

Queensland



BILLS OF SALE AND OTHER INSTRUMENTS ACT 1955

**Reprinted as in force on 12 October 2001
(includes amendments up to Act No. 45 of 2001)**

Warning—see last endnote for uncommenced amendments

Reprint No. 4A revised edition

**This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy**

Information about this reprint

This Act is reprinted as at 12 October 2001. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have been made to use aspects of format and printing style consistent with current drafting practice (s 35).

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

Also see endnotes for information about—

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

Dates shown on reprints

Reprints dated at last amendment All reprints produced on or after 1 July 2002, hard copy and electronic, are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If a hard copy reprint is dated earlier than an electronic version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of a hard copy reprint is the same as the date shown for an electronic version previously published, it merely means that the electronic version was published before the hard copy version. Also, any revised edition of the previously published electronic version will have the same date as that version.

Replacement reprint date If the date of a hard copy reprint is the same as the date shown on another hard copy reprint it means that one is the replacement of the other.

Revised edition indicates further material has affected existing material. For example—

- a correction
- a retrospective provision
- other relevant information.



BILLS OF SALE AND OTHER INSTRUMENTS ACT 1955

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	5
2	Act binds all persons	5
5	Liens on Crops of Sugar Cane Act not affected	5
6	Definitions	5
6A	Application of Act to bills of sale	10
6B	Limitation on separate assignment etc.	10
6C	Rents and profits	10
6D	Hire-purchase agreements	11
PART 2—REGISTRATION AND ITS EFFECTS		
<i>Division 1—Application of part</i>		
7	Application of pt 2.	11
<i>Division 2—The register and registration</i>		
8	Register	11
9	Application for registration of security interest	12
10	Application for renewal of registration of security interest.	12
11	Registration, or renewal of registration, of security interest	13
12	Expiry of registration.	13
<i>Division 3—Other provisions about registration and registered security interests</i>		
13	Inspecting the register	13
14	Copies of documents to which security interest relates	14
15	Registration of restraining orders	14
16	Application for registration of assignment of registered security interest . .	14

17	Registration of assignment of a registered security interest	15
18	Effect of failure to register a security interest	15
18A	Priority given from time of registration.	15
18B	Priority of security interests	15

Division 4—Discharge of registered security interests

18C	Application for discharge of registered security interest.	16
18D	Registration of discharge of registered security interest	17
18E	Duty after interest fully discharged.	17
18F	Borrower may seek registration of discharge or change in particulars	17

Division 5—Changes to register

18G	Changes to particulars in register	19
18H	Correction of errors	19
18I	Removal of particulars of improperly registered interests	19

Division 6—Compensation for loss

18J	Application of div 6.	21
18K	Compensation for loss.	21

Division 7—General

18L	Chief executive to be satisfied stamp duty has been accounted for	22
-----	---	----

**PART 3—CONTENTS AND ATTESTING OF INSTRUMENTS
ETC.**

19	Contents of instruments.	23
19A	Further advances	24
20	Instrument to be attested and when registered to have effect of a deed	24
21	Effect of bill of sale on chattels acquired later	24
23	Saving	25

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

Division 2—Stock mortgages

25	Stock under stock mortgage are chattels	25
26	How stock to be described in mortgage etc.	25
27	Stock to include increase of stock etc.	26
28	Special provisions as to poultry etc.	26

29	Security may not be given without consent to third party over wool of mortgaged sheep	26
----	---	----

30	Borrower may provide for lender to have wool from mortgaged sheep	27
----	---	----

Division 3—Liens on crops

31	Liens may be given on crops	27
----	---------------------------------------	----

32	Savings of existing mortgages etc.	27
----	--	----

Division 4—Liens on wool

34	Security may be given over wool	28
----	---	----

35	Wool to continue subject to lien despite subsequent sale or mortgage	29
----	--	----

36	Lender may take possession and shear sheep subject to the lien if borrower neglects to do so	29
----	--	----

PART 5—MISCELLANEOUS

37	Security interest securing account current	29
----	--	----

37A	False or misleading statements	29
-----	--	----

37B	False or misleading documents	30
-----	---	----

37C	Protection from liability	30
-----	-------------------------------------	----

38	Delegations	30
----	-----------------------	----

39	Covenants for title—Sch 4	31
----	-------------------------------------	----

40	Covenants etc. implied in instruments by way of security—Sch 5	31
----	--	----

41	Meaning of “abbreviated terms”—Sch 6	31
----	--	----

42	Covenants to be several as well as joint	31
----	--	----

43	Covenants to bind executors	32
----	---------------------------------------	----

44	Covenants etc. may be negated or varied	32
----	---	----

45	Chattels not to be sold until at least 14 days after seizure	32
----	--	----

46	Approval of forms	33
----	-----------------------------	----

47	Regulation making power	33
----	-----------------------------------	----

49	Chief executive is registrar for repealed State Securities Registration Act 1925	33
----	--	----

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

50	Transitional provisions about register	34
----	--	----

51	Transitional provision about registered instruments	34
----	---	----

52	Transitional provision about crop liens	34
----	---	----

Bills of Sale and Other Instruments Act 1955

53	Transitional provision about expiry of liens on wool	34
54	Transitional provision about stock mortgages and certain other securities. .	34
55	Saving of priority.	35
56	Validation	36

SCHEDULE 4	37
-----------------------------	-----------

COVENANTS IMPLIED IN ALL INSTRUMENTS

SCHEDULE 5	38
-----------------------------	-----------

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

SCHEDULE 6	45
-----------------------------	-----------

MEANINGS OF ABBREVIATED TERMS

ENDNOTES

1	Index to endnotes	48
2	Date to which amendments incorporated.	48
3	Key	48
4	Table of earlier reprints	49
5	Tables in earlier reprints.	49
6	List of legislation	49
7	List of annotations	51
8	Provisions that have not commenced and are not incorporated into reprint	59

**PART 4—AMENDMENT OF BILLS OF SALE AND OTHER
INSTRUMENTS ACT 1955**

33	Replacement of s 7 (Application of pt 2)	60
7	Application of pt 2	60
34	Insertion of new pt 7	60

**PART 7—TRANSITIONAL PROVISIONS FOR MOTOR VEHICLES
SECURITIES AND OTHER ACTS AMENDMENT ACT 2001**

57	Ending of registration of security interest over boat	60
----	---	----

BILLS OF SALE AND OTHER INSTRUMENTS ACT 1955

[as amended by all amendments that commenced on or before 12 October 2001]

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

1 Short title

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

2 Act binds all persons

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

5 Liens on Crops of Sugar Cane Act not affected

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

6 Definitions

In this Act—

“approved form” see section 46.¹

“assign” includes transfer.

“bill of sale” includes—

¹ Section 46 (Approval of forms)

Bills of Sale and Other Instruments Act 1955

- (a) bills of sale; and
- (b) assignments 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 borrower;
- (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 borrower;
- (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 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.

“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.

“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.

“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 borrower or the borrower's solicitor or agent and, in appropriate cases, signed by the lender or the borrower or his or her solicitor or agent and by the lender or the lender'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.

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

“instrument” means—

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

“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.

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

“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.

“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 security interest” means a security interest that—

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

6A Application of Act to bills of sale

(1) Unless otherwise provided, this Act applies only to bills of sale under which the lender 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.

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

6B Limitation on separate assignment etc.

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.

6C Rents and profits

(1) 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.

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

(3) 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.

6D Hire-purchase agreements

(1) 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.

(2) In this section—

“**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—REGISTRATION AND ITS EFFECTS

Division 1—Application of part

7 Application of pt 2

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

8 Register

(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.

9 Application for registration of security interest

(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.

10 Application for renewal of registration of security interest

(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.

11 Registration, or renewal of registration, of security interest

(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.

12 Expiry of registration

(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

13 Inspecting the register

(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.

14 Copies of documents to which security interest relates

(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.

15 Registration of restraining orders

(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.

16 Application for registration of assignment of registered security interest

(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.

17 Registration of assignment of a registered security interest

(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.

18 Effect of failure to register a security interest

(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).

18A Priority given from time of registration

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.

18B Priority of security interests

(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 82,² 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);³
- (b) the Corporations Act;
- (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.

Division 4—Discharge of registered security interests

18C Application for discharge of registered security interest

(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—

² *Property Law Act 1974*, section 82 (Tacking and further advances)

³ Section 6A (Application of Act to bills of sale)

- (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.

18D Registration of discharge of registered security interest

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.

18E Duty after interest fully discharged

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 18C⁴ 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.

18F Borrower may seek registration of discharge or change in particulars

(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.

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

(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—

- (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**18G Changes to particulars in register**

(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.

18H Correction of errors

(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.

18I Removal of particulars of improperly registered interests

(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**18J Application of div 6**

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;⁵ 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.

18K Compensation for loss

(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 106.⁶

⁵ Section 18F (Borrower may seek registration of discharge or change in particulars)

⁶ *Financial Administration and Audit Act 1977*, section 106 (Losses and special payments)

(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
- (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, after discounting for any GST payable on any supply relating to the payment of the compensation, 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, after discounting for any GST payable on any supply relating to the payment of the compensation, 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

18L Chief executive to be satisfied stamp duty has been accounted for

(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 for⁷ 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 interest states, in writing, that the stamp duty has been paid or accounted for under that Act.

PART 3—CONTENTS AND ATTESTING OF INSTRUMENTS ETC.

19 Contents of instruments

(1) An instrument must state—

- (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
- (d) the consideration for granting the instrument.

(1A) Subsection (1)(d) does not apply to a mortgage to which the Consumer Credit Code applies.

(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.

⁷ See, for example, the *Stamp Act 1894*, section 13A (Duty accounted for by returns)

19A Further advances

(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.

(3) This section does not apply to a mortgage to which the Consumer Credit Code applies.

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

(1) Sealing shall not be essential to the validity of any instrument, but the execution of each instrument (other than a mortgage to which the Consumer Credit Code applies), or of an assignment, or discharge of it, shall be attested by at least 1 witness, not being a party to it.

(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.

(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.

21 Effect of bill of sale on chattels acquired later

(1) Subject to this section 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 borrower 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 borrower 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 borrower 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.

(4) This section does not apply to a mortgage to which the Consumer Credit Code applies.

23 Saving

Nothing in section 21 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 2—Stock mortgages

25 Stock under stock mortgage are chattels

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.

26 How stock to be described in mortgage etc.

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.

27 Stock to include increase of stock etc.

(1) A registered security interest in stock under a stock mortgage shall, subject to the express words in the instrument creating the security interest, be taken to include not only the stock comprised in the instrument 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 borrower, which at any time after the execution of the instrument and during the continuance of the registered 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 continuance of the registered security are depastured or kept on the land or premises described in the instrument.

(2) The lender 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.

28 Special provisions as to poultry etc.

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.

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

(1) The borrower under any stock mortgage comprising sheep shall not, except with the consent in writing of the lender 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.

30 Borrower may provide for lender to have wool from mortgaged sheep

In every stock mortgage comprising sheep, there shall be implied (unless such implication is expressly negated) a covenant by the borrower to deliver to the lender the wool shorn from such sheep in each year during the continuance of the instrument, and the lender shall, during the subsistence of a registered security interest in the sheep under the mortgage, be taken, despite sections 34 and 35, to have a registered security interest in wool under a 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 borrower and a security interest in wool under a lien on wool had been registered under this Act, and such registered security interest shall have the consequences referred to in sections 34 to 36.

Division 3—Liens on crops

31 Liens may be given on crops

(1) An instrument by way of security (a “**lien on crops**”) may be granted over any crops of the borrower, 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 of a security interest in the crops entitle the lender to the crops to which the interest relates, 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.

32 Savings of existing mortgages etc.

(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 registered security interest in a crop under a lien on crops 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, particulars of which are included in the register.

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

- (a) in the case where the borrower 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 borrower.

Division 4—Liens on wool

34 Security may be given over wool

(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 borrower 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 of a security interest in the wool under the lien on wool, shall entitle the lender 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.

35 Wool to continue subject to lien despite subsequent sale or mortgage

No registered security interest in wool under a lien on wool 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, particulars of which are included in the register, 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 borrower.

36 Lender may take possession and shear sheep subject to the lien if borrower neglects to do so

If the borrower or any subsequent purchaser, bailee, mortgagee or encumbrancee of the sheep whose wool is subject to a registered security interest in wool under a lien on wool, 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 lien, it shall be lawful for the lender 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 lien or, if no such place is so mentioned, to the place of abode of the lender, shall be added to and be taken to be part of the amount secured by the lien.

PART 5—MISCELLANEOUS**37 Security interest securing account current**

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.

37A False or misleading statements

(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.

37B False or misleading documents

(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.

37C Protection from liability

(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.

38 Delegations

(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.

39 Covenants for title—Sch 4

There shall be implied in every instrument the covenants on the part of the borrower 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.

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

(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.

41 Meaning of “abbreviated terms”—Sch 6

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.

42 Covenants to be several as well as joint

Where there are 2 or more borrowers or 2 or more lenders 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 borrowers or lenders, or ensuring for the benefit of such borrowers or lenders, 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.

43 Covenants to bind executors

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.

44 Covenants etc. may be negatived or varied

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.

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

(1) No chattels, except such as may be of a perishable nature, which shall be seized by the lender 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 borrower, 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.

(3) This section does not apply to chattels seized under a mortgage to which the Consumer Credit Code applies.

46 Approval of forms

The chief executive may approve forms for use under this Act.

47 Regulation making power

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may prescribe—

- (a) the matters for which fees, costs and charges are payable;
- (b) the amounts of the fees, costs and charges;
- (c) the persons liable to pay the fees, costs and charges;
- (d) when the fees, costs and charges are payable;
- (e) how unpaid amounts of fees, costs and charges are to be recovered.

49 Chief executive is registrar for repealed State Securities Registration Act 1925

(1) To the extent the repealed Act continues to apply,⁸ the chief executive is the registrar for the purposes of the repealed Act.

(2) In this section—

“**repealed Act**” means the *State Securities Registration Act 1925*.

(3) This section expires 9 years after section 54⁹ commences.

8 Under the *Statute Law (Miscellaneous Provisions) Act 1991*, schedule 4, section 3, the Act continues to apply to securities registered under it immediately before 1 September 1992.

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

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

50 Transitional provisions about register

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.

51 Transitional provision about registered instruments

(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.

52 Transitional provision about crop liens

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.

53 Transitional provision about expiry of liens on wool

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

54 Transitional provision about stock mortgages and certain other securities

(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.

55 Saving of priority

(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.¹⁰

56 Validation

(1) It is declared that anything done between 23 April 1999 and 7 May 1999 that would have been validly done or effectual under this Act, had the amending Act commenced on 23 April 1999, is and always was as valid and effectual as if the amending Act had commenced on 23 April 1999.

(2) In this section—

“amending Act” means the *Bills of Sale and Other Securities Amendment Act 1999*, part 2 and the schedule.

“done” includes, made, applied for, registered, discharged, renewed, given, exercised, charged, established, changed and omitted to be done.

10 Section 18B (Priority of security interests)

SCHEDULE 4

COVENANTS IMPLIED IN ALL INSTRUMENTS

section 39

1. That the borrower will pay to the lender 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 borrower will produce to the lender, 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 borrower has good right and full power to assign to the lender 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 borrower will, at the cost of the lender [or, if the instrument is by way of security, at the cost, until sale, of the borrower, 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 lender [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

1 Covenants taken to be implied

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

That the borrower will not remove the goods and chattels

(1) That the borrower shall not, without consent in writing of the lender, 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 borrower will not suffer the goods to be taken to execution

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

Power of sale in case of default

(4) That, if the borrower 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

SCHEDULE 5 (continued)

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 lender, subject to sections 96 and 108 of the *Credit Act 1987* and the Consumer Credit (Queensland) Code, sections 80 and 91, without any further consent or concurrence on the part of the borrower, 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 lender may deem proper or expedient, with power for the lender to make any such other terms and conditions in regard to such sale or sales as the lender 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.

To execute deeds for purpose of carrying out sale

(5) That it shall be lawful for the lender, 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 borrower as if the borrower or they had joined in it, or assented to it.

SCHEDULE 5 (continued)

(5A) And also that the receipt or receipts in writing of the lender for all purchase money or other property which shall be paid or delivered to the lender, 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 lender shall out of the money which shall come to the lender'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 lender on the security of this instrument, and shall pay to the borrower 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 negated and subject to any modification or addition, be implied in favour of the lender 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.

SCHEDULE 5 (continued)

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

3.(1) That, during the continuance of this security, the lender, the lender'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 borrower will, on receiving 7 days previous written notice delivered to the borrower personally or addressed to the borrower through the ordinary course of post or otherwise at the borrower's last known place of abode in Queensland, give and afford to the lender, the lender's agents or servants, all reasonable assistance to enable the lender, the lender'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 borrower will not, during the continuance of this security, without first obtaining the lender'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 borrower will, during the continuance of this security, at the usual and convenient season for so doing, well and properly brand and earmark, with the borrower's registered brand and earmark, all stock for the time being subject to this security, so that all such stock shall bear and continue to bear the borrower's registered brand and earmark.

(2C) And will not without the leave in writing of the lender 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 borrower'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.

SCHEDULE 5 (continued)

(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 lender, render and deliver to the lender 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 borrower, 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 borrower will, at the borrower's own cost and charges, do and execute all such deeds, matters and things as may be necessary, or as the lender may think proper, for the further, better and more perfectly assigning and assuring to the lender 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 of which possession has been taken, so that the same may be held by the lender 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 lender exercises any power of entry or taking possession vested in the lender under this instrument, then, the lender, or any person or persons appointed by the lender 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 borrower

SCHEDULE 5 (continued)

could do if such power had not been exercised; and the lender for any such purpose shall be entitled without any interference by the borrower 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 borrower does not pay to the lender 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 lender 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 borrower or by the lender at the option of the lender, but in either case at the expense of the borrower, and shall (if gathered by the borrower) be delivered by the borrower to the lender or the lender's order at the place of delivery mentioned in this instrument or, if no such place is mentioned, at such place as the lender directs; and the lender 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 lender thinks fit, or may cause the same to be sent to any place or places out of Queensland, to be sold by the lender or the lender'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 lender 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

SCHEDULE 5 (continued)

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 borrower.

POWER TO BE IMPLIED IN LIENS ON WOOL

5. If the borrower does not pay to the lender 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 lender 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 borrower or by the lender, at the option of the lender, but in either case at the expense of the borrower, 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 borrower to the lender or the lender's order at the place of delivery mentioned in this instrument or, if no such place is mentioned, at such place as the lender directs; and the lender 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 lender 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 lender or the lender'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 lender 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 borrower.

SCHEDULE 6

MEANINGS OF ABBREVIATED TERMS

section 41

Abbreviated form of word ‘insure’

The words ‘that the borrower will insure’ in any instrument being a bill of sale shall imply—that the borrower will immediately insure and, so long as any money shall remain due from the borrower to the lender on the security of the bill of sale, keep insured in some public insurance office, to be approved of by the lender, against loss or damage by fire, in the name of the lender, the chattels comprised in such bill of sale to the full amount then due, and will hand over to the lender the policy of such insurance and produce to the lender 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 lender towards satisfaction of the amounts due on such security, and that if default shall be made by the borrower in effecting or keeping on foot such insurance it shall be lawful for, but not obligatory on the lender (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 lender to the borrower after the execution of this instrument, and include also such amounts as may become owing by the borrower to the lender during the continuance of this security for goods supplied, for bills and notes discounted and paid, and for

SCHEDULE 6 (continued)

other loans, credits and advances that may during the continuance of this security be made by the lender to or for the accommodation or at the request of the borrower.

‘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 borrower will, on demand, pay to the lender the balance on account-current of the borrower with the lender 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 borrower, 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 borrower to the lender and then current may, at the option of the lender, and shall in case of entry into possession or sale by the lender, 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 borrower in such account at the time of making such demand.

‘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

SCHEDULE 6 (continued)

distinctly branded and earmarked with the borrower'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 borrower'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

	Page
2 Date to which amendments incorporated	48
3 Key	48
4 Table of earlier reprints	49
5 Tables in earlier reprints	49
6 List of legislation	49
7 List of annotations	51
8 Provisions that have not commenced and are not incorporated into reprint	59

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 12 October 2001. Future amendments of the Bills of Sale and Other Instruments Act 1955 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	prev	= previous
amd	= amended	(prev)	= previously
amdt	= amendment	proc	= proclamation
ch	= chapter	prov	= provision
def	= definition	pt	= part
div	= division	pubd	= published
exp	= expires/expired	R[X]	= Reprint No.[X]
gaz	= gazette	RA	= Reprints Act 1992
hdg	= heading	reloc	= relocated
ins	= inserted	renum	= renumbered
lap	= lapsed	rep	= repealed
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 1992
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered

4 Table of earlier reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Comparative legislation	1, 2
Corrected minor errors	1, 2
Renumbered provisions	1, 2

6 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 pt 2

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 pt 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 pt 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

Statute Law (Miscellaneous Provisions) Act 1994 No. 15 s 3 sch 2

date of assent 10 May 1994

commenced on date of assent

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1

date of assent 28 November 1995

commenced on date of assent

Consumer Credit Legislation Amendment Act 1996 No. 38 pt 1 sch

date of assent 1 November 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 November 1996 (see s 2 and 1996 SL No. 152)

**Consumer Law and Other Justice Legislation (Miscellaneous Provisions) Act 1996
No. 56 pts 1, 3**

date of assent 20 November 1996

commenced on date of assent

**Justice and Other Legislation (Miscellaneous Provisions) Act 1997 No. 9 ss 1–2(1)
pt 4**

date of assent 15 May 1997

commenced on date of assent

Courts Reform Amendment Act 1997 No. 38 pt 1 sch

date of assent 18 July 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 August 1997 (1997 SL No. 235)

**Justice and Other Legislation (Miscellaneous Provisions) Act (No. 2) 1997 No. 82
ss 1–2(1), 3 sch**

date of assent 5 December 1997

commenced on date of assent

Bills of Sale and Other Securities Amendment Act 1999 No. 4 pts 1–2 sch

date of assent 18 March 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 7 May 1999 (1999 SL No. 78)

Equity and Fair Trading (Miscellaneous Provisions) Act 1999 No. 63 pts 1, 3

date of assent 6 December 1999

ss 1–2 commenced on date of assent

remaining provision commenced 10 March 2000 (2000 SL No. 36) (amendment could not be given effect)

GST and Related Matters Act 2000 No. 20 ss 1, 2(4), 29 sch 3

date of assent 23 June 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2(4))

Equity and Fair Trading (Miscellaneous Provisions) Act 2000 No. 24 pts 1, 4

date of assent 27 June 2000

commenced on date of assent

Motor Vehicles Securities and Other Acts Amendment Act 2001 No. 38 ss 1, 2(2), pt 4

date of assent 7 June 2001

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force**Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3**

date of assent 28 June 2001

ss 1–2 commenced on date of assent

sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

7 List of annotations

Act binds all persons

- s 2** prev s 2 om 1992 No. 40 s 163 sch 1
 pres s 2 prev s 1(2) renum (see RA s 43)
 sub 1999 No. 4 s 4

Parts of this Act

- s 3** om R1 (see RA s 36)

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

Definitions

- prov hdg** amd 1999 No. 4 s 5(1)
- 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; 1999 No. 4 s 5
- def **“approved form”** ins 1995 No. 58 s 4 sch 1
- def **“assign”** ins 1999 No. 4 s 5(3)
- def **“bill of sale”** amd 1992 No. 68 s 3 sch 2; 1999 No. 4 s 3 sch
- def **“book debts”** om 1992 No. 68 s 3 sch 2
amd 1999 No. 4 s 3 sch
- def **“borrower”** ins 1999 No. 4 s 5(3)
- def **“central district”** ins 1992 No. 40 s 163 sch 1
sub 1997 No. 38 s 3 sch
om 1999 No. 4 s 5(2)
- def **“chattels”** sub 1992 No. 68 s 3 sch 2
- def **“chief executive”** ins 1992 No. 40 s 163 sch 1
om 1995 No. 58 s 4 sch 1
- def **“Commissioner”** ins 1971 No. 10 s 5(a)
om 1981 No. 57 s 31(a)
- def **“executed”** amd 1999 No. 4 s 3 sch
- def **“far northern district”** ins 1997 No. 38 s 3 sch
om 1999 No. 4 s 5(2)
- def **“grantee”** om 1999 No. 4 s 5(2)
- def **“grantor”** om 1999 No. 4 s 5(2)
- def **“incorrect information”** ins 1999 No. 4 s 5(3)
- def **“instrument”** ins 1992 No. 68 s 3 sch 2
- def **“instruments”** om 1992 No. 68 s 3 sch 2
- def **“lender”** ins 1999 No. 4 s 5(3)
- def **“northern district”** ins 1992 No. 40 s 163 sch 1
sub 1997 No. 38 s 3 sch
om 1999 No. 4 s 5(2)
- 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
sub 1997 No. 38 s 3 sch
amd 1997 No. 82 s 3 sch
om 1999 No. 4 s 5(2)
- def **“official”** ins 1999 No. 4 s 5(3)
- def **“primary produce”** ins 1992 No. 68 s 3 sch 2
- def **“printed search result”** ins 1999 No. 4 s 5(3)
- def **“register”** ins 1999 No. 4 s 5(3)
- def **“registered”** ins 1999 No. 4 s 5(3)
- 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
om 1999 No. 4 s 5(2)
- def **“Registry”** om 1971 No. 10 s 5(c)
- def **“security interest”** ins 1999 No. 4 s 5(3)

- def “southern district” ins 1992 No. 40 s 163 sch 1
 - sub 1997 No. 38 s 3 sch
 - om 1999 No. 4 s 5(2)
- def “trade machinery” sub 1992 No. 68 s 3 sch 2
- def “unregistered instrument” om 1999 No. 4 s 5(2)
- def “unregistered security interest” ins 1999 No. 4 s 5(3)

Application of Act to bills of sale

- prov hdg ins 1999 No. 4 s 5(4)
- s 6A (prev s 6(2)–(2A)) renum 1999 No. 4 s 5(5)
- amd 1999 No. 4 s 3 sch

Limitation on separate assignment etc.

- prov hdg ins 1999 No. 4 s 5(6)
- s 6B (prev s 6(3)) renum s 6(3) 1999 No. 4 s 5(7)

Rents and profits

- prov hdg ins 1999 No. 4 s 5(8)
- s 6C (prev s 6(4)–(4B)) renum 1999 No. 4 s 5(9)

Hire-purchase agreements

- s 6D (prev s 6(5)–(6)) renum 1999 No. 4 s 5(10)
- amd 1999 No. 4 s 5(11)

PART 2—REGISTRATION AND ITS EFFECTS

- pt hdg sub 1999 No. 4 s 6

Division 1—Application of part

- div hdg ins 1999 No. 4 s 6

Application of pt 2

- s 7 sub 1992 No. 40 s 163 sch 1; 1999 No. 4 s 6; 2001 No. 38 s 33

When a registered instrument takes effect

- s 7A ins 1992 No. 40 s 163 sch 1
- om 1999 No. 4 s 6

Registration does not cure invalidity

- s 7B ins 1992 No. 40 s 163 sch 1
- om 1999 No. 4 s 6

Division 2—The register and registration

- div hdg ins 1999 No. 4 s 6

Register

- s 8 sub 1999 No. 4 s 6

Application for registration of security interest

- s 9 amd 1971 No. 10 s 6; 1981 No. 57 s 33
- sub 1992 No. 40 s 163 sch 1
- amd 1997 No. 38 s 3 sch
- sub 1999 No. 4 s 6

Application for renewal of registration of security interest**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
sub 1999 No. 4 s 6**Registration, or renewal of registration, of security interest****s 11** sub 1999 No. 4 s 6**Application of Part****s 11A** ins 1986 No. 24 s 4(1)
om 1999 No. 4 s 6**Registration of restraining orders****s 11B** ins 1991 No. 42 s 3 sch
om 1999 No. 4 s 6**RENEWAL OF REGISTRATION OF BILLS OF SALE****hdg prec s 12** om 1992 No. 68 s 3 sch 2**Expiry of registration****s 12** amd 1971 No. 10 ss 8, 15, 16; 1981 No. 57 s 33; 1992 No. 40 s 163 sch 1; R1
(see RA s 37); 1992 No. 68 s 3 sch 2; 1995 No. 58 s 4 sch 1
sub 1999 No. 4 s 6**Division 3—Other provisions about registration and registered security interests****div hdg** ins 1999 No. 4 s 6**RENEWAL OF REGISTRATION OF LIENS UPON CROPS****hdg prec s 13** om 1992 No. 40 s 163 sch 1**Inspecting the register****s 13** amd 1971 No. 10 ss 9, 15, 16; 1981 No. 57 s 33; 1992 No. 40 s 163 sch 1
sub 1999 No. 4 s 6**TRANSFERS OF INSTRUMENTS****hdg prec s 14** om 1992 No. 40 s 163 sch 1**Copies of documents to which security interest relates****s 14** amd 1971 No. 10 ss 10, 15, 16; 1981 No. 57 s 33; 1992 No. 40 s 163 sch 1
sub 1999 No. 4 s 6**ENTRY OF SATISFACTION****hdg prec s 15** om 1992 No. 40 s 163 sch 1**Registration of restraining orders****s 15** amd 1971 No. 10 ss 11, 15, 16; 1981 No. 57 s 33; 1992 No. 40 s 163 sch 1
sub 1999 No. 4 s 6**Application for registration of assignment of registered security interest****s 16** amd 1971 No. 10 s 12
sub 1999 No. 4 s 6**OFFICE****hdg prec s 17** amd 1971 No. 10 ss 13, 15, 16
om 1992 No. 40 s 163 sch 1

Registration of assignment of a registered security interest

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
 sub 1999 No. 4 s 6

Effect of failure to register a security interest

s 18 amd 1971 No. 10 s 14; 1981 No. 57 s 32
 sub 1992 No. 40 s 163 sch 1; 1999 No. 4 s 6

Priority given from time of registration

s 18A ins 1999 No. 4 s 6

Priority of security interests

18B ins 1999 No. 4 s 6
 amd 2001 No. 45 s 29 sch 3

Division 4—Discharge of registered security interests

div hdg ins 1999 No. 4 s 6

Application for discharge of registered security interest

s 18C ins 1999 No. 4 s 6

Registration of discharge of registered security interest

s 18D ins 1999 No. 4 s 6

Duty after interest fully discharged

s 18E ins 1999 No. 4 s 6

Borrower may seek registration of discharge or change in particulars

s 18F ins 1999 No. 4 s 6

Division 5—Changes to register

div hdg ins 1999 No. 4 s 6

Changes to particulars in register

s 18G ins 1999 No. 4 s 6

Correction of errors

s 18H ins 1999 No. 4 s 6

Removal of particulars of improperly registered interests

s 18I ins 1999 No. 4 s 6

Division 6—Compensation for loss

div hdg ins 1999 No. 4 s 6

Application of div 6

s 18J ins 1999 No. 4 s 6

Compensation for loss

s 18K ins 1999 No. 4 s 6
 amd 2000 No. 20 s 29 sch 3

Division 7—General

div hdg ins 1999 No. 4 s 6

Chief executive to be satisfied stamp duty has been accounted for

s 18L ins 1999 No. 4 s 6

Contents of instruments

s 19 sub 1992 No. 40 s 163 sch 1
amd 1997 No. 9 s 11; 1999 No. 4 s 7

Further advances

s 19A ins 1992 No. 40 s 163 sch 1
amd 1997 No. 9 s 12

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

s 20 amd 1997 No. 9 s 13; 1999 No. 4 ss 8, 3 sch

Effect of bill of sale on chattels acquired later

s 21 sub 1992 No. 40 s 163 sch 1
amd 1997 No. 9 s 14; 1999 No. 4 s 3 sch

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

s 22 amd 1997 No. 9 s 15
om 1999 No. 4 s 9

Saving

s 23 amd 1999 No. 4 s 3 sch

Division 1—Optional registration of assignments of book debts

div hdg ins 1992 No. 40 s 163 sch 1
om 1999 No. 4 s 10

OPTIONAL REGISTRATION OF ASSIGNMENTS OF BOOK DEBTS

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

Registration of assignments of book debts

s 24 om 1999 No. 4 s 10

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

Stock under stock mortgage are chattels

prov hdg sub 1999 No. 4 s 11(1)
s 25 amd 1999 No. 4 s 11(2)–(3)

How stock to be described in mortgage etc.

s 26 amd 1993 No. 82 s 16

Stock to include increase of stock etc.

s 27 amd 1999 No. 4 ss 12, 3 sch

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

s 29 amd 1999 No. 4 s 3 sch

Borrower may provide for lender to have wool from mortgaged sheep

prov hdg amd 1999 No. 4 s 3 sch
s 30 amd 1999 No. 4 ss 13, 3 sch

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**Liens may be given on crops****s 31** amd 1999 No. 4 ss 14, 3 sch**Savings of existing mortgages etc.****s 32** amd 1999 No. 4 ss 15, 3 sch**Duration of registration of liens on crops****s 33** om 1999 No. 4 s 16**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**Security may be given over wool****s 34** amd 1999 No. 4 ss 17, 3 sch**Wool to continue subject to lien despite subsequent sale or mortgage****s 35** amd 1999 No. 4 ss 18, 3 sch**Lender may take possession and shear sheep subject to the lien if borrower neglects to do so****prov hdg** amd 1999 No. 4 s 3 sch**s 36** amd 1999 No. 4 ss 19, 3 sch**AS TO INSTRUMENTS BY WAY OF SECURITY SECURING AN ACCOUNT CURRENT****hdg prec s 37** om 1992 No. 40 s 163 sch 1**Security interest securing account current****s 37** sub 1999 No. 4 s 20**False or misleading statements****s 37A** ins 1999 No. 4 s 21**False or misleading documents****s 37B** ins 1999 No. 4 s 21**Protection from liability****s 37C** ins 1999 No. 4 s 21**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 pt A
pres s 38 ins 1992 No. 40 s 163 sch 1
sub 1999 No. 4 s 22

IMPLIED COVENANTS AND POWERS**hdg prec s 39** om 1992 No. 40 s 163 sch 1**Covenants for title—Sch 4****s 39** amd 1999 No. 4 s 3 sch**Covenants etc. implied in instruments by way of security—Sch 5****s 40** amd 1992 No. 68 s 3 sch 2**Covenants to be several as well as joint****s 42** amd 1999 No. 4 s 3 sch**SALE AFTER SEIZURE****hdg prec s 45** om 1992 No. 40 s 163 sch 1**Chattels not to be sold until at least 14 days after seizure****s 45** amd 1997 No. 9 s 16; 1999 No. 4 s 3 sch**FEES****hdg prec s 46** om 1992 No. 40 s 163 sch 1**Approval of forms****s 46** amd 1971 No. 10 s 16
sub 1992 No. 40 s 163 sch 1; 1995 No. 58 s 4 sch 1**Regulation making power****s 47** prev om 1992 No. 40 s 163 sch 1
pres ins 1995 No. 58 s 4 sch 1**Validation of acts etc. by Supreme Court registrars at Rockhampton and Townsville****s 48** ins 1996 No. 56 s 34
exp 21 November 1996 (see s 48(2))**Registrar is registrar for repealed State Securities Registration Act 1925****prov hdg** amd 1999 No. 4 s 3 sch
s 49 ins 1996 No. 56 s 34
(2)–(3) exp 21 November 1996 (see s 49(3))
amd 1999 No. 4 ss 23, 3 sch
exp 7 May 2008 (see s 49(3))**Validation****s 49A** ins 1999 No. 63 s 19 (amendment could not be given effect)
exp 31 December 1999 (see s 49A(3))**PART 6—TRANSITIONAL AND SAVING PROVISIONS FOR BILLS OF SALE
AND OTHER SECURITIES AMENDMENT ACT 1999****pt hdg** ins 1999 No. 4 s 24**Transitional provisions about register****s 50** ins 1999 No. 4 s 24**Transitional provision about registered instruments****s 51** ins 1999 No. 4 s 24**Transitional provision about crop liens****s 52** ins 1999 No. 4 s 24

Transitional provision about expiry of liens on wool

s 53 ins 1999 No. 4 s 24

Transitional provision about stock mortgages and certain other securities

s 54 ins 1999 No. 4 s 24

Saving of priority

s 55 ins 1999 No. 4 s 24

Validation

s 56 ins 2000 No. 24 s 22

**PART 7—TRANSITIONAL PROVISIONS FOR MOTOR VEHICLES
SECURITIES AND OTHER ACTS AMENDMENT ACT 2001**pt hdg ins 2001 No. 38 s 34**Ending of registration of security interest over boat**s 57 ins 2001 No. 38 s 34**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 4—COVENANTS IMPLIED IN ALL INSTRUMENTS

amd 1999 No. 4 s 3 sch

**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; 1994

No. 15 s 3 sch 2; 1996 No. 38 s 3 sch; 1999 No. 4 s 3 sch

SCHEDULE 6—MEANINGS OF ABBREVIATED TERMS

amd 1999 No. 4 s 3 sch

**8 Provisions that have not commenced and are not
incorporated into reprint**

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

Motor Vehicles Securities and Other Acts Amendment Act 2001 No. 38 ss 33-34 reads as follows—

PART 4—AMENDMENT OF BILLS OF SALE AND OTHER INSTRUMENTS ACT 1955

33 Replacement of s 7 (Application of pt 2)

Section 7—

omit, insert—

‘7 Application of pt 2

‘This part does not apply to a security interest, whether created before or after the commencement of this section, to the extent that the security interest relates to a motor vehicle or boat as defined under the *Motor Vehicles and Boats Securities Act 1986*, section 2.’.

34 Insertion of new pt 7

After section 56—

insert—

‘PART 7—TRANSITIONAL PROVISIONS FOR MOTOR VEHICLES SECURITIES AND OTHER ACTS AMENDMENT ACT 2001

‘57 Ending of registration of security interest over boat

‘(1) This section applies if, at the end of the prescribed period, a holder of an existing security interest in a boat as defined in the *Motor Vehicles and Boats Securities Act 1986* has not applied to the chief executive to have the interest, to the extent it relates to the boat, registered under the *Motor Vehicles and Boats Securities Act 1986*.

‘(2) To the extent the existing security interest relates to the boat—

- (a) the existing security interest ceases to be registered under this Act; and
- (b) part 2 no longer applies to the security interest.

‘(3) In this section—

“prescribed period” means the period prescribed under a regulation under the *Motor Vehicles and Boats Securities Act 1986*, section 42(2).¹¹

© State of Queensland 2007

¹¹ *Motor Vehicles and Boats Securities Act 1986*, section 42 (Registration of existing security interest under Bills of Sale and Other Instruments Act 1955)