

# **MOTOR VEHICLES SECURITIES AND OTHER ACTS AMENDMENT BILL 2003**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Objectives of the legislation**

The *Motor Vehicles Securities Act 1986* (“the Act”) provides for the registration of security interests over motor vehicles and trailers. The major objective of the *Motor Vehicles Securities and Other Acts Amendment Bill 2003* (“the Bill”) is to extend the registration of security interests to boats and outboard motors in Queensland. In order to do this, the Bill will make amendments to the Act, and the *Bills of Sale and Other Instruments Act 1955*; and repeal the sections of the *Motor Vehicles Securities and Other Acts Amendment Act 2001* (the 2001 Amending Act) that have not commenced.

The motor vehicles securities register has in recent years been linked electronically to similar registers in New South Wales, Victoria, the Australian Capital Territory, South Australia and the Northern Territory. The national register has become known as the Register of Encumbered Vehicles or REVS register. The addition of boats to the register is in response to industry requests and follows the lead of New South Wales which has included security interests over boats since 1996. While the boats register will not initially be linked to that in New South Wales, there is potential for that linkage in the future.

The Bill will also implement recommendations of the National Vehicle Security Project; and enact other miscellaneous amendments which promote efficiency in the administration of the *Motor Vehicles Securities Act 1986*. These are for the most part, a reiteration of those in the 2001 Amending Act which could not be commenced because they had reference in them to the word “boat”.

The National Vehicle Security Project comprised a National Working Party which recommended amendments to the Act to eliminate inconsistencies between the REVS legislation in the various States and

Territories. These recommendations were included in a 1996 Report written by Professor Tony Duggan, which is referred to below as the “Duggan Report.” The implementation of these recommendations will improve the effectiveness of the national REVS register.

### **Administrative Cost**

Any expenditure associated with the implementation of the recommendations for this initiative will be met through existing appropriations. System enhancements to the REVS system, extending it to boats were completed for the 2001 Amending Act. A few minor changes will be required which will be met through existing appropriations.

The fees set out in the *Motor Vehicles Securities Regulation 1995* will not be changed, as the existing reference to “a vehicle” in the fee schedule will be removed, so that the fees can apply to a security interest for motor vehicles, boats and outboard motors.

### **Fundamental Legislative Principles**

The Bill contains a validating provision which may be considered retrospective legislation. However, the provision is considered justified as it is curative and does not in any practical way change previous rights, obligations or expectations

The Bill also provides for the transfer of existing security interests over boats with hull identification numbers (“HINs”) from the Bills of Sale register to the REVS register. Security interest holders may apply for the transfer, free of charge. There is a possibility that a financier’s rights may be adversely affected if it fails to apply for a transfer and the interest will have the status of an unregistered interest.

The Department will be sending to each security interest holder a list of its current interests on the Bills of Sale register. Each interest holder will then review the list and make application for transfer of any interest over a boat with a HIN. This implementation process was the subject of consultation, and financiers considered any risk to be small compared with the overall benefits of the new register. Even if an interest was not transferred, there would be no loss to the interest holder unless a dispute arose over the boat.

## **Consultation**

Consultation occurred with the following government and non-government agencies and individuals.

## **Community**

Community stakeholders consulted on the draft Bill include the Australian Finance Conference, Financiers Association of Australia Limited, Insurance Council of Australia and the Boating Industry Association of Queensland Limited.

Extensive consultation was conducted with the finance and boating industries throughout the formation of the initial REVS for boats scheme in the 2001 Amending Act. Key stakeholders were consulted with the revised policy for the draft Bill.

The Working Party for the National Vehicle Security Project consulted widely before preparing its final report. Twenty three submissions were received from a range of persons, groups and government agencies including: the Australian Law Reform Commission, the Commercial Vehicle Industry Association of Queensland, the Australian Bankers Association, the Australian Finance Conference, Credit Union Services Corporation (Aust) Limited and the Consumer Credit Legal Centre Inc (NSW).

## **Government**

Key government stakeholders involved in consultation with the draft Bill include the Queensland Police Service and the Departments of the Premier and Cabinet; Justice and Attorney-General; and Queensland Transport.

## **NOTES ON PROVISIONS**

### **PART 1—PRELIMINARY**

#### **Short title**

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

#### **Commencement**

*Clause 2* sets out the commencement of the Act.

### **PART 2—AMENDMENT OF MOTOR VEHICLES SECURITIES ACT 1986**

#### **Act amended in pt 2**

*Clause 3* provides that Part 2 amends the *Motor Vehicle Securities Act 1986*.

#### **Replacement of title**

*Clause 4* replaces the title of the Act, to reflect the inclusion of security interests over boats and outboard motors on the register and to delete reference to the registration of instruments.

#### **New pt heading and replacement of s.1 (Short title)**

*Clause 5* inserts a new part heading into the Act and a new short title.

#### **Amendment of s.5 (Definitions)**

*Clause 6(1)* deletes the current definition of “motor vehicle”.

*Clause 6(2)* inserts new definitions into the Act.

*Clause 6(3)* includes a reference to “boat” and “outboard motor” in the definition of “security interest.”

*Clause 6(4)* amends the section number referred to in the definition of “water damaged motor vehicle”.

### **Insertion of new s.5A**

*Clause 7* provides the new definition of “motor vehicle”. It moves the definition of “motor vehicle” from the *Motor Vehicles Securities Regulation 1995* into the Act. The drafting has been updated but the meaning is intended to remain the same.

### **Insertion of new s.5C**

*Clause 8* implements a recommendation of the Duggan Report. It provides that the sections of the Act governing the priority and extinguishment of security interests apply to motor vehicles when those motor vehicles are situated in Queensland. This section does not apply to boats and outboard motors, as there is not yet any national security interest legislation applying to them.

### **Amendment of s6 (Register)**

*Clause 9(1)* amends subsection 6(2)(d) to provide that information about boats can be included on the register.

*Clause 9(2)* updates a reference to “the regulations” to comply with modern drafting practice.

*Clause 9(3)* repeals subsection 6(3) which stipulated that the time on the register must be in New South Wales time. It inserts a new subsection 6(3) which recognises that the register may be kept in any manner, which would include for instance, a computerised register.

*Clause 9(4)* amends s.6(4) to allow the chief executive to include stolen boat or outboard motor information on the security interest register.

**Amendment of s7 (Application for registration, or renewal of registration, of security interest)**

*Clause 10* repeals subsection 7(1)(b) and provides that an application for registration or renewal of a security interest must include the motor vehicle's VIN or if there is no VIN, the motor vehicle's chassis number, for a boat the HIN must be included and for an outboard motor the engine number must be included. There is some renumbering as a result of this section.

**Amendment of s7A (Registration of confiscation orders)**

*Clause 11* adds a reference to boats and outboard motors into section 7A. This means that confiscation orders relating to boats or outboard motors under the *Criminal Proceeds Confiscation Act 2002* can be included on the register.

**Amendment of s8 (Application for assignment of a registered security interest)**

*Clause 12* repeals subsection 8(2)(b) which provides that an application for registration of an assignment of a security interest must include the particulars prescribed in the regulation.

**Omission of s11 (Effect of failure to register a security interest)**

*Clause 13* repeals section 11. The Duggan Report recommended the repeal of this section on the basis that its meaning is unclear and it conflicts with other sections of the Act.

**Replacement of s12 (Priority of security interests)**

*Clause 14* replaces the existing section 12 and in so doing inserts new rules into the Act governing the priority of competing security interests. These new rules were recommended by the Duggan Report and are based on those already contained in the *Bills of Sale and Other Instruments Act 1955*. Previously, if a later registered security interest holder had notice of an earlier unregistered security interest, then the earlier unregistered interest would still prevail.

The new rules provide that, with very limited exceptions, a registered interest will always prevail over an unregistered interest. The exceptions relate to: when the unregistered interest holder has possession of the vehicle or boat or outboard motor; when a repairer has a lien over the vehicle or boat or outboard motor; when the *Corporations Law* prevails, or when the two interest holders otherwise agree. The new subsection 12(4) also provides that the priority given to an interest by the section relates to all existing and future amounts which it secures.

#### **Amendment of s14 (Application for discharge of registered security interest)**

*Clause 15* repeals subsection 14(1)(b) which provides that an application for discharge of a registered security interest must contain the particulars prescribed in the Regulation. It also repeals subsections 14(2) and (4) as partial discharges are not possible in practice in the REVS register.

#### **Amendment of s.17 (Onus to cancel registration on discharge)**

*Clause 16* deletes reference to “fully” and “full” in section 17, these terms are redundant following the repeal of subsections 14(2) and (4).

#### **Replacement of s 18 (Rectification of register)**

*Clause 17* rewrites section 18 and inserts a new section 18A. Section 18 now provides that a change of particulars entered in the register can be made on application of the security interest holder or someone acting on his or her behalf. Section 18A provides a mechanism for the chief executive to deregister a purported security interest when it comes to his or her attention that the interest is not a true security interest. The holder of the security interest is given 14 days to show cause why the interest should not be deregistered. Both the holder of the interest and the owner of the vehicle or boat will be notified of any decision to deregister. An appeal against a decision to deregister is available to the Magistrates Court.

#### **Amendment of s 22 (Security interest certificate)**

*Clause 18* amends section 22 to include references to boats and outboard motors so that a person may apply for a security interest certificate relating to a boat or outboard motor. It also deletes the requirement for an

application for a certificate to be in the approved form; provides that an application must be made in the way prescribed in the regulation, and deletes the requirement for the time on the certificate to be in New South Wales time.

### **Replacement of s 23 (Inspecting the register)**

*Clause 19* provides that inspection of the register can be done at any departmental office open to the public or by computer.

### **Amendment of s 26 (Extinguishing of security interest)**

*Clause 20* amends section 26 so that the extinguishment rules apply to security interests over boats and outboard motors as well as over motor vehicles. It also implements a recommendation of the Duggan Report by providing that on extinguishment of a security interest under section 26, the security interest holder has certain rights to receive the unpaid balance of the purchase price of the boat or outboard motor or vehicle.

### **Insertion of new s 26A**

*Clause 21* inserts a new section 26A to provide for the revival of a security interest extinguished under section 26(1) when a sale is later rescinded (i.e. when for legal reasons, such as in cases of fraud, the sale may be taken to never have occurred).

### **Amendment of s 27 (Purchases to which s 26 does not apply)**

*Clause 22* inserts a reference to “boats or outboard motors” into section 27. It also implements a recommendation of the Duggan Report to provide that section 26 does not apply to extinguish an unregistered security interest in certain cases where the goods are on-sold through a financier to a third party who is acting in bad faith. The amendment will prevent the original seller and the third party from acting fraudulently to extinguish the unregistered security interest. The Duggan Report outlines the following scenario:

“A holds a security interest in goods that are in the possession of X (the borrower). X wrongfully disposes of the goods to B, B being a finance company whose purpose is to supply them by way of hire-purchase or lease to B1”.

If B1 (not B) is acting in concert with X (the borrower) and the security interest is unregistered, then the above transaction could be utilised by these two parties to defraud the original interest holder A of its security interest. This amendment is intended to provide that the security interest is not extinguished in these cases.

### **Amendment of s 28 (Compensation for loss etc. by holder of security interest)**

*Clause 23* inserts a reference to “boats or outboard motors” into section 28.

### **Replacement of s 30 (Compensation for loss etc. by purchaser)**

*Clause 24* repeals and replaces section 30. The former section 30 provided that where a security interest certificate mistakenly failed to show a registered interest, then a purchaser could apply to the accountable officer for compensation for any loss. The new section 30 provides instead that in these cases, the purchaser gets to keep the vehicle free of the interest, and the security interest holder can apply to the accountable officer for compensation.

### **Insertion of new s 40 and pt 7**

*Clause 25* gives the chief executive the power to approve forms for use under the Act. *Clause 24* also inserts a new Part 7 into the Act. Part 7 is a transitional provision. It provides a mechanism for the transfer of existing registered bills of sale from the *Bills of Sale and Other Instruments Act 1955* to the *Motor Vehicles Securities Act 1986*, to the extent that those bills of sale relate to boats that have a HIN and outboard motors that have an engine number.

The intention is that this clause will commence by proclamation before those provisions of the Bill which enable and recognise the registration of interests over boats. The security interest holder will apply for the transfer of the interest and the chief executive will register the interest under the *Motor Vehicles and Boats Securities Act 1986* immediately on commencement of the boats register (see s.43). The original date of registration will be preserved. The new section 42(4) provides that in the case of security interests transferred from the *Bills of Sale and Other Instruments Act 1955*, their existing priority will be preserved.

The new section 44 provides that security interests in motor vehicles registered before the commencement of the new priority rules in section 12, will still be governed by the former rules.

### **Insertion of new s.47**

*Clause 26* inserts a new s.47, validating the past collection of a fee prior to 1 January 2003. The fee item was inadvertently left out of the fee schedule in the *Motor Vehicles Securities Regulation 1995*, yet the head of power to collect the fee was in the Act.

## **PART 3—AMENDMENT OF BILLS OF SALE AND OTHER INSTRUMENTS ACT 1955**

### **Act amended in pt 3**

*Clause 27* provides that Part 3 amends the *Bills of Sale and Other Instruments Act 1955*.

### **Replacement of s7 (Application of pt 2)**

*Clause 28* amends the *Bills of Sale and Other Instruments Act 1955* to provide that security interests over boats with HINs and outboard motors with engine numbers will no longer be able to be registered under that Act.

### **Insertion of new pt 7**

*Clause 29* inserts a new Part 7 into the Act. The new section 57 is a transitional provision which will provide that on commencement of the new boats register, any security interest on the bills of sale register will cease to be registered to the extent that it relates to a boat with a HIN or an outboard motor with an engine number.

## **PART 4—OTHER AMENDMENTS AND REPEAL**

### **Minor and consequential amendments**

*Clause 30* provides that the schedule makes a series of minor and consequential amendments. This includes:

- amending the *Electronic Transactions (Queensland) Act 2001*, the *Property Agents and Motor Dealers Act 2000*, the *Transport Operations (Road Use Management) Act 1995* and the *Police Powers and Responsibilities Act 2000* to reflect the new name of the Act;
- an amendment to the *Fair Trading Act 1989* as a result of the repeal of the *Broadcasting Act 1942* (Commonwealth); and
- renumbering and insertion of part headings into the *Motor Vehicles Securities Act 1986*

### **Repeal**

*Clause 31* repeals the *Motor Vehicles Securities and Other Acts Amendment Act 2001 No. 38*. All of the provisions that have not commenced have been repealed. The majority of the un-commenced provisions have been replaced into this Act or modified and replaced to accommodate the refinements of the REVS for boats scheme.