

Queensland



BILLS OF SALE AND OTHER INSTRUMENTS ACT 1955

**Reprinted as in force on 19 January 1994
(includes amendments up to Act No. 82 of 1993)**

Reprint No. 2

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Information about this reprint

This Act is reprinted as at 19 January 1994. As required by section 5 of the Reprints Act 1992, it—

- shows the law as amended by all amendments that commenced on or before that day; and
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

As required by section 6 of the Reprints Act 1992, the reprint includes a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

The opportunity has also been taken, under section 7 of the Reprints Act 1992, to do the following—

- use punctuation and expressions consistent with current legislative drafting practice as permitted by sections 27 and 29 of that Act;
- correct minor errors as permitted by section 44 of that Act.

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A Table of previous reprints is included in the Endnotes.

Also see Endnotes for—

- **details about when provisions commenced; and**
- **any provisions that have not commenced and are not incorporated in the reprint.**

Queensland



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

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BILLS OF SALE AND OTHER INSTRUMENTS ACT 1955

[as amended by all amendments that commenced on or before 19 January 1994²]

An Act to consolidate and amend certain enactments relating to bills of sale, stock mortgages, liens on certain crops, and liens on wool

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Bills of Sale and Other Instruments Act 1955*³⁻⁹.

Commencement

2. This Act shall come into operation on such date, not being earlier than 3 months after its passing, as the Governor in Council may fix by proclamation.

Liens on Crops of Sugar Cane Act not affected

5. This Act does not affect the *Liens on Crops of Sugar Cane Act 1931*.

Meaning of terms

6.(1) In this Act—

“**bill of sale**” includes—

- (a) bills of sale; and
- (b) assignments and transfers of chattels; and

- (c) inventories of chattels with receipts attached to them; and
- (d) receipts for purchase money of chattels; and
- (e) any other assurances of chattels; and
- (f) declarations of trust of chattels without transfer; and
- (g) powers of attorney, authorities or licences to take possession of chattels as security for any debt; and
- (h) any agreement, whether intended to be followed by the execution of any other instrument or not, by which any legal or equitable right to any chattels or to any charge or security on or over chattels is conferred;

but does not include the following—

- (i) assignments for the benefit of the creditors of the grantor;
- (j) marriage settlements or agreements for marriage settlements;
- (k) transfers of any ship or a share in any ship that is registered under the *Shipping Registration Act 1981* (Cwlth);
- (l) transfers of chattels in the ordinary course of business of any trade or calling or by way of absolute assignment where the chattels are not left in the possession, order or disposition of the grantor;
- (m) bills of sale of chattels in foreign parts or at sea;
- (n) bills of lading, warehouse-keepers' certificates, dock warrants, warrants or orders for the delivery of chattels, or any other document used in the ordinary course of business as proof of the possession or control of chattels or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of such document to transfer or receive the chattels represented by them;
- (o) debentures and interest coupons issued by any government, any Crown corporation or instrumentality or corporation or instrumentality representing the Crown, or any local authority, or any company or other corporate body;

“book debts” means any debts due or to become at some future time due to any person because of or in connection with any profession, trade or

business carried on by such person, whether entered in any book or not, and includes future debts of the same nature although not incurred or owing at the time of the assignment or transfer of them, but does not include any debt owing in respect of any mortgage, lease, debenture, debenture stock, deposit receipt, judgment, bond, fire or life insurance policy, or contract for sale of real property, nor any debt for which a promissory note or acceptance has been given, nor any debt secured or charged on land;

“Central District” means the area described as the Central District in Schedule 1 to the *Supreme Court Act 1895*;

“chattels” means—

- (a) furniture, goods, chattels and other articles capable of complete transfer by delivery; and
- (b) fixtures, if separately assigned or charged; and
- (c) book debts; and
- (d) trade machinery;

but does not include—

- (e) chattel interests in real estate, title deeds, negotiable instruments or choses in action; or
- (f) fixtures (except trade machinery) when assigned together with a freehold or leasehold interest in any land or building to which they are affixed; or
- (g) growing crops when assigned with any interest in the land on which they grow; or
- (h) shares and interests in the stock, funds or securities of—
 - (i) a Government; or
 - (ii) a Crown corporation or instrumentality or corporation or instrumentality representing the Crown; or
 - (iii) any local authority; or
- (i) shares and interests in the capital or property of a body corporate; or
- (j) debentures and interest coupons issued by—

- (i) a Government; or
 - (ii) a Crown corporation or instrumentality or corporation or instrumentality representing the Crown; or
 - (iii) a local authority; or
 - (iv) a body corporate; or
- (k) stock, or wool on the sheep's back.

“chief executive” means the chief executive of the department;

“crop” includes wheat, maize, sorghum, barley, oats, lucerne, grass (whether for hay or for grain), cotton, tobacco, rice and any other agricultural produce, oranges, grapes (whether grown as fruit or for wine or spirit), fruit of any other kind, and any other horticultural produce, but does not include a crop within the meaning of the *Liens on Crops of Sugar Cane Act 1931*;

“executed” means, in relation to any instrument, signed by the grantor or the grantor's solicitor or agent and, in appropriate cases, signed by the grantee or the grantor or his or her solicitor or agent and by the grantee or the grantee's solicitor or agent;

“factory” means any workshop or any other premises in or on which any manual labour is exercised by way of trade or for purposes of gain in or about the making, altering, repairing, ornamenting, finishing or adapting of any article or part of any article;

“grantee” means, in relation to any instrument, the person to whom the instrument is given, and includes the person's executors, administrators and assigns and, where the grantee is a body corporate, the successors in title of that body corporate;

“grantor” means, in relation to any instrument, the person giving the instrument, and includes the person's executors, administrators and assigns and, where the grantor is a body corporate, the successors in title of that body corporate;

“instrument” means—

- (a) a bill of sale; or
- (b) a stock mortgage; or
- (c) a lien on crops; or

(d) a lien on wool;

“Northern District” means the area described as the Northern District in Schedule 2 to the *Supreme Court Act 1895*;

“office of the registrar” means—

- (a) in the case of the Central District—the office of the registrar of the Supreme Court at Rockhampton; and
- (b) in the case of the Northern District—the office of the registrar of the Supreme Court at Townsville; and
- (c) in the case of the Southern District—the office of the department at Brisbane;

“primary produce” means stock and crops and the derivatives and by-products of stock including offspring, skins, hides, tallow and wool;

“registrar” means the chief executive;

“Southern District” means the area of the State other than the Central District and the Northern District;

“stock” includes any sheep, cattle, horses, swine, poultry and any other animals;

“trade machinery” means machinery used in or attached to any factory, but does not include—

- (a) fixed motive powers, including water wheels, steam engines, donkey engines and gas engines, together with boilers and other fixed accessories of the motive powers; and
- (b) fixed power on machinery, including shafts, wheels, drums and their fixed accessories, which transmit the action of the motive powers to other machinery, whether fixed or loose; and
- (c) pipes for steam, gas or water in the factory;

“unregistered instrument” means an instrument the registration under this Act of which at the material time has not been effected or, in an appropriate case, has expired.

(2) Unless otherwise provided, this Act applies only to bills of sale under which the grantee has power, either with or without notice and either immediately or at any future time, to seize or take possession of any chattels

comprised in them or subject to them.

(2A) However, this Act shall not apply to any bill of sale where the grantee shall bona fide take the chattels comprised in it or subject to it out of the possession, or apparent possession, of the grantor within 21 days of the date of the execution of such bill of sale, and shall keep such possession.

(3) No fixtures or growing crops shall be taken to be separately assigned or charged merely because they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed, mortgaged or assigned to the same persons or person.

(4) Every attornment or agreement (not being a mining lease) by which a power of distress is given or agreed to be given by any person to another by way of security for any present, future or contingent debt or advance and by which any rent is reserved or made payable as a means of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be taken to be a bill of sale within the meaning of this Act so far as regards any chattels which may be seized or taken under such power of distress.

(4A) Nothing in subsection (4) shall prejudice the right (if any) of a landlord to distrain for rent.

(4B) Where a mortgagee of any interest in land, after entering (under the powers contained or implied in the mortgage) into possession of the mortgaged land, or into receipt of the rents and profits of the mortgaged land, demises the said land or any part of it to the mortgagor at a fair and reasonable rent, the instrument by which such demise is effected shall be taken not to be a bill of sale within the meaning of this Act.

Hire-purchase agreements

(5) Every hire-purchase agreement with respect to any chattels (excepting every hire-purchase agreement where the owner is a person who ordinarily sells, or hires under hire-purchase agreements, chattels of the same class and the agreement is made in the ordinary course of the owner's business) shall be taken to be a bill of sale within the meaning and for the purposes of this Act.

(6) For the purposes of subsection (5)—

“**hire-purchase agreement**” has the same meaning as in the *Hire-purchase Act 1959*;

“**owner**” has the same meaning as in the *Hire-purchase Act 1959*.

PART 2—REGISTRATIONS

Unregistered instruments

7. An unregistered instrument has no effect against a person other than the grantor and the grantee.

When a registered instrument takes effect

7A.(1) Subject to subsection (2), an instrument registered under this Act is taken to have been given on the day that it was executed and has effect from the time of its execution.

(2) A registered instrument has priority, for any title, or right to possession, to chattels conferred by the instrument, according to the time of its registration.

Registration does not cure invalidity

7B. Subject to section 16, registration of an instrument does not validate, give effect to, make operative or make enforceable the instrument, or any subsequent dealing with the instrument that is capable of registration under this Act, if the instrument is otherwise invalid, ineffective, inoperative or unenforceable as between the parties to the instrument.

Registration of instrument to be notice

8.(1) Subject to subsection (2), all persons shall be taken to have notice of an instrument (including every subsequent dealing capable of being registered under it) and of the contents of it when and so soon as such instrument or subsequent dealing, as the case may be, has been registered under this Act.

(1A) However, if the registration of any such instrument, required by this Act to be renewed, is not renewed under section 12 or 13 or under an order made under section 16, prior registration shall not be taken to operate as notice after the lapse of the period within which renewal of that registration is required by this Act.

(2) Registration under this Act of any instrument shall not in itself constitute actual, constructive or implied notice of the existence of that instrument or of its contents to the grantee of any prior registered instrument relating to the same chattels or to any of those chattels.

Place of registration

9.(1) If the chattels comprised in or subject to an instrument are described in the instrument as being at a place—

- (a) in the Central District; or
- (b) in the Northern District; or
- (c) in the Southern District;

the instrument must be registered, and registration must be renewed, at the office of the registrar in the district in which the place is located.

(2) If the chattels comprised in or subject to an instrument are described in the instrument as being at places located in different districts, the instrument must be registered, and registration must be renewed, at the office of the registrar in each of the districts in which the chattels are described as located.

(3) If an instrument—

- (a) has been registered in 1 district; and
- (b) is required to be registered in another district;

a copy of the instrument, verified in a way determined by the registrar, may be filed in the other district as if it were the original instrument.

(4) If an instrument that is required under subsection (2) to be registered, or have its registration renewed, in more than 1 district is not registered or renewed in each of the districts, the instrument is taken to be unregistered so far as it relates to chattels that are in the district in which the instrument has not been registered or its registration renewed.

(5) Dealings with a registered instrument that are capable of registration must be registered at the office of the registrar in each district in which the instrument is registered.

(6) If a dealing is not registered in a district in which the instrument is registered, the dealing is taken to be unregistered so far as it relates to chattels that are in the district in which the dealing has not been registered.

Registration

10.(1) Every instrument the registration of which is effected under this Act shall be executed in duplicate.

(2) For the purpose of registration under this Act, every instrument shall be lodged in duplicate in the office of the registrar and the fees payable in respect of the registration shall at the time of such lodgment be paid to the registrar.

(2A) It shall be unnecessary for the registrar to require any verification of the execution of the instrument or to make any comparison of the duplicates and no checking fee shall be payable in respect of such a comparison.

(2B) The registrar shall endorse on each duplicate, a certificate of registration stating the consecutive registration number of such instrument and the time and date of the lodgment of it for registration (which time and date shall be the time and date of registration under this Act of the instrument), and 1 duplicate (“**the original copy**”) shall be filed in the office of the registrar, and the other (“**the duplicate copy**”) shall be delivered to the person entitled to it, and the production of either the original copy or the duplicate copy, with such certificate properly endorsed on it, shall be prima facie evidence of the due registration of such instrument.

(3) A register of registered instruments must be kept by the registrar at each office of the registrar.

(3A) The register must include the following particulars in relation to each registered instrument—

- (a) the name of the grantor;
- (b) the registration number;
- (c) the class of instruments to which the instrument belongs;
- (d) any other particular prescribed by regulation to be entered in the

register for that class of instruments.

(3B) The registrar must register an instrument by entering in the register the particulars mentioned in subsection (3A).

(4) Where any instrument is made or given by any person under or in the execution of the process of a court of law, then, the name, residence and occupation of the person against whom the process issued, and also the name of the grantee of it, shall be inserted in the register.

(5) All instruments shall be registered under this Act in the order of time in which the same are lodged in the office for that purpose.

(6) Every instrument may be registered under this Act at any time after its execution.

In case of variance original copy to prevail

11. Whenever there is any difference or variation between the contents of the original copy and of the duplicate copy, the original copy shall prevail.

Application of Part

11A. On the commencement of section 4 of the *Motor Vehicles Securities Act 1986*, this Part shall not apply to any instrument (whether executed before or after that commencement) to the extent that the instrument relates to a motor vehicle within the meaning of that Act and to that extent any such instrument shall cease to be registered.

Registration of restraining orders

11B.(1) In this section—

“**restraining order**” means a restraining order within the meaning of the *Crimes (Confiscation of Profits) Act 1989*.

(2) A restraining order in respect of chattels of a person may be registered under this Act.

(3) Registration of a restraining order under subsection (2) has effect for the duration of the restraining order.

(4) Where a restraining order has been made in respect of chattels of a

person, the registrar must, on receipt of a request accompanied by the prescribed evidence of the order, record in the register a memorial that the chattels are the subject of the restraining order.

Registration of certain instruments to be renewed every 5 years

12.(1) The registration under this Act of every bill of sale shall, during the subsistence of such instrument, be renewed in the way specified in this Act within the period of 5 years starting on the day of such registration, and afterwards within the period of 5 years starting on the day of the last renewal of the registration.

(3) Subject to any extension of time under subsection (7), if a period of 5 years elapses from the registration or renewed registration under this Act of a bill of sale without a renewal or further renewal of such registration, as the case may be, the instrument shall not have any effect as to the chattels comprised in it or subject to it, against any person other than the grantor and grantee.

(4) For the purpose of the renewal of registration under this Act of a bill of sale, there shall be filed in the office in which the instrument is registered a statutory declaration in the form approved by the registrar, made by the person or 1 of the persons entitled to the benefit of the instrument or his, her or their solicitor or agent, and the fees payable in respect of the renewal of registration shall at the time of such filing be paid to the registrar.

(4A) The statutory declaration referred to in subsection (4) shall be filed within 30 days of the date of the swearing of it.

(4B) A renewal of registration shall not become necessary merely because of a transfer or assignment of the bill of sale.

(5) The registrar shall endorse on such statutory declaration the time and date of the filing of it (which time and date shall, subject to any order which may be made under section 16, be the time and date of the renewal of registration under this Act of the instrument to which the statutory declaration relates), and number such statutory declaration as if the same were an instrument lodged for registration, and shall likewise renumber and endorse the original copy of the instrument filed in the office and the duplicate copy, if produced, with a similar number and endorsement, and shall enter particulars in the register in the same way as on an original registration with the addition of the number of the last previous registration,

and shall also enter the time and date of renewal of registration at the last previous entry in the register relating to that instrument.

(5A) The production of either the original copy or the duplicate copy of the instrument, with such properly authenticated number and endorsement on it, shall be prima facie evidence of the renewal of registration, according to the endorsement, of such instrument.

(6) The costs payable in respect of the preparation and renewal of registration of an instrument in this section or in section 13 referred to shall be payable by the grantor, and, if the grantee or any other person pays them, the grantee or other person may recover them from the grantor.

(7) Section 16 shall apply to any extension of time for the renewal of registration of any instrument in this section referred to.

(8) If an instrument relating to any chattels is registered under this Act between the time when the registration of a prior instrument relating to the same chattels, or to any of those chattels, expired under this section and the time when the registration of the said prior instrument was renewed under this section, the first instrument shall, subject to any order which may be made under section 16, be entitled to priority over the prior instrument.

(9) An absolute bill of sale shall not require renewal of registration.

Renewal of registered liens on crops

13.(1) Where a lien on crops is granted over any crop which does not come to maturity within 1 year from the date of execution of that instrument, the registration under this Act of the lien may, during the subsistence of the lien, be renewed for a term not longer than 1 year on the filing in the office in which the lien is registered of a statutory declaration, made by the person or 1 of the persons entitled to the benefit of the instrument or his, her or their solicitor or agent, stating that the crop over which the lien is granted is still immature and that the lien is unsatisfied, and setting out the period for which the renewal of registration of the lien is required.

(2) On the filing of such a statutory declaration and on payment of the prescribed fee, the registrar shall endorse on such statutory declaration the time and date of the filing of it (which time and date shall, subject to any order which may be made under section 16, be the time and date of the

renewal of registration under this Act of the instrument to which the statutory declaration relates), and shall endorse on the original copy of the instrument filed in the office and on the duplicate copy, if produced, the fact of the renewal of registration and the time for which the lien on crops is renewed and shall enter the time and date of renewal of registration at the entry in the register relating to that instrument as well as the time for which the instrument is renewed.

(3) The production of either the original copy or the duplicate copy of the instrument, with such properly authenticated endorsement on it, shall be prima facie evidence of the renewal of registration, according to the endorsement, of such instrument.

Transfer or assignment of registered instruments

14.(1) A transfer or assignment (a “**transfer**”) of any instrument registered under this Act may be, but need not be, registered under this Act.

(2) For the purpose of registering the transfer of any instrument registered under this Act, there shall be lodged in the office in which the instrument is registered the document of transfer in duplicate and there shall be produced to the registrar the duplicate copy of the instrument and the fees payable in respect of the registration of the transfer shall at the time of such lodgment be paid to the registrar.

(2A) However, the registrar may, in the registrar’s discretion, dispense with the production of the duplicate copy of the instrument on proof by statutory declaration to the registrar’s satisfaction that the duplicate copy has been destroyed, cannot be found, or for some other reason cannot be produced, and that such nonproduction is not brought about by the execution of some other transfer of the same instrument.

(3) If a transfer of an instrument is not registered because of the nonproduction to the registrar of the duplicate copy of the instrument and its production not being dispensed with by the registrar, and subsequently, for the purpose of registering some other transfer of that instrument, all the requirements of subsection (2) are complied with (including the production to the registrar of the duplicate copy of the instrument), the registrar shall first register that other transfer.

(4) It shall be unnecessary for the registrar to require any verification of the execution of the document of transfer or to make any comparison of the

duplicates and no checking fee shall be payable in respect of such a comparison.

(5) For the purpose of registration, the registrar shall endorse on each duplicate a certificate of registration of the document of transfer stating the time and date of the lodgment of it for registration (which time and date shall, subject to any order which may be made under section 16, be the time and date of registration), and the number of the entry, or, as the case may be, last previous entry of registration of the instrument to which that document of transfer relates, and 1 duplicate shall be filed in the office and the other shall be delivered to the person entitled to it, and the production of either duplicate with such certificate properly endorsed on it shall be prima facie evidence of the registration under this Act of such transfer.

(6) The registrar shall at the time of registration of the transfer enter in the register at the entry or, as the case may be, last previous entry relating to the instrument in question particulars of the parties to that transfer and shall endorse on the original copy of the instrument filed in the office and on the duplicate copy, where the production of the duplicate copy has not been dispensed with, the fact of the registration of that transfer and shall deliver the duplicate copy of the instrument to the person entitled to it.

(7) Whenever there is any difference or variation between the contents of the duplicate document of transfer filed in the office of the registrar and of the duplicate document of transfer delivered to the person entitled to it, the duplicate filed in the office of the registrar shall prevail.

Entry of discharge of registered instrument

15.(1) On the discharge of any instrument, whether in full or in part, the chattels discharged shall revert in the grantor.

(2) On the lodgment with the registrar of a memorandum of satisfaction (in the case of a discharge in part, in duplicate), signed by the person or persons entitled to the benefit of the instrument or his, her or their properly authorised agent, discharging the chattels or any specified part of the chattels comprised in or subject to the instrument from the amounts secured by it or any specified part of it, or from the performance of the obligation secured by it or any specified part of it, and, where that memorandum of satisfaction is not endorsed on the duplicate copy of the instrument, on production of such duplicate copy, and on payment of the prescribed fee, the registrar shall

file such memorandum (or, in the case of a discharge in part, 1 duplicate of it) in the registrar's office and make an endorsement on the original copy of the instrument and an entry in the register in the place where the particulars of the instrument registered are entered or last previously entered, as the case may be.

(2A) The registrar may, in the registrar's discretion, dispense with the production of the duplicate copy of the instrument on proof by statutory declaration to the registrar's satisfaction that the duplicate copy has been destroyed, cannot be found, or for some other reason cannot be produced.

(2B) The registrar shall endorse on the duplicate copy of the instrument (unless production of the same is dispensed with) and, in the case of a discharge in part, on the duplicate of the memorandum of satisfaction not filed in the registrar's office the fact of the filing of the memorandum of satisfaction and shall where the memorandum of satisfaction is not endorsed on the duplicate copy of the instrument and that duplicate copy is produced, return that duplicate copy and, in the case of a discharge in part, the duplicate of the memorandum of satisfaction not filed in the office, to the person entitled to it.

(3) Whenever it is made to appear, with or without application made for the purpose, to a Judge that the chattels comprised in or subject to any instrument, or any specified part of it, have been discharged from the money secured by it or any specified part of it, or from the performance of the obligation secured by it or any specified part of it, the Judge may order that a memorandum of satisfaction to the extent indicated be endorsed on the original copy of the instrument and an entry of it made in the register in the place where the particulars of the instrument registered are entered or last previously entered, as the case may be, and on production to the registrar of such order or an office copy of it the registrar shall make such endorsement and entry accordingly.

Correction of errors etc.

16. Despite anything to the contrary contained in this Act, a Judge, on being satisfied that any omission, error, misstatement or failure has occurred in any instrument or has occurred in relation to the registration under this Act of any instrument, or in relation to any renewal of registration, transfer or discharge, or in relation to the filing, lodgment or production of any instrument, affidavit, statutory declaration or document

under this Act, and that such omission, error, misstatement or failure should be corrected, or was unavoidable or accidental or due to inadvertence or any other cause, may make such order of correction as the Judge thinks fit (including, but without limiting the generality of the power conferred by this section, an order extending for such period as the Judge thinks fit the time prescribed for the lodgment, filing or production of any instrument, affidavit, statutory declaration or document under this Act) and may make that order subject to such terms and conditions (if any) as the Judge deems fit to impose, and on the making of the order such correction shall be made in compliance in every respect with that order by the person or persons ordered to make the same.

Search etc.

17.(1) Every person, on payment of the prescribed fees and during the hours and on the days appointed for the purpose, shall be entitled to search for any instrument, affidavit, statutory declaration or document under this Act in the office of the registrar and to search every register and shall be entitled to inspect any such instrument, affidavit, statutory declaration or document or any entry in any such register and make extracts from it or to have office copies of it or extracts from it prepared in the office.

(1A) A copy of any instrument registered under this Act or of any other document filed or lodged in the office of the registrar, purporting to be an office copy of it, and every extract from any such document certified by the registrar, and a certificate by the registrar of the time when any document was registered, filed, produced or lodged in the registrar's office, shall in all courts and before all persons authorised by law or consent of parties to hear and determine any matter or thing be admitted as evidence of such instrument or other document and of the contents of it and signatures on it, or of the matters contained in such certified extract, or, as the case may be, of the fact and time of the registration, filing, production or lodgment of such document.

(2) It shall not be necessary to prove the handwriting or official position of the person appearing as registrar to have certified any such copy or extract, or to have given any such certificate, or to have made, given or issued under this Act any other certificate or any endorsement or document of any kind.

(3) Any instrument, statutory declaration or document of any kind which,

for the purposes of lodging, filing or producing the same at any office of the registrar is sent to the registrar through the post or by medium of the office of the Commissioner of Stamp Duties shall be taken to be lodged, filed or produced, as the case may be, in or at the office on such date and at such time as the registrar shall fix.

(4) An endorsement of the date and time so fixed shall be made on the instrument, statutory declaration or document which shall be taken to have been lodged, filed or produced, as the case requires, in or at the office on the date and at the time stated in the endorsement.

Disposal of instruments

18. If the registration of an instrument has lapsed and has not been renewed for a period of 2 years, the registrar may dispose of, or destroy, the instrument.

PART 3—CONTENTS AND ATTESTING OF INSTRUMENTS ETC.

Contents of instruments

19.(1) An instrument must state—

- (a) the names of the grantor and grantee (or the name by which the grantor or grantee is usually known) and an address of the grantor and grantee; and
- (b) a general description of the chattels or types of chattels comprised in, or subject to, or intended to be comprised in, or subject to, the instrument; and
- (c) a description of the place (in a way that is sufficient to allow reasonable identification) where the chattels are situated, or intended to be situated, at the time the instrument is executed; and
- (d) the consideration for granting the instrument.

(2) If the instrument is a stock mortgage, a lien on crops or a lien on

wool, the instrument must comply—

- (a) in the case of a stock mortgage—with the requirements of sections 26 and 28; or
- (b) in the case of a lien on crops—with the requirements of section 31; or
- (c) in the case of a lien on wool—with the requirements of section 34.

(3) This section does not limit section 21.

Further advances

19A.(1) Further advances may be made on the security of an instrument unless the instrument otherwise provides.

(2) This section does not limit section 21.

Instrument to be attested and when registered to have effect of a deed

20.(1) Sealing shall not be essential to the validity of any instrument, but the execution of each and every instrument, or of a transfer or discharge of it, shall be attested by at least 1 witness, not being a party to it.

(2) Every instrument, when registered under this Act, shall have the effect of and be taken to be a deed properly executed by the parties to the same.

Effect of bill of sale on chattels acquired later

21.(1) Subject to subsections (2) and (3) and any other express provision of this Act, a bill of sale given as security is of no effect in relation to chattels that the grantor acquires, or becomes entitled to, after the execution of the bill.

(2) If a bill of sale given as security over chattels expressly provides that it is for a loan to be spent, wholly or partly, in the purchase of the chattels, the grantor is taken to have acquired the chattels at the time the bill is executed.

(3) Unless the bill of sale otherwise provides, the bill is to have effect in

relation to chattels that the grantor acquires, or becomes entitled to, after the execution of the bill if the chattels—

- (a) are acquired in substitution for a chattel that at the time of execution of the bill was comprised in, or subject to, the bill; or
- (b) are brought onto the place—
 - (i) where the chattels described in the bill (the “**nominated chattels**”) are stated in the bill as being situated or intended to be situated; or
 - (ii) where the nominated chattels are, at any time after the execution of the bill, situated from time to time; or
- (c) are acquired for use or intended use in the business described in the bill wherever the business may at any time be carried on.

Instrument subject to defeasance etc. of no effect in certain cases

22.(1) If an instrument is made or given subject to any defeasance, condition or declaration of trust not contained in the body of it, such defeasance, condition or declaration of trust shall be taken to be part of the instrument, and shall be written on the same paper or parchment on which such instrument is written, otherwise such instrument shall not have any effect so far as regards the property in or right to the possession of any chattels comprised in or subject to such instrument.

(2) However, in the case of a document also securing the payment of the money or any part of it payable under an instrument, or of a document referred to in such instrument, it shall not be necessary for the purposes of this section to write such document on the same paper or parchment so long as the date, names of the parties to it, and short particulars of the document affected be set out in such instrument or some schedule to it, but nothing contained in this subsection shall be taken to impose any obligation or requirement in respect to the mode of registering an instrument not otherwise imposed by this Act.

Saving

23. Nothing in sections 21 and 22 shall affect an instrument in respect of any stock, crops and wool.

**PART 4—OPTIONAL REGISTRATION OF
ASSIGNMENTS OF BOOK DEBTS; PROVISIONS
RELATING TO STOCK MORTGAGES, LIENS ON
CROPS AND LIENS ON WOOL**

Division 1—Optional registration of assignments of book debts

Registration of assignments of book debts

24.(1) Despite any other provision of this Act, an assignment or transfer of book debts due or to become due to any person, whether such assignment or transfer is absolute or conditional, may, but need not be, registered under this Act as an instrument, and such registration shall not confer any priority on such assignment or transfer.

(1A) An assignment or transfer of book debts mentioned in subsection (1) may be by separate instrument or be contained in some other instrument.

(2) For the purposes of the requirements of this Act relating to the registration, book debts shall be taken to be chattels situate in the place where the grantor of the instrument resided or carried on business at the date of the execution of the instrument.

Division 2—Stock mortgages

Stock mortgages

25.(1) Every mortgage of stock made bona fide and for valuable consideration and properly registered under this Act shall be valid in law to all intents and purposes, whether the money secured by the instrument is payable presently or not, and even though the mortgaged stock are not delivered to the grantee but remain and continue in every respect, as before, in the possession, order or disposition of the grantor, and though the grantor afterwards takes the benefit of any law for the time being in force in Queensland for the relief of debtors.

(2) For the purpose of the application of the provisions, relating to

instruments generally, of this Act to a stock mortgage, the stock comprised in it or subject to it shall be taken to be chattels.

How stock to be described in mortgage etc.

26. The stock comprised in a stock mortgage shall be described in it or in some schedule to it by the brand, earmark or other mark on them, or in another way that reasonably allows them to be identified, and the land or premises on which such stock are or are intended to be depastured or kept shall be described in such instrument or in some schedule to it.

Stock to include increase of stock etc.

27.(1) A stock mortgage properly registered under this Act shall, subject to the express words in the instrument, be taken to include not only the stock comprised in it wherever the same may at any time be depastured or kept, but also the natural increase of such stock wherever the same may at any time be depastured or kept, and all stock of every kind (whether of the classes described in the instrument or not), the property of the grantor, which at any time after the execution of the instrument and during the continuance of the security are substituted for any of the stock wherever the stock in substitution may at any time be depastured or kept, or which at any time after the execution of the instrument and during the continuance of the security are depastured or kept on the land or premises described in the instrument.

(2) The grantee shall have the legal property and right in all stock which by force of this section are taken to be included in the instrument and in the stock actually described in the instrument or in some schedule to it.

Special provisions as to poultry etc.

28. Where the stock comprised in a stock mortgage is poultry, swine or other stock which cannot be properly the subject of distinctive marking—

- (a) the provisions of section 26 relating to the description in it or in some schedule to it of the stock comprised in that stock mortgage shall not apply in respect of such stock; and
- (b) section 27 shall apply.

Security may not be given without consent to third party over wool of mortgaged sheep

29.(1) The grantor under any stock mortgage comprising sheep shall not, except with the consent in writing of the grantee and then only so far as is authorised by such consent, give to any third person any security on the ensuing clip of the wool of such sheep.

(2) Any such security given in contravention of this section shall be void.

Grantor may provide for grantee to have wool from mortgaged sheep

30. In every stock mortgage comprising sheep, there shall be implied (unless such implication is expressly negated) a covenant by the grantor to deliver to the grantee the wool shorn from such sheep in each year during the continuance of the instrument, and the grantee shall, during the subsistence of the registration under this Act of such instrument, be taken, despite sections 34 and 35, to possess a registered lien on wool over each clip in the same degree and way as if a lien in respect of the wool had been actually executed by the grantor and registered under this Act, and such lien shall have the consequences referred to in sections 34 to 36.

Division 3—Liens on crops**Liens may be given on crops**

31.(1) An instrument by way of security (a “**lien on crops**”) may be granted over any crops of the grantor, then actually sown or growing or within 12 months after the execution of the instrument to be sown or grown in or on the lands described in the instrument.

(1A) Every such instrument shall state the nature of the crops over which it is granted and describe the lands in or on which those crops are sown or growing or are to be sown or grown, and shall on registration under this Act entitle the grantee of it to the whole of the crops in it mentioned, not only while growing, but afterwards when cut or separated from the soil, and whether stacked or stored on the land where the same were grown or on any other land or premises.

(2) For the purpose of the application of the provisions, relating to

instruments generally, of this Act to a lien on crops, the crops comprised in it or subject to it shall be taken to be chattels.

Savings of existing mortgages etc.

32.(1) Subject to subsection (2), no lien on crops shall prejudicially affect the rights of any landlord or mortgagee of any land on which the crops over which the lien is granted are growing, unless and so far as the landlord or mortgagee has consented in writing to such instrument.

(2) No lien on crops being registered under this Act shall be extinguished, suspended, impaired or otherwise prejudicially affected by any subsequent sale, lease, mortgage or other disposition or encumbrance of or on the land described in that instrument or in some schedule to it.

(3) The grantee of a lien on crops shall, before selling any crops over which the lien is granted, pay—

- (a) in the case where the grantor of the instrument is in respect of the land on which such crops are sown or growing or were sown or grown a tenant—to the landlord of the land such amount of money as may be due to that landlord for rent for that land at the time of the carrying away for sale of such crops, but not more than 12 months rent; and
- (b) in the case where at the time of the execution of the lien on crops there is in force a mortgage of the land on which such crops are sown or growing or are to be sown or grown and the land is in the occupation of the mortgagee—to the mortgagee an amount of money equal to the amount of interest, but not more than 12 months interest, due on such mortgage at the time of the carrying away for sale of such crops;

and may repay the amount or amounts so paid out of the proceeds of the sale of such crops before paying over the balance (if any) payable under the instrument to the grantor.

Duration of registration of liens on crops

33. Subject to the renewal of registration under section 13 of any such lien, the registration under this Act of every lien on crops shall expire at the expiration of 1 year from the date of the execution of it.

Division 4—Liens on wool**Security may be given over wool**

34.(1) Subject to sections 29 and 30, an instrument by way of security (a “**lien on wool**”) may be granted over the wool of the next clip to be shorn from the sheep of the grantor described or referred to in such instrument and then depasturing on the lands described in it or in some schedule to it, and on registration under this Act, shall entitle the grantee to the wool of such sheep, not only while growing, but afterwards when shorn from the sheep, and wherever such wool may be.

(2) For the purpose of the application of the provisions, relating to instruments generally, of this Act to a lien on wool, the wool the subject of the lien on wool shall be taken to be chattels.

Wool to continue subject to lien despite subsequent sale or mortgage

35. No lien on wool being registered under this Act shall be in any way extinguished, suspended, impaired or otherwise prejudicially affected by any subsequent sale, bailment, mortgage or other disposition or encumbrance of or affecting the sheep referred to in the lien, but shall be valid and effectual to all intents and purposes against any subsequent purchaser, bailee, mortgagee, encumbrancee or other claimant, or possessor of such sheep, as it is against the grantor.

Grantee may take possession and shear sheep subject to the lien if grantor neglects to do so

36. If the grantor or any subsequent purchaser, bailee, mortgagee or encumbrancee of the sheep whose wool is subject to a lien on wool registered under this Act, or any other subsequent claimant or possessor of such sheep neglects or refuses to shear and deliver the wool of any such sheep under the provisions contained in the registered lien, it shall be lawful for the grantee to take possession of all or any of such sheep for the purpose of shearing the same, and all expenses attending such shearing and the conveyance of the wool to the place mentioned in that behalf in the registered lien or, if no such place is so mentioned, to the place of abode of the grantee, shall be added to and be taken to be part of the amount secured

by the lien.

PART 5—MISCELLANEOUS

Instrument by way of security securing an account current

37. An instrument by way of security securing an account current and registered under this Act continues in full force and effect even though the grantor may from time to time be in credit on such account.

Delegations

38. The registrar may delegate the registrar's powers under this or another Act to an officer or employee of the department.

Covenants for title—Sch 4

39. There shall be implied in every instrument the covenants on the part of the grantor mentioned in Schedule 4, and such implied covenants shall have the same effect as if the same were respectively set out at length in the instrument.

Covenants etc. implied in instruments by way of security—Sch 5

40.(1) There shall be implied in every instrument by way of security the covenants, provisos, agreements and powers mentioned in Schedule 5, or such of them as are applicable and such implied covenants, provisos, agreements and powers shall, subject to any modification of the same expressed in the instrument, have the same effect as if the same were respectively set out in it at length.

(2) However, any of the provisions of Schedule 5 which are inconsistent with any provision of the *Hire-purchase Act 1959* shall to the extent of such inconsistency be void and of no legal effect.

Meaning of “abbreviated terms”—Sch 6

41. The terms defined in section 6 shall apply to all instruments and subject to them such of the terms defined in Schedule 6 as are used in any instrument to which that Schedule applies, or in any of the covenants, provisos, agreements and powers implied in it by this Act, shall, unless the contrary is expressed in such instrument or unless manifestly inconsistent with the context, have the meanings given to the same in Schedule 6, and such meanings shall be implied in such instrument as fully and effectually as if the same were set out in it.

Covenants to be several as well as joint

42. Where there are 2 or more grantors or 2 or more grantees of any instrument, then any covenants, conditions, provisos, agreements and powers expressed in such instrument, or implied in it by this Act, and imposing an obligation on such grantors or grantees, or ensuring for the benefit of such grantors or grantees, shall, except in so far as a contrary intention appears, be taken to impose such obligation, or confer such benefit, as the case may be, severally as well as jointly.

Covenants to bind executors

43. Except in so far as a contrary intention appears, all covenants, conditions, provisos, agreements and powers expressed in any instrument, or implied in it by this Act, shall bind the executors, administrators and assigns of the person, or the successor and assigns of a body corporate, on whom such covenants, conditions, provisos, agreements and powers impose an obligation, and shall operate for the benefit of the executors, administrators and assigns of the person, or the successors and assigns of the body corporate, for whose benefit the same have effect.

Covenants etc. may be negatived or varied

44. All or any of the covenants, conditions, provisos, agreements and powers set out in Schedules 4 to 6 may be negatived, altered or otherwise modified, or others may be added to them, by express words in the instrument.

Chattels not to be sold until at least 14 days after seizure

45.(1) No chattels, except such as may be of a perishable nature, which shall be seized by the grantee of an instrument, shall be sold until at least 14 days after such seizure under the instrument.

(2) At any time during the period mentioned in subsection (1), the grantor, on payment or tender of the amount which would have been then due under the instrument if there had been no default under the instrument, or on performance or tender of performance of such other condition as may be expressed or implied in the instrument for the breach of which the seizure was made, and on payment of the expenses of seizure and keeping of them, may retake and, in appropriate cases subject to further compliance with the instrument, continue to take possession of the chattels and continue in the performance of the covenants, conditions and agreements of the instrument as if no default had occurred.

Regulations

46.(1) The Governor in Council may make regulations for the purposes of this Act.

(2) A regulation may make provision with respect to—

- (a) prescribing or approving forms for the purposes of this Act, the method of verifying any information required by or in forms and the completion or preparation of forms in accordance with the directions contained in forms; and
- (b) the matters for which fees, costs and charges are payable under this Act, the amounts of the fees, costs and charges, the persons who are liable to pay fees, costs and charges, when fees, costs and charges are payable, and the recovery of any unpaid amount of fees, costs and charges.

SCHEDULE 4**COVENANTS IMPLIED IN ALL INSTRUMENTS**

section 39

1. That the grantor will pay to the grantee the principal and interest money secured by the instrument, and any other money secured or intended to be secured by the instrument, after the date and at the times and in the way provided in the instrument for payment of them.
2. That the grantor will produce to the grantee, on demand, the last receipts for all rent, rates, charges, assessments and taxes in respect of the premises in which the chattels shall be.
3. That the grantor has good right and full power to assign to the grantee the chattels purporting to be assigned and free and clear from encumbrances, charges and liens, whether at law or in equity, other than such as are mentioned in the instrument.
4. That the grantor will, at the cost of the grantee [or, if the instrument is by way of security, at the cost, until sale, of the grantor, and afterwards of the person requiring the same], do and execute all such acts, deeds, matters and things for the better assigning of the chattels assigned by the instrument, or intended so to be, as by the grantee [or other person] may from time to time be reasonably required.

SCHEDULE 5**COVENANTS IMPLIED IN INSTRUMENTS BY WAY
OF SECURITY (OTHER THAN STOCK
MORTGAGES, LIENS ON CROPS AND LIENS ON
WOOL)**

section 40

Covenants taken to be implied

1. The following covenants and powers shall, unless negatived and subject to any modification or addition, be implied in favour of the grantee and as to subclause (6) as an agreement between the parties—

That the grantor will not remove the goods and chattels

(1) That the grantor shall not, without consent in writing of the grantee, sell, exchange or remove the chattels comprised in this instrument from the premises described in this instrument, and will at all times keep such chattels in good order and condition.

That the grantor will not suffer the goods to be taken to execution

(2) That the grantor shall not suffer the chattels comprised in this instrument to be distrained for any rent, rates or taxes, nor suffer any execution to be levied against the grantor's goods or chattels, or become bankrupt, or present a bankruptcy petition against himself or herself, or enter into any composition, or scheme of arrangement or deed of assignment without sequestration or deed of arrangement under Part 10 of the *Bankruptcy Act 1966* (Cwlth).

To enter and view the goods etc.

(3) That the grantee may, personally or by agents, at all reasonable times, enter on the grantor's premises in which the chattels are kept, and view the state and condition of them, and that the grantor will show forth and produce to the grantee all and singular the chattels comprised in this instrument, and permit the grantee to take an inventory of them.

SCHEDULE 5 (continued)

Power of sale in case of default

(4) That, if the grantor shall make default in the payment of the principal or interest money secured by this instrument or any other money secured, or intended to be secured, by this instrument at the time provided for payment, or in the observance or performance of any 1 of the covenants, terms, conditions or agreements, whether expressed or implied in this instrument, it shall be lawful for the grantee, subject to Part 8 of the *Credit Act 1987*, without any further consent or concurrence on the part of the grantor, to enter into and on the land, messuage or tenement on which the chattels assigned are, or into or on any other land, messuage or tenement on or in which such chattels, or any other chattels comprised and included in this instrument respectively, may be, or may reasonably be supposed to be, and for that purpose to open or remove any outer or inner gate, door, fastening or other obstruction, without liability to any action of trespass or other proceeding for so doing, but with liberty to plead the leave and license given by this authority in bar to any such proceeding, if any such be brought or instituted, and to seize and take possession of all such chattels, and to remove the same to any other place or places for safety, convenience of sale or otherwise, or suffer them to remain in the place or places where the same may be found, and to sell and dispose of such chattels, or any of them, either together or in parcels, at such time or times, and place or places, and either by public auction or private contract, or partly by public auction and partly by private contract, to any person or persons, for such price or prices, either for cash or on credit, or partly for cash and partly on credit, and if either wholly or partly on credit, giving such time or times for payment, and taking or foregoing any security or securities for the payment of the unpaid purchase money as the grantee may deem proper or expedient, with power for the grantee to make any such other terms and conditions in regard to such sale or sales as the grantee may think proper, and also to buy in all or any of the said chattels at any such sale or sales by auction, and rescind or vary any contract for sale, and again to resell or offer for resale the same from time to time, without being answerable or accountable for any loss, diminution in price, costs or expenses to be occasioned by any such buying in, rescission, variance or actual or attempted resale.

SCHEDULE 5 (continued)

To execute deeds for purpose of carrying out sale

(5) That it shall be lawful for the grantee, on or after any such sale, to make, enter into, sign and execute all such contracts, agreements, deeds, instruments and writings as may be necessary or expedient for the purpose of making and effectuating any such sale, and which shall be as binding and conclusive on and against the said grantor as if the grantor or they had joined in it, or assented to it.

(5A) And also that the receipt or receipts in writing of the grantee for all purchase money or other property which shall be paid or delivered to the grantee, under this instrument, shall be a good and sufficient discharge or good and sufficient discharges to all purchasers or other persons paying or delivering the same, and that such purchaser or other persons shall not be required to see to the application, or be answerable for the misapplication or nonapplication of it, or be bound or concerned to inquire into the propriety or expediency of any such sale or resale.

Purchase money to be applied in satisfaction of security

(6) That the grantee shall out of the money which shall come to the grantee's hands because of any such sale or sales, in the first place, discharge the costs and expenses incurred or sustained in or about such sale or sales, and all other costs, charges and expenses incurred or occasioned in or about the execution of the powers contained in this instrument, and shall retain the balance of such money, or so much of it as may be necessary, in or towards payment and satisfaction of all money due and owing to the grantee on the security of this instrument, and shall pay to the grantor the surplus then remaining.

**COVENANTS IMPLIED IN INSTRUMENTS BY WAY
OF SECURITY (OTHER THAN BILLS OF SALE)**

2. The covenants and powers implied in instruments by way of security (other than stock mortgages, liens on crops and liens on wool) shall, unless negatived and subject to any modification or addition, be implied in favour

SCHEDULE 5 (continued)

of the grantee and as to clause 1(6) as an agreement between the parties in every stock mortgage, lien on crops and lien on wool and to the stock, crops and wool respectively subject to them as if the words 'stock, crops or wool' appeared in the said covenants and powers instead of the word 'chattels' wherever that word appears.

**POWERS, COVENANTS AND PROVISIONS TO BE
IMPLIED IN STOCK MORTGAGES**

3.(1) That, during the continuance of this security, the grantee, the grantee's agents or servants, may, at reasonable times for that purpose, enter into and on the said lands or premises, or any other lands or premises on which the stock for the time being subject to this security are depasturing or kept, for the purpose of viewing the state and condition of the same; and that the grantor will, on receiving 7 days previous written notice delivered to the grantor personally or addressed to the grantor through the ordinary course of post or otherwise at the grantor's last known place of abode in Queensland, give and afford to the grantee, the grantee's agents or servants, all reasonable assistance to enable the grantee, the grantee's agents or servants, to view the same accordingly.

(2) That there are now depasturing or kept on the lands and premises all the stock respectively mentioned in the instrument as depasturing or kept on them.

(2A) And that the grantor will not, during the continuance of this security, without first obtaining the grantee's consent in writing in each case, further encumber the stock for the time being subject to this security or change the general quality, character or description of the same, or remove them from the lands or premises, or sell them or any part of them.

(2B) And that the grantor will, during the continuance of this security, at the usual and convenient season for so doing, well and properly brand and earmark, with the grantor's registered brand and earmark, all stock for the time being subject to this security, so that all such stock shall bear and

SCHEDULE 5 (continued)

continue to bear the grantor's registered brand and earmark.

(2C) And will not without the leave in writing of the grantee brand, earmark or mark, or permit to be branded, earmarked or marked, any stock for the time being subject to this security with any brands, earmarks or marks other than the grantor's registered brand and earmark.

(2D) And will at all times during the continuance of this security take, use and adopt all due and proper means for keeping and maintaining all stock for the time being subject to this security, free from disease, and in clean and healthy condition.

(2E) And will, during the continuance of this security, at the usual and convenient season for so doing, tail all lambs for the time subject to this security which are untailed.

(2F) And will, at all times during the continuance of this security, pay and defray all expenses in and about the good and proper conduct and management of the lands, stock and premises, and employ and maintain on the said lands or premises efficient and proper assistance to assist in the said conduct and management.

(2G) And will at least twice in every year, on demand by the grantee, render and deliver to the grantee a return or account in writing setting out the number, ages and sexes of the stock for the time being subject to this security and the places where they are depasturing or kept.

(3) That all stock belonging to the grantor, of which possession has been taken, under the power in that behalf contained in this instrument, shall be subject to the same powers, provisions, declarations and agreements as are expressed or implied in this instrument of and concerning the stock and increase of stock expressed in this instrument to be assigned, and may be dealt with in the same way in all respect as if the stock of which possession is taken had formed part of the stock assigned by this instrument.

(3A) And that the grantor will, at the grantor's own cost and charges, do and execute all such deeds, matters and things as may be necessary, or as the grantee may think proper, for the further, better and more perfectly assigning and assuring to the grantee the stock and increase of stock, and all and singular other the premises assigned by this instrument or intended so to be, or the stock for the time being on the lands or premises, and any stock

SCHEDULE 5 (continued)

of which possession has been taken, so that the same may be held by the grantee on and for the same end, intents and purposes and with, under, and subject to the same powers, provisos, agreements and declarations, as are expressed or implied of and concerning the stock and premises expressed to be assigned by this instrument.

(3B) That in case the grantee exercises any power of entry or taking possession vested in the grantee under this instrument, then, the grantee, or any person or persons appointed by the grantee for the purpose, may continue in possession of the stock and of the lands or premises on which they are depasturing or kept until the sale of them, and manage, conduct and carry on the lands and stock, and employ servants and assistants, and provide all necessary stores in that behalf in all respects as the grantor could do if such power had not been exercised; and the grantee for any such purpose shall be entitled without any interference by the grantor to use all branding, earmarking, marking and other implements and plant on or used in connection with the lands or premises; and, further, that the costs, charges and expenses of so doing, from the time of such entry and taking possession until the sale and delivery of the stock and premises to any purchaser of them, shall, together with interest, until payment, be a charge on the stock for the time being subject to this security.

POWER TO BE IMPLIED IN LIENS ON CROPS

4. If the grantor does not pay to the grantee the amounts secured by this instrument, including the interest and commission as mentioned in this instrument, at the time mentioned for payment of the same or if any such money or any part of it remain unpaid to the grantee at the time when the crops assigned by this instrument may be harvested, the crops assigned shall be gathered, carried away and made marketable either by the grantor or by the grantee at the option of the grantee, but in either case at the expense of the grantor, and shall (if gathered by the grantor) be delivered by the grantor to the grantee or the grantee's order at the place of delivery mentioned in this instrument or, if no such place is mentioned, at such place as the grantee

SCHEDULE 5 (continued)

directs; and the grantee may either sell the same in Queensland, in 1 or more lots, by public auction or private contract, or partly in the one way and partly in the other, and on such terms and conditions as to credit and otherwise as the grantee thinks fit, or may cause the same to be sent to any place or places out of Queensland, to be sold by the grantee or the grantee's agents in that way and on those terms, without being responsible for any loss or deficiency occasioned either by the shipment of the crop or by any sale or sales of it, whether in Queensland or elsewhere, or by the act, neglect or default of any agent, broker or other person; and may from the proceeds pay himself or herself the amounts secured by this instrument, and any rent payable to any landlord and any amounts payable to any mortgagee or other person that the grantee may be compelled to pay in order to protect the security over the crops, and all costs, mercantile and other charges and expenses incurred in and about the harvesting, sale, shipment and carrying away of such crops, and the storage and freight of them, or on any other account connected with the realisation of them, and shall pay over the balance (if any) to the grantor.

POWER TO BE IMPLIED IN LIENS ON WOOL

5. If the grantor does not pay to the grantee the amounts secured by this instrument, including the interest and commission and other customary and proper charges as are mentioned in this instrument, at the time mentioned for payment of the same or if such money or any part of it remain unpaid to the grantee at the time when the wool assigned by this instrument may be shorn, the flock of sheep mentioned in this agreement and the increase of them, and all other sheep which, if this agreement were a stock mortgage comprising sheep, would be included in it, shall be shorn either by the grantor or by the grantee, at the option of the grantee, but in either case at the expense of the grantor, at the usual and proper season for so doing, and the wool of such sheep shall with all convenient speed be properly sorted and packed in good bales, marked with the proper brand of such wool, and shall be delivered by the grantor to the grantee or the grantee's order at the place of delivery mentioned in this instrument or, if no such place is mentioned, at

SCHEDULE 5 (continued)

such place as the grantee directs; and the grantee may either sell the same in Queensland, in 1 or more lots, by public auction or private contract, or partly in the one way and partly in the other, and on such terms and conditions as to credit and otherwise as the grantee thinks fit, or may cause the same to be shipped or exported to any place or places out of Queensland, to be sold by the grantee or the grantee's agents in that way and on those terms, without being responsible for any loss or deficiency occasioned either by the shipment of the said wool or by any sale or sales of it, whether in Queensland or elsewhere, or by the act, neglect or default of any agent, broker or other person; and may from the proceeds pay himself or herself the money secured, and any rent payable to any landlord, and any money payable to any mortgagee or other person that the grantee may be compelled to pay in order to protect the security over the wool and all costs, mercantile and other charges and expenses incurred in and about the shearing of the said sheep, and the packing, carrying away, sale and shipment of the said wool, or on any other account connected with the realisation of it, and shall pay over the balance (if any) to the grantor.

SCHEDULE 6**MEANINGS OF ABBREVIATED TERMS**

section 41

Abbreviated form of word ‘insure’

The words ‘that the grantor will insure’ in any instrument being a bill of sale shall imply—that the grantor will immediately insure and, so long as any money shall remain due from the grantor to the grantee on the security of the bill of sale, keep insured in some public insurance office, to be approved of by the grantee, against loss or damage by fire, in the name of the grantee, the chattels comprised in such bill of sale to the full amount then due, and will hand over to the grantee the policy of such insurance and produce to the grantee the receipts for the annual or other periodical premiums payable on account of the policy, and that all money payable because of such insurance shall be received by the grantee towards satisfaction of the amounts due on such security, and that if default shall be made by the grantor in effecting or keeping on foot such insurance it shall be lawful for, but not obligatory on the grantee (without prejudice to any other remedy) to insure the chattels in that way, and the money paid on account of such insurance shall be a charge on the chattels.

In any instrument—

‘Upon demand’

1. The words ‘upon demand’ mean on demand being made by written notice signed by the person entitled to make the demand, or any solicitor, agent, or clerk or servant of such person, served on the person on whom the demand is to be made, either personally or by posting the demand in a properly registered letter addressed to the person at the person’s usual or last known place of abode in Queensland.

‘Further advances’

2. The words ‘further advances’ mean such further amount or amounts of money as may be advanced or paid by the grantee to the grantor after the execution of this instrument, and include also such amounts as may become

SCHEDULE 6 (continued)

owing by the grantor to the grantee during the continuance of this security for goods supplied, for bills and notes discounted and paid, and for other loans, credits and advances that may during the continuance of this security be made by the grantee to or for the accommodation or at the request of the grantor.

‘Will, upon demand, pay the balance due upon the account-current between them’

3. The words ‘will, upon demand, pay the balance due upon the account-current between them’ mean that the grantor will, on demand, pay to the grantee the balance on account-current of the grantor with the grantee for the time being owing for and on account of the amounts advanced on the execution of this instrument, or intended to be secured by it, and for further advances, and for interest, commission and other lawful charges from the day of such demand being made till the actual payment, at the rate mentioned in this instrument without any deduction; and it is declared and agreed that the account-current shall be made up with half-yearly rests on the half-yearly days mentioned for that purpose in this instrument, in each year or if no such days are mentioned in this instrument, then on 31 March and 30 September in each year, until the final balance of account is fully paid; and that this instrument shall be a continuing security for all amounts for the time being owing by the grantor, even though the current account between them may have at any time been in credit by payments, settlement of account, or otherwise; and also that on every such half-yearly day interest shall be considered as converted into principal, and the balance shall be chargeable with interest as on further advances, and also that in making up such account interest at the rate specified in this instrument shall be calculated on the daily debtor balances; and also that, on any such demand, all bills of exchange or promissory notes given by the grantor to the grantee and then current may, at the option of the grantee, and shall in case of entry into possession or sale by the grantee, be considered as matured or become due, subject to a rebate of interest on the amount for the time during which the same have to run, to be calculated at the rate at which interest is payable under this instrument, and that the amount of such bills or promissory notes, subject to such rebate, may be charged to the grantor in such account at the time of making such demand.

SCHEDULE 6 (continued)

‘Will brand, earmark, and mark’

4. In a stock mortgage, the words ‘will brand, earmark, and mark’ mean that the party liable to brand, earmark and mark will keep all the stock subject to this security at all times while this instrument remains in force distinctly branded and earmarked with the grantor’s registered brand and earmark specified in this instrument, failing which it shall be lawful for, but not imperative on, the other party to enter on any lands or premises where any stock subject to this security are, and to take possession of the stock, and brand, earmark and mark the same with the grantor’s registered brand and earmark, with the right to use all branding, earmarking, marking and other implements and plant required for the purpose, and all costs, charges and expenses occasioned to the other party by so doing, shall be recoverable from the party liable to brand, earmark and mark as if the same had been advanced by way of loan as a further advance on the security of this instrument.

‘Stock subject to this security’

5. In a stock mortgage, the words ‘stock subject to this security’ mean and include not only the stock described or referred to in this instrument or in any schedules to it, but also all stock which are under the *Bills of Sale and Other Instruments Act 1955*, or otherwise, taken to be comprised and included in this instrument.

ENDNOTES

1 Index to Endnotes

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2 Date to which amendments incorporated

This is the day mentioned in section 5(c) of the Reprints Act 1992. Accordingly, this reprint includes all amendments that commenced operation before 19 January 1994. Future amendments of the Bills of Sale and Other Instruments Act 1955 may be made in accordance with this reprint because of section 49 of the Reprints Act 1992.

3 Table of previous reprints

Reprint No.	Amendments included	Reprint date
1	to Act No. 68 of 1992	1 March 1993

4 List of legislation

Bills of Sale and Other Instruments Act 1955 4 Eliz 2 No. 16
date of assent 22 April 1955
commenced 3 October 1955 (proc pubd Gaz 23 July 1955 p 1321)
as amended by—

Bills of Sale and Other Instruments Act and Other Acts Amendment Act 1971 No. 10

date of assent 16 April 1971

commenced 29 January 1973 (proc pubd Gaz 27 January 1973 p 355)

Public Trustee Act 1978 No. 73 s 5(1) Sch 1 Part A

date of assent 8 December 1978

commenced 1 January 1979 (proc pubd Gaz 23 December 1978 p 1970)

Administration of Commercial Laws Act and Other Acts Amendment Act 1981 No. 57 Part 9

date of assent 12 June 1981

commenced 1 July 1982 (proc pubd Gaz 29 June 1982 p 2101)

Motor Vehicles Securities Act 1986 No. 24 s 4

date of assent 8 April 1986

commenced 1 December 1986 (proc pubd Gaz 1 November 1986 p 1353)

Credit Act 1987 No. 52 s 181

date of assent 1 October 1987

commenced 1 May 1989 (proc pubd Gaz 17 December 1988 p 1943)

Statute Law (Miscellaneous Provisions) Act 1989 No. 103 s 3 Sch

date of assent 25 October 1989

commenced on date of assent

Corporations (Consequential Amendments) Act 1990 No. 99 s 3.1 Sch

date of assent 12 December 1990

commenced 1 January 1991 (proc pubd Gaz 22 December 1990 p 2270)

Justice Legislation (Miscellaneous Amendments) Act 1991 No. 42 s 3 Sch

date of assent 5 August 1991

commenced on date of assent

Justice Legislation (Miscellaneous Provisions) Act 1992 No. 40 ss 2(1)(c), 163 Sch 1

date of assent 14 August 1992

amendments 10, 15, 44 commenced 18 December 1992 (1992 SL No. 446)

remaining provisions commenced on date of assent

Statute Law (Miscellaneous Provisions) Act (No. 2) 1992 No. 68 s 3 Sch 2

date of assent 7 December 1992

commenced on date of assent

Consumer Law (Miscellaneous Provisions) Act 1993 No. 82 Pts 1, 3, s 3 Sch 1

date of assent 17 December 1993

commenced on date of assent

5 List of annotations

Key to abbreviations in list of annotations

amd	=	amended
Chap	=	Chapter
cl	=	clause
def	=	definition
Div	=	Division
hdg	=	heading
ins	=	inserted
om	=	omitted
prec	=	preceding
pres	=	present
prev	=	previous
(prev)	=	previously
prov	=	provision
Pt	=	Part
RA	=	Reprints Act 1992
renum	=	renumbered
Sdiv	=	Subdivision
sub	=	substituted

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

Commencement

s 2 prev s 2 om 1992 No. 40 s 163 Sch 1
 pres s 2 prev s 1(2) renum (see s 43 RA)

Parts of this Act

s 3 om (see s 36 RA)

Repeal and savings. First Schedule

s 4 om 1992 No. 40 s 163 Sch 1

Liens on Crops of Sugar Cane Act not affected

s 5 sub 1992 No. 40 s 163 Sch 1

Meaning of terms

s 6 amd 1971 No. 10 s 5; 1981 No. 57 s 31; 1989 No. 103 s 3 Sch; 1990 No. 99
 s 3.1(1) Sch; 1992 No. 68 s 3 Sch 2
 def “**bill of sale**” amd 1992 No. 68 s 3 Sch 2
 def “**book debts**” om 1992 No. 68 s 3 Sch 2
 def “**Central District**” ins 1992 No. 40 s 163 Sch 1
 def “**chattels**” sub 1992 No. 68 s 3 Sch 2
 def “**chief executive**” ins 1992 No. 40 s 163 Sch 1
 def “**Commissioner**” ins 1971 No. 10 s 5(a)
 om 1981 No. 57 s 31(a)
 def “**instrument**” ins 1992 No. 68 s 3 Sch 2
 def “**instruments**” om 1992 No. 68 s 3 Sch 2
 def “**Northern District**” ins 1992 No. 40 s 163 Sch 1
 def “**Office**” ins 1971 No. 10 s 5(b)
 om 1992 No. 40 s 163 Sch 1
 def “**office of the registrar**” ins 1992 No. 40 s 163 Sch 1

def **“primary produce”** ins 1992 No. 68 s 3 Sch 2
 def **“registrar”** om 1971 No. 10 s 5(c)
 ins 1981 No. 57 s 31(b)
 amd 1989 No. 103 s 3 Sch; 1990 No. 99 s 3.1(1) Sch
 sub 1992 No. 40 s 163 Sch 1
 def **“Registry”** om 1971 No. 10 s 5(c)
 def **“Southern District”** ins 1992 No. 40 s 163 Sch 1
 def **“trade machinery”** sub 1992 No. 68 s 3 Sch 2

Unregistered instruments

s 7 sub 1992 No. 40 s 163 Sch 1

When a registered instrument takes effect

s 7A ins 1992 No. 40 s 163 Sch 1

Registration does not cure invalidity

s 7B ins 1992 No. 40 s 163 Sch 1

Place of registration

s 9 amd 1971 No. 10 s 6; 1981 No. 57 s 33
 sub 1992 No. 40 s 163 Sch 1

Registration

prov hdg sub 1992 No. 40 s 163 Sch 1

s 10 amd 1971 No. 10 ss 7, 15, 16; 1981 No. 57 s 33; 1992 No. 40 s 163 Sch 1

Application of Part

s 11A ins 1986 No. 24 s 4(1)

Registration of restraining orders

s 11B ins 1991 No. 42 s 3 Sch

RENEWAL OF REGISTRATION OF BILLS OF SALE

hdg prec s 12 om 1992 No. 68 s 3 Sch 2

Registration of certain instruments to be renewed every 5 years

s 12 amd 1971 No. 10 ss 8, 15, 16; 1981 No. 57 s 33; 1992 No. 40 s 163 Sch 1;
 (see s 37 RA); 1992 No. 68 s 3 Sch 2

RENEWAL OF REGISTRATION OF LIENS UPON CROPS

hdg prec s 13 om 1992 No. 40 s 163 Sch 1

Renewal of registered liens on crops

s 13 amd 1971 No. 10 ss 9, 15, 16; 1981 No. 57 s 33; 1992 No. 40 s 163 Sch 1

TRANSFERS OF INSTRUMENTS

hdg prec s 14 om 1992 No. 40 s 163 Sch 1

Transfer or assignment of registered instruments

s 14 amd 1971 No. 10 ss 10, 15, 16; 1981 No. 57 s 33; 1992 No. 40 s 163 Sch 1

ENTRY OF SATISFACTION

hdg prec s 15 om 1992 No. 40 s 163 Sch 1

Entry of discharge of registered instrument

s 15 amd 1971 No. 10 ss 11, 15, 16; 1981 No. 57 s 33; 1992 No. 40 s 163 Sch 1

Correction of errors etc.

s 16 amd 1971 No. 10 s 12

OFFICEhdg prec s 17 amd 1971 No. 10 ss 13, 15, 16
om 1992 No. 40 s 163 Sch 1**Search etc.**s 17 amd 1971 No. 10 ss 13, 15, 16; 1981 No. 57 s 33; 1992 No. 40 s 163
Sch 1; 1993 No. 82 s 3 Sch 1**Disposal of instruments**s 18 amd 1971 No. 10 s 14; 1981 No. 57 s 32
sub 1992 No. 40 s 163 Sch 1**Contents of instruments**

s 19 sub 1992 No. 40 s 163 Sch 1

Further advances

s 19A ins 1992 No. 40 s 163 Sch 1

Effect of bill of sale on chattels acquired later

s 21 sub 1992 No. 40 s 163 Sch 1

Division 1—Optional registration of assignments of book debts

Div hdg ins 1992 No. 40 s 163 Sch 1

OPTIONAL REGISTRATION OF ASSIGNMENTS OF BOOK DEBTS

hdg prec s 24 om 1992 No. 40 s 163 Sch 1

Division 2—Stock mortgages

Div hdg ins 1992 No. 40 s 163 Sch 1

STOCK MORTGAGES

hdg prec s 25 om 1992 No. 40 s 163 Sch 1

How stock to be described in mortgage etc.

s 26 amd 1993 No. 82 s 16

Division 3—Liens on crops

Div hdg ins 1992 No. 40 s 163 Sch 1

LIENS ON CROPS

hdg prec s 31 om 1992 No. 40 s 163 Sch 1

Division 4—Liens on wool

Div hdg ins 1992 No. 40 s 163 Sch 1

LIENS ON WOOL

hdg prec s 34 om 1992 No. 40 s 163 Sch 1

**AS TO INSTRUMENTS BY WAY OF SECURITY SECURING AN ACCOUNT
CURRENT**

hdg prec s 37 om 1992 No. 40 s 163 Sch 1

WHEN PUBLIC CURATOR MAY SIGN MEMORANDUM OF SATISFACTION

1st hdg after s 37 om 1992 No. 40 s 163 Sch 1

Delegations

s 38 prev s 38 amd 1971 No. 10 s 16
om 1978 No. 73 s 5(1) Sch 1 Part A
pres s 38 ins 1992 No. 40 s 163 Sch 1

IMPLIED COVENANTS AND POWERS

hdg prec s 39 om 1992 No. 40 s 163 Sch 1

Covenants etc. implied in instruments by way of security—Schedule 5

s 40 amd 1992 No. 68 s 3 Sch 2

SALE AFTER SEIZURE

hdg prec s 45 om 1992 No. 40 s 163 Sch 1

FEES

hdg prec s 46 om 1992 No. 40 s 163 Sch 1

Regulations

s 46 amd 1971 No. 10 s 16
sub 1992 No. 40 s 163 Sch 1

Regulations

s 47 om 1992 No. 40 s 163 Sch 1

SCHEDULE 1

om 1992 No. 40 s 163 Sch 1

SCHEDULE 2—CERTIFICATE OF REGISTRATION

amd 1971 No. 10 s 15; 1981 No. 57 s 33
om 1992 No. 40 s 163 Sch 1

SCHEDULE 3—AFFIDAVIT FOR RENEWAL OF REGISTRATION OF A BILL OF SALE

amd 1971 No. 10 s 17
om 1992 No. 40 s 163 Sch 1

SCHEDULE 5—COVENANTS IMPLIED IN INSTRUMENTS BY WAY OF SECURITY (OTHER THAN STOCK MORTGAGES, LIENS ON CROPS AND LIENS ON WOOL)

amd 1987 No. 52 s 181(1); 1992 No. 68 s 3 Sch 2; 1993 No. 82 s 3 Sch 1

6 Table of corrected minor errors

TABLE OF CORRECTED MINOR ERRORS
under section 44 of the Reprints Act 1992

Provision	Description
Schedule 5 1	om 'clause (6)' ins 'subclause (6)'

7 Table of renumbered provisionsTABLE OF RENUMBERED PROVISIONS
under section 43 of Reprints Act 1992

Previous	Renumbered as
1(1)	1
1(2)	2
6 def “bill of sale” (i)–(viii)	(a)–(h)
6 def “bill of sale” (a)–(g)	(i)–(o)
6 def “chattels” (a)–(d) (2nd occurring)	(e)–(h)
6 def “chattels” (e)–(g)	(i)–(k)
6 def “trade machinery” (i)–(iii)	(a)–(c)
6(2) (2nd sentence)	6(2A)
6(4) (2nd sentence)	6(4A)
6(4) (3rd sentence)	6(4B)
8(1) (2nd sentence)	8(1A)
10(2) (2nd sentence)	10(2A)
10(2) (3rd sentence)	10(2B)
12(4)(a)	12(4)
12(4)(b)	12(4A)
12(4)(c)	12(4B)
20 (1st sentence)	20(1)
20 (2nd sentence)	20(2)
22 (1st sentence)	22(1)
22 (2nd sentence)	22(2)
24 (2nd sentence)	24(1A)
27 (1st sentence)	27(1)
27 (2nd sentence)	27(2)
28(i)	28(a)
28(ii)	28(b)
29 (1st sentence)	29(1)
29 (2nd sentence)	29(2)
31(1) (2nd sentence)	31(1A)
32(3)(i)	32(3)(a)
32(3)(ii)	32(3)(b)
40 (1st sentence)	40(1)
40 (2nd sentence)	40(2)
45 (1st sentence)	45(1)
45 (2nd sentence)	45(2)
Schedule 4 (1st sentence)	1
Schedule 4 (2nd sentence)	2
Schedule 4 (3rd sentence)	3
Schedule 4 (4th sentence)	4

Schedule 5—Covenants implied in instruments by way of security (other than stock mortgages, liens on crops and liens on wool) (1st sentence)	1
Schedule 5—Covenants implied in instruments by way of security (other than bills of sale) (1st sentence)	2
Schedule 5—Powers, covenants and provisions to be implied in stock mortgages (clause 1)	3(1)
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Schedule 5—Powers, covenants and provisions to be implied in stock mortgages (clause 2 5th sentence)	3(2D)
Schedule 5—Powers, covenants and provisions to be implied in stock mortgages (clause 2 6th sentence)	3(2E)
Schedule 5—Powers, covenants and provisions to be implied in stock mortgages (clause 2 7th sentence)	3(2F)
Schedule 5—Powers, covenants and provisions to be implied in stock mortgages (clause 2 8th sentence)	3(2G)
Schedule 5—Powers, covenants and provisions to be implied in	

stock mortgages (clause 3 1st sentence)	3(3)
Schedule 5—Powers, covenants and provisions to be implied in stock mortgages (clause 3 2nd sentence)	3(3A)
Schedule 5—Powers, covenants and provisions to be implied in stock mortgages (clause 3 3rd sentence)	3(3B)
Schedule 5—Power to be implied in liens on crops (clause)	4
Schedule 5—Power to be implied in liens on wool (clause)	5

8 Table of comparative legislation

s 6(4)	55 Vic No. 23 s 3(3)
s 6(5)	55 Vic No. 23 s 3(4)
s 12	55 Vic No. 23 ss 8, 9
s 13	34 Vic No. 12 s 1
s 14	34 Vic No. 12 s 6
s 15	55 Vic No. 23 s 13
s 16	55 Vic No. 23 s 17; 60 Vic No. 10 s 11
s 17	55 Vic No. 23 s 14; 60 Vic No. 10 s 8
s 20	55 Vic No. 23 s 6
s 22	55 Vic No. 23 s 6
s 25	31 Vic No. 36 s 29
s 31	31 Vic No. 36 s 38
s 32	31 Vic No. 36 s 39
s 33	31 Vic No. 36 s 41
s 34	31 Vic No. 36 s 27
s 35	31 Vic No. 36 s 28
s 36	31 Vic No. 36 s 28
s 40	5 Geo 6 No. 13

9 Transitional and savings provisions

Section 34 of Act No. 57 of 1981 provides—

Transitional

34.(1) Immediately upon the commencement of this Act, the

Commissioner for Corporate Affairs shall in respect of each Act amended by a Part, transmit to the Registrar at the Registrar's office all copies of securities, licences and other documents filed in his office under that Act and all records therein relating to those securities, licences and documents.

(2) A Registrar as defined in a Part shall keep in his office all copies of securities, licences and other documents and records transmitted to him pursuant to this section and those records shall be the records required to be kept by him under the Act amended by that Part.

(3) Every registration of or in respect of any security or any licence to which an Act referred to in a Part applied, of force and effect immediately before the commencement of this Act, shall, on and from that commencement, be deemed to have been registered in the office of the Registrar.

(4) In this section the word "Registrar" shall in respect of each Act referred to in a Part have the meaning assigned to it in that Part.