.