



Western Australia

## **Chattel Securities Act 1987**

Compare between:

[05 Oct 2011, 03-b0-02] and [21 May 2012, 03-c0-03]



Western Australia

## **Chattel Securities Act 1987**

**An Act relating to chattel securities and to amend the *Consumer Affairs Act 1971* <sup>2</sup>.**

## **Part I — Preliminary**

### **1. Short title**

This Act may be cited as the *Chattel Securities Act 1987*<sup>1</sup>.

### **2. Commencement**

The provisions of this Act shall come into operation on such day or days as is or are respectively fixed by proclamation<sup>1</sup>.

### **3. Terms used**

(1) In this Act —

***approved form*** means a form approved for that purpose by the Commissioner;

***commercial vehicle*** has the same meaning as in the *Credit Act 1984*;

***Commissioner*** means the person for the time being designated as the Commissioner under section 3A;

***dealer*** with respect to any goods means a person who carries on a business in which the person deals in goods of that kind;

***debtor*** in relation to a security interest means the person who created the security interest and includes the lessee in relation to a lease of goods and the hirer in relation to a hire-purchase agreement;

***Department*** means the department of the Public Service principally assisting in the administration of this Act;

***farm machinery*** has the same meaning as in the *Credit Act 1984*;

***goods*** includes all chattels personal and fixtures other than —

- (a) things in action and money; and
- (b) ships registered in an official register kept under a law in force in Western Australia relating to title to ships; and
- (c) aircraft; and

- (d) livestock, unshorn wool and growing crops; and
- (e) to the extent of rights expressly conferred on a registered security under the *Bills of Sale Act 1899* shorn wool and harvested crops; and
- (f) documents of title;

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

**hirer** has the same meaning as in the *Hire-Purchase Act 1959*;

**inventory security interest** means a security interest —

- (a) given by a dealer in or over goods of a kind in which the dealer deals in the course of the dealer's business; or
- (b) reserved in or over goods in the possession or control of a dealer, being goods of a kind in which the dealer deals in the course of the dealer's business;

**lease** means a contract for the hiring of goods or for the grant of a licence to use goods and a contract for the hiring or bailment of goods for display purposes but does not include —

- (a) a hire-purchase agreement; or
- (b) a contract for the hiring of or for the grant of a licence to use a vehicle within the meaning of the *Road Traffic Act 1974* of which the lessor is registered or an applicant for registration as the owner under the *Road Traffic Act 1974* or a corresponding Act of the Commonwealth or another state or territory of the Commonwealth; or
- (c) a contract for the hiring of or for the grant of a licence to use goods, not being a vehicle within the meaning of the *Road Traffic Act 1974*, under which the lessor does not effectively transfer from the lessor to the lessee substantially all the risks and benefits incident to ownership of the goods;

**lessee** in relation to a lease of goods, means the person to whom the goods are hired under the lease or to whom a licence to use the goods is granted under the lease;

**lessor** in relation to a lease of goods, means the person who hires the goods to another person under the lease or grants to another person under the lease a licence to use the goods;

**owner** has the same meaning as in the *Hire-Purchase Act 1959*;

**purchase** with respect to goods, means acquire an interest in the goods by way of purchase, exchange, lease or hire-purchase;

**purchase price** with respect to goods purchased by a purchaser, means the consideration paid or payable by the purchaser or, if the purchaser is a lessee under a lease or a hirer under a hire-purchase agreement, the consideration paid or payable by the lessor or owner;

**purchaser** means a person who purchases goods but excludes —

- (a) secured party not being a lessor, owner or other supplier of the goods under a lease, hire-purchase agreement, or other contract for the supply of goods; or
- (b) in relation to unregistrable goods, a dealer;

**register** means of register kept under Part III;

**registered** means registered under Part III;

**registrable goods** means goods to which Part III applies;

**secured party** means the holder of a security interest and includes the lessor in relation to a lease of goods and the owner in relation to a hire-purchase agreement;

**security interest** means an interest in or a power over goods (whether arising by or pursuant to an instrument or transaction) which secures payment of a debt or other pecuniary obligation or the performance of any other obligation and includes any interest in or power over goods of a lessor, owner or other supplier of goods, but does not include a possessory lien or pledge;

**supply** in relation to goods, means dispose of an interest in the goods by way of sale, exchange, lease or hire-purchase;

**trailer** means a vehicle that is built to be towed, or is towed, by a motor vehicle, whether by attachment to the motor vehicle directly or to another trailer towed by the motor vehicle, but does not include a motor vehicle that is being towed;

**unregistered security interest** means a security interest which is not registered under Part III;

**unregistrable goods** means goods to which Part III does not apply.

(2) This Act applies to a person to whom the rights and obligations of —

- (a) a secured party; or
- (b) a debtor,

have passed by operation of law in the same manner as this Act applies to the person from whom the rights and obligations have passed by operation of law.

(3) For the purposes of this Act, a hirer or lessee of goods or a buyer of goods under a conditional sale is deemed to have an interest in the goods notwithstanding that title or general property in the goods has not passed to the hirer, lessee or buyer.

(4) For the purposes of this Act —

- (a) a security interest attaches at the time at which value is given by the secured party and the debtor has rights in the goods or at such later time as the secured party and the debtor intend; and
- (b) an agreement to which a debtor is party which contains a provision to the effect that the debtor takes the goods on lease or hire-purchase or creates a security interest over the goods shall be deemed to give value to the debtor.

(5) For the purposes of this Act, a person has notice of a security interest in goods —

- (a) if the person has actual notice of the security interest; or

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- (b) if the person has been put upon inquiry as to the existence of the security interest and has deliberately abstained from inquiry or further inquiry when the person might reasonably have expected the inquiry or further inquiry to reveal the security interest.
- (6) For the purposes of this Act, a person has notice of a security interest in goods affixed to land if the person would have had, or would have been deemed to have had, notice of that interest if subsection (5) had not been enacted.
- (7) If an amount, other than the sum of \$20 000 but not exceeding the sum of \$50 000, is prescribed by the regulations as the purchase price for the purposes of section 7, a reference in this Act to \$20 000 is a reference to the prescribed amount.
- (8) If the Governor is satisfied that provisions of a law of another State or of a Territory correspond to provisions of this Act, the Governor may, by Order published in the *Government Gazette*, declare those provisions to be a corresponding law for the purposes of this Act.

*[Section 3 amended by No. 28 of 2001 s. 26; No. 74 of 2003 s. 34; No. 55 of 2004 s. 104; No. 28 of 2006 s. 59.]*

**3A. Commissioner**

- (1) The Minister is required, by notice published in the *Gazette*, to designate a person who is an executive officer of the Department as the Commissioner for the purposes of this Act.
- (2) The Commissioner may be referred to by a title specified by the Minister by notice published in the *Gazette*.
- (3) In this section —

*executive officer* has the meaning given by section 3(1) of the *Public Sector Management Act 1994*.

*[Section 3A inserted by No. 28 of 2006 s. 60.]*



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**Part IIA — Act ceases to have effect except as otherwise provided**

*[Heading inserted by No. 42 of 2011 s. 34.]*

**3B. Terms used**

In this Part —

**migration time** has the meaning given in the *Personal Property Securities Act 2009* (Commonwealth) section 306(1);

**pre-PPS transition period** means the period —

- (a) commencing at the migration time or such earlier time as may be prescribed by the regulations; and
- (b) ending at the registration commencement time;

**Registrar** has the meaning given in the *Personal Property Securities Act 2009* (Commonwealth) section 10;

**registration commencement time** has the meaning given in the *Personal Property Securities Act 2009* (Commonwealth) section 306(2);

**registration function** means any function conferred or imposed on the Commissioner under Part III.

*[Section 3B inserted by No. 42 of 2011 s. 34.]*

**3C. Effect of Act at and after registration commencement time**

- (1) Subject to section 3D, this Act, other than the following provisions, has no effect at and after the registration commencement time —
  - (a) sections 3A, 22, 23, 24, 25, 26, 29, 30A, 30B, 30C, 30D and 31;
  - (b) any other provision of this Act (a **related provision**) that is referred to in provision listed in paragraph (a) (a **primary provision**) to the extent necessary for the purposes of the continued operation of the primary provision;

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- (c) any power to make regulations in respect of a matter that is conferred by the primary provision or a related provision.
- (2) Section 23 has no effect on and after the day after the end of the period of 7 years beginning at the registration commencement time.

*[Section 3C inserted by No. 42 of 2011 s. 34.]*

**3D. Refusal to exercise registration functions**

- (1) Subject to section 3E, the Commissioner may refuse to exercise a registration function during the pre-PPS transitional period.
- (2) Without limiting subsection (1), the Commissioner may refuse to exercise a registration function during the pre-PPS transitional period in relation to a matter that was not finally determined or concluded immediately before the commencement of that period.
- (3) After the end of the pre-PPS transitional period the Commissioner is not to exercise a registration function under section 15, 19, 20, 21 or 22.

*[Section 3D inserted by No. 42 of 2011 s. 34.]*

**3E. Show cause proceedings under s. 22**

If the Commissioner —

- (a) has given a person a notice under section 22(1) and that notice is in force immediately before the registration commencement time; and
- (b) would have cancelled the registration of the person under section 22(2) had he or she been able to exercise that registration function after the end of the pre-PPS transition period,

the Commissioner may provide the Registrar with a written notice stating the registration of the person would have been so cancelled.

*[Section 3E inserted by No. 42 of 2011 s. 34.]*

**3F. Details of entry**

At and after the registration commencement time, the Commissioner may, instead of providing a certificate under section 23(3), respond to an application made in accordance with section 23 by providing the applicant with an extract from the register.

*[Section 3F inserted by No. 42 of 2011 s. 34.]*

**3G. Act to expire**

- (1) When the Minister is satisfied that there is no reason for this Act to continue, the Minister is to publish a notice in the *Gazette* stating that the Minister is satisfied as to that matter, and that the Act expires at the end of the day on which the notice is published.
- (2) This Act expires as stated in a notice published under subsection (1).

*[Section 3G inserted by No. 42 of 2011 s. 34.]*

## **Part II — Security interests**

### **4. Application of Part**

- (1) The provisions of this Part (other than section 5) apply (notwithstanding anything to the contrary in any other Act or law) to and in respect of a security interest (whether created within or outside Western Australia) if the goods the subject of the security interest —
  - (a) are at the date of attachment of the security interest situated in Western Australia; or
  - (b) are for the time being situated in Western Australia.
- (2) Section 5 applies (notwithstanding anything to the contrary in any other Act or law) to and in respect of a security interest (whether created within or outside Western Australia) if the goods the subject of the security interest are at the date of attachment of the security interest situated in Western Australia.
- (3) Subject to subsection (4), a reference in this Part to a security interest does not include a reference to a security interest which attaches before the date of commencement of this section.
- (4) Sections 7 and 10 have effect in relation to a security interest relating to registrable goods as if in those sections a reference to a security interest were a reference to a security interest which attaches before, upon or after the commencement of this section.

### **5. Agreement that security interest is legal interest**

The parties to a security interest may agree that the security interest shall be a legal interest in the goods subject to the security interest and, if the parties so agree, the security interest is a legal interest in the goods.

### **6. Fixtures**

- (1) If, after a security interest attaches, goods subject to the security interest are affixed to land and become fixtures, the fixtures, for the purposes of the exercise of the secured party's right to take

possession of, remove or sell the goods, shall be deemed not to have become fixtures.

- (2) A secured party who removes fixtures to which subsection (1) applies is liable to make good damage done to the land in removing the fixtures.
- (3) If, after a lease of goods is made, goods subject to the lease are affixed to land and become fixtures, the fixtures, for the purposes of the exercise of the lessor's right to take possession of the goods, shall be deemed not to have become fixtures.
- (4) A lessor who removes fixtures to which subsection (3) applies is liable to make good damage done to the land in removing fixtures.
- (5) If, after a hire-purchase agreement is made, goods subject to the agreement are affixed to land and become fixtures, the fixtures, for the purposes of the exercise of the owner's right to take possession of the goods, shall be deemed not to have become fixtures.
- (6) An owner who removes fixtures to which subsection (5) applies is liable to make good damage done to the land in removing the fixtures.
- (7) Despite this section, a secured party is not entitled to take possession of goods that have become affixed to land and become fixtures if, after the goods have become so affixed, a person other than the secured party has acquired an interest in the land for value in good faith and without notice of the security interest of the secured party.
- (8) If goods subject to a security interest were affixed to land after an offer to enter into the agreement giving rise to the interest was made, but before the offer was accepted, the goods, for the purposes of this section, shall be deemed to have been affixed to the land after the agreement was made.

**7. Extinguishing of security interest**

- (1) Subject to section 8, if a secured party has —
- (a) an unregistered security interest (whether or not over registrable goods); or
  - (b) a registered inventory security interest,  
in goods but is not in possession of the goods and a purchaser purchases or purports to purchase an interest in the goods (otherwise than at a sale in pursuance of a process of execution issued by or on behalf of a judgment creditor) for value in good faith and without notice, when the purchase price is paid, (or, if the price is not paid at one time, when the first part of the purchase price is paid), of the security interest from a supplier being —
  - (c) the debtor; or
  - (d) another person who is in possession of the goods in circumstances where the debtor has lost the right to possession of the goods or is estopped from asserting an interest in the goods against the purchaser,
- the security interest of the secured party is extinguished.
- (2) Subject to section 8, if a secured party has a security interest in a vehicle as defined in section 5(2) of the *Motor Vehicle Dealers Act 1973* but is not in possession of the vehicle and a purchaser purchases or purports to purchase an interest in the vehicle (otherwise than at a sale in pursuance of a process of execution issued by or on behalf of a judgment creditor) for value in good faith and without notice when the purchase price is paid (or, if the price is not paid at one time, when the first part of the purchase price is paid) of the security interest from —
- (a) a motor vehicle dealer licensed; or
  - (b) a car market operator registered,
- under the *Motor Vehicle Dealers Act 1973*, the security interest of the secured party is extinguished.

- (3) The onus of proving that a person has purchased an interest in goods free from a security interest is on the person asserting that the interest was so purchased.
- (4) A reference in subsection (1) or (2) to payment of the purchase price or to payment of part of the purchase price includes a reference to the giving of any valuable consideration in satisfaction of the purchase price or of part of the purchase price.
- (5) The provisions of subsection (1) do not apply to or in respect of —
  - (a) a purchase or purported purchase of an interest in unregistrable goods, other than a commercial vehicle or farm machinery, if the purchase price exceeds \$20 000; or
  - (b) a purchase or purported purchase of a motor vehicle within the meaning of the *Road Traffic Act 1974* or a trailer which is not licensed under the *Road Traffic Act 1974* but is registered or licensed under the law of another State or of a Territory, if a security interest, not being an inventory security interest, in the motor vehicle or trailer is registered under the provisions of a law declared under section 3(8) to be a corresponding law of that State or Territory for the purposes of this Act.
- (6) Section 25(2) of the *Sale of Goods Act 1895* has no effect in relation to the delivery or transfer of goods or documents of title to goods if —
  - (a) the goods are registrable goods; or
  - (b) the purchase price of the goods does not exceed \$20 000; or
  - (c) the goods are a commercial vehicle or farm machinery; or
  - (d) the goods are a motor vehicle within the meaning of the *Road Traffic Act 1974* or a trailer which is not licensed under the *Road Traffic Act 1974* but is registered or licensed under the law of another State or of a Territory

and there is in force in that State or Territory a law declared under section 3(8) to be a corresponding law for the purposes of this Act.

- (7) If security interest is extinguished under subsection (1) or (2), the secured party shall be subrogated to the rights (if any) of the supplier and any predecessor in title of the supplier in and in respect of the goods, including the right to receive any part of the purchase price for the goods which has not been paid.
- (8) A person liable to pay the purchase price of any goods obtains a good discharge for any payment made by the person before the person receives notice of the rights of any secured party under subsection (7).
- (9) If, by reason of any purchase of goods, a security interest is extinguished under subsection (1) or (2) or under section 9 and a contract which is or includes the purchase is rescinded, the security interest shall revive and have effect as if the purchase had not occurred.

*[Section 7 amended by No. 28 of 2001 s. 27; No. 4 of 2002 s. 70; correction to reprint 24 Mar 2006 p. 1102.]*

**8. Purchase for value in good faith**

- (1) For the purposes of section 7, a purchase or purported purchase of goods by a purchaser is not a purchase or purported purchase for value in good faith and without notice of a security interest if —
  - (a) the purchaser is a member of the same household as is the supplier or purported supplier of the goods; or
  - (b) the purchaser and the supplier or purported supplier of the goods are bodies corporate that are related to each other; or
  - (c) one of the purchaser and the supplier or purported supplier of the goods is a body corporate and the other a natural person who, within the meaning of the



*Corporations Act 2001* of the Commonwealth, is a director or officer of the body corporate,

unless the person asserting that it is such a purchase or purported purchase proves beyond reasonable doubt that it is such a purchase or purported purchase.

- (2) For the purposes of subsection (1), the question whether bodies corporate are related to each other shall be determined in the same manner as the question whether corporations within the meaning of the *Corporations Act 2001* of the Commonwealth are related bodies corporate would be determined under that Act.
- (3) For the purposes of section 7 where a purchaser of goods is a lessor, owner or the supplier of the goods under a lease, hire-purchase agreement or other contract for the supply of the goods or is a person who purchases goods with the intention of entering into such a lease, hire-purchase agreement or other contract and the lessee, hirer or buyer under such a lease, hire-purchase agreement or other contract has participated in negotiations with the supplier of the goods, the purchase or purported purchase of the goods by the purchaser is not a purchase or purported purchase in good faith and without notice of a security interest if such lessee, hirer or buyer has not acted in good faith and without notice of the security interest.

*[Section 8 amended by No. 20 of 2003 s. 12.]*

**9. Extinguishing of subsequent security interests**

- (1) If a purchaser purchases goods from a secured party, all security interests which rank subsequently to the security interest of the secured party are extinguished without prejudice to the rights of the secured parties in respect of the interests to, or to call for, an accounting of such part of the consideration for the purchase as exceeds the entitlement of the first-mentioned secured party.

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- (2) Nothing in subsection (1) prejudices the right of a debtor or other secured party to damages if a secured party wrongly exercises a power to sell goods subject to a security interest held by the person.

**10. Priority of security interests**

- (1) If there are 2 or more security interests in respect of the same goods and one or more of those security interests is registered under Part III, those interests, subject to this section, rank in priority with respect to all debts or other pecuniary obligations (including contingent obligations) and all other obligations respectively secured under them whenever arising in the order in which they are so registered.
- (2) The order of priority of security interests in subsection (1) is subject to any express contrary provision in the *Corporations Act 2001* of the Commonwealth and to any agreement between the holders of the security interests.
- (3) If, before the registration of a security interest, the secured party in respect of any other security interest in the same goods takes possession of the goods, the second-mentioned security interest, subject to subsection (2), ranks in priority to the registered security interest with respect to those goods.

*[Section 10 amended by No. 20 of 2003 s. 13.]*

**11. Extinguishing etc. of security interest under corresponding law**

- (1) If a security interest over goods situated in another State or in a Territory is extinguished or loses priority under the provisions of a law of that State or Territory declared under section 3(8) to be a corresponding law of that State or Territory for the purposes of this Act, that interest is also extinguished or loses priority for the purposes of the law of Western Australia.
- (2) The provisions of subsection (1) are in addition to the provisions of any other law or rule of law relating to the extinguishing or loss of priority of security interests.

**12.      Regulations**

The Governor may make regulations for or with respect to prescribing any matter or thing which is authorised or required to be prescribed for carrying out or giving effect to this Part.

### **Part III — Registrable goods**

#### **13. Application of Part**

The goods to which this Part applies are —

- (a) motor vehicles within the meaning of the *Road Traffic Act 1974*, being motor vehicles that, unless the regulations otherwise provide, are, or have been, licensed under that Act; and
- (b) trailers that, unless the regulations otherwise provide, are, or have been, licensed under that Act; and
- (c) motor vehicles and trailers within the meaning of the *Interstate Road Transport Act 1985* of the Commonwealth as amended and in force for the time being, being vehicles and trailers that are registered in Western Australia under that Act; and
- (d) prescribed goods.

*[Section 13 amended by No. 28 of 2001 s. 28.]*

#### **14. Register**

The Commissioner shall keep a register in the prescribed form or in the prescribed manner in which shall be entered security interests in relation to registrable goods.

#### **15. Registration of security interest**

- (1) A person may make application to the Commissioner for registration of a security interest in registrable goods.
- (2) An application under subsection (1) shall be in or to the effect of the approved form.
- (3) The Commissioner in relation to each application under this section, shall enter in the register the security interest and other particulars of the application and the date on which, and time at which, the entry is made.

- (4) The applicant, at the prescribed time or within the prescribed period, shall pay the prescribed fee (if any) payable in respect of an application made by the applicant under subsection (1).

**16. Offence**

- (1) A person shall not make an application under section 15 for the registration of a security interest if that person is not the holder of the interest.

Penalty: \$500.

- (2) It is a defence to a prosecution of a person for an offence under subsection (1) if the person proves that when the application was made the person believed on reasonable grounds that the person was the holder of the security interest.

**17. Cancellation of registration**

If a person is the holder of a registered security interest, that person may make application to the Commissioner in or to the effect of the approved form for the cancellation of that registration.

**18. Discharge of registered security interest**

If a registered security interest is discharged or extinguished, the person who was the holder immediately before the discharge or extinguishment, not later than 14 days after the person knows or ought to reasonably know that he or she has ceased to be the holder of that security interest, shall make application to the Commissioner in or to the effect of the approved form for the cancellation of the registration.

Penalty: \$500.

**19. Commissioner to cancel registration**

If an application is made under section 17 or 18, the Commissioner shall cancel the particulars in the register to which the application relates and shall note in the register the date on which, and the time at which, the particulars were cancelled.

**20. Change in particulars**

- (1) If there is a change in the particulars of a registered security interest (other than by reason that the security interest is discharged or extinguished), the secured party may make application in or to the effect of the approved form for the variation of those particulars.
- (2) If an application is made under subsection (1), the Commissioner shall vary the particulars in the register and note in the register the date on which, and time at which, the particulars are varied.
- (3) The applicant, at the prescribed time or within the prescribed period, shall pay the prescribed fee (if any) payable in respect of an application made by the applicant under subsection (1).

*[Section 20 amended by No. 39 of 1996 s. 4.]*

**21. Variation of particulars**

If a prescribed change occurs in the particulars entered in the register, the Commissioner may vary the particulars in the entry in the register and note in the register the date on which, and the time at which, the particulars are varied.

**22. Commissioner may cancel registration**

- (1) If a person is registered under section 15 as the holder of a security interest in respect of registrable goods and it appears to the Commissioner that —
  - (a) the person was not, when the application for registration was made, the holder of such a security interest; or
  - (b) the security interest has been discharged or extinguished and the person has failed to comply with section 18,

the Commissioner, by notice in writing in the approved form given to the person, may require the person to show cause within 14 days after the giving of the notice why the registration should not be cancelled.

- (2) If a person fails to show cause as required by a notice under subsection (1), the Commissioner, in his discretion, may cancel the registration of the person and must note in the register the date on which, and time at which, the registration was cancelled.
- (3) For the purposes of subsection (1), a notice shall be deemed to have been given to a person when it is posted by prepaid post to the person at the person's address shown in the register.

**23. Details of entries**

- (1) A person (the *applicant*) may apply to the Commissioner, in or to the effect of the approved form or in the prescribed manner —
  - (a) for a certificate containing —
    - (i) details of particulars of entries in the register in respect of specified goods to which this Part applies; or
    - (ii) a statement that there are no entries in the register in respect of those goods;
  - or
  - (b) subject to the approval of the Commissioner, for confirmation of —
    - (i) details of particulars of entries in the register in respect of specified goods to which this Part applies; or
    - (ii) a statement that there are no entries in the register in respect of those goods,
- by reference to an account sent to the applicant.
- (2) The applicant, at the prescribed time or within the prescribed period, shall pay the prescribed fee (if any) payable in respect of an application under subsection (1).
- (3) The Commissioner shall respond to an application made in accordance with this section by providing a certificate containing, or an account confirming, the details or statement

applied for, and bearing the time and date that the response to the application was made, together with such other information as the Commissioner approves.

(4) In this section —

*entries* does not include particulars in the register that have been cancelled under section 19.

*[Section 23 inserted by No. 39 of 1996 s. 5.]*

**24. Compensation for extinguishment of security interest**

(1) A person who suffers loss or damage by reason that a security interest in registrable goods of which the person is the holder is extinguished by the operation of section 7(1), being a security interest —

(a) for the registration of which application had been made under section 15; and

(b) which at the time the loss or damage was suffered —

(i) had not been entered in the register; or

(ii) was entered in the register but not correctly entered; or

(iii) having been entered in the register after the application was made, was no longer entered by reason of the cancellation of the entry under section 22,

is entitled to make application to the Commissioner for an order for the payment of compensation to the applicant.

(2) If an application is made under subsection (1), the Commissioner shall determine whether or not compensation should be paid to the applicant and, if the Commissioner determines that compensation should be paid, shall make an order for the payment to the applicant of such amount including costs as the Commissioner determines.



- (3) The Commissioner shall not make an order under this section in relation to an application arising by reason of loss or damage suffered after the cancellation under section 22 of an entry in the register if the applicant did not show cause in accordance with that section unless the Commissioner is satisfied that the applicant did not show cause in accordance with that section why the registration should not be cancelled —
- (a) because of circumstances beyond the applicant's control; or
  - (b) for reasons that ought reasonably to be excused.
- (4) Compensation paid in respect of a claim under this section shall not exceed —
- (a) the amount of the debt or other pecuniary obligation or the value of any other obligation secured by the security interest; or
  - (b) the value of the registrable goods in respect of which the application is made,

at the time the loss or damage is suffered, whichever is the lesser.

*[Section 24 amended by No. 8 of 2009 s. 30.]*

**25. Compensation where entry not shown on certificate**

- (1) A person who suffers loss or damage arising from, or in connection with, the purchase of registrable goods is entitled to make application to the Commissioner for an order for payment of compensation, including costs to the applicant, if —
- (a) before the purchase was made, an application was made —
    - (i) under section 23(1)(a) for a certificate setting out details of particulars of entries in the register in respect of specified goods; or
    - (ii) under section 23(1)(b) for confirmation (by reference to an account) of particulars of details of entries relating to specified goods in the register;
- and

- (b) the certificate or the account did not contain particulars of an entry in the register relating to those goods at the time the details were provided or obtained.
- (2) If an application is made under subsection (1), the Commissioner shall determine whether or not compensation should be paid to the applicant and, if the Commissioner determines that compensation should be paid, shall make an order for the payment to the applicant of such amount as the Commissioner determines.
- (3) The Commissioner shall not grant an application under subsection (1) if the person at the time of suffering the loss or damage —
  - (a) had actual notice of the security interest entered in the register; or
  - (b) had been put upon inquiry as to the existence of such a security interest and had deliberately abstained from inquiry or further inquiry when the person might reasonably have expected the inquiry or further inquiry to reveal the security interest.
- (4) Subsection (3) does not apply if the applicant under subsection (1) is the secured party in respect of the registrable goods.

*[Section 25 amended by No. 39 of 1996 s. 6.]*

**26. Review by State Administrative Tribunal**

- (1) A person who is aggrieved by a decision of the Commissioner under section 24 or 25 may apply to the State Administrative Tribunal for a review of the decision.

*[(2) deleted]*

*[Section 26 amended by No. 55 of 2004 s. 105.]*

*[27, 28. Deleted by No. 55 of 2004 s. 106.]*

## **Part IV — Miscellaneous**

*[Heading inserted by No. 28 of 2006 s. 61.]*

### **29. Appropriation**

Any moneys payable under an order of the Commissioner under this Act or to give effect to a decision arising from an application made under this Act to the State Administrative Tribunal shall be charged to the Consolidated Account which is to the extent necessary appropriated accordingly.

*[Section 29 amended by No. 6 of 1993 s. 11; No. 49 of 1996 s. 64; No. 55 of 2004 s. 107; No. 77 of 2006 s. 4.]*

### **30. Offence**

- (1) A dealer shall not supply any goods in the course of a business without first procuring the discharge of any inventory security interest created by the dealer in the goods.  
Penalty: \$2 500.
- (2) Subsection (1) does not apply in relation to the sale, exchange or disposition of a vehicle as defined in section 5(2) of the *Motor Vehicle Dealers Act 1973* that is subject to an inventory security interest by a licensed motor vehicle dealer as defined in that Act if the sale, exchange or disposition is authorised by and in accordance with the terms of the inventory security interest.
- (3) A dealer shall not supply any goods in the course of a business without first procuring the discharge of —
  - (a) any security interest of which the dealer has notice; and
  - (b) any registered security interest whether or not the dealer has notice of the interest; and
  - (c) if the vehicle is not licensed under the *Road Traffic Act 1974* but is registered or licensed under the law of another State or a Territory, any security interest in the vehicle registered under the provisions of a law of that State or Territory corresponding to the provisions of this

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Act (whether or not those provisions are declared under section 3(8) to be a corresponding law of that State or Territory for the purposes of this Act).

Penalty: \$2 500.

- (4) Without affecting the operation of subsection (2), subsections (1) and (3) do not apply to the extent or in the circumstances prescribed by the regulations.

**30A. Delegation by Commissioner**

- (1) The Commissioner may delegate to any other person employed in the Department any power or duty of the Commissioner under another provision of this Act.
- (2) The delegation must be in writing signed by the Commissioner.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Commissioner to perform a function through an officer or agent.

*[Section 30A inserted by No. 28 of 2006 s. 62.]*

**30B. Information officially obtained to be confidential**

- (1) A person who misuses information obtained by reason of any function that person has, or at any time had, in the administration of this Act commits an offence.

Penalty: \$20 000.

- (2) A person misuses information if it is, directly or indirectly, recorded, used, or disclosed to another person, other than —
- (a) in the course of duty; or

- (b) under this Act; or
  - (c) for the purposes of the investigation of any suspected offence or the conduct of proceedings against any person for an offence; or
  - (d) in a manner that could not reasonably be expected to lead to the identification of any person to whom the information refers; or
  - (e) with the consent of the person to whom the information relates, or each of them if there is more than one.
- (3) In this section —  
**information** means information concerning the affairs of a person.

*[Section 30B inserted by No. 28 of 2006 s. 62.]*

**30C. Protection from liability for wrongdoing**

- (1) Subject to sections 24 and 25, a person is not liable for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.
- (2) Subject to sections 24 and 25, the State is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

*[Section 30C inserted by No. 28 of 2006 s. 62.]*

**30D. Powers of investigation**

The *Fair Trading Act 2010* section 61 and Part 6 of that Act apply to this Act.

*[Section 30D inserted by No. 58 of 2010 s. 186.]*

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**31.        Regulations**

- (1) The Governor may make regulations for or with respect to prescribing any matter or thing which is authorised or required to be prescribed for carrying out or giving effect to this Part.
- (2) Except as otherwise expressly provided by this Part, regulations under this Part may be of general or of specially limited application and may differ according to differences in time, place or circumstances.

[32.        *Omitted under the Reprints Act 1984 s. 7(4)(e).*]



## Notes

- <sup>1</sup> This is a compilation of the *Chattel Securities Act 1987* and includes the amendments made by the other written laws referred to in the following table [1a](#). The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Chattel Securities Act 1987</i>	101 of 1987	18 Dec 1987	s. 1 and 2: 18 Dec 1987; s. 3, 12-14, 15(1), (2) and (4), 16-23, 31-32: 29 Aug 1988 (see s. 2 and <i>Gazette</i> 5 Aug 1988 p. 2583); s. 4-11, 15(3) and 24-30: 14 Nov 1988 (see s. 2 and <i>Gazette</i> 5 Aug 1988 p. 2583)
<i>Financial Administration Legislation Amendment Act 1993</i> s. 11	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Chattel Securities Amendment Act 1996</i>	39 of 1996	27 Sep 1996	s. 1 and 2: 27 Sep 1996; Act other than s. 1 and 2: 4 Nov 1996 (see s. 2 and <i>Gazette</i> 29 Oct 1996 p. 5715)
<i>Financial Legislation Amendment Act 1996</i> s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Road Traffic Amendment (Vehicle Licensing) Amendment Act 2001</i> Pt. 3 Div. 1	28 of 2001	21 Dec 2001	4 Dec 2006 (see s. 2 and <i>Gazette</i> 28 Nov 2006 p. 4889)
<i>Motor Vehicle Dealers Amendment Act 2002</i> s. 70	4 of 2002	4 Jun 2002	1 Sep 2002 (see s. 2 and <i>Gazette</i> 13 Aug 2002 p. 4151)
<b>Reprint of the <i>Chattel Securities Act 1987</i> as at 13 Dec 2002</b> (includes amendments listed above except those in the <i>Road Traffic Amendment (Vehicle Licensing) Act 2001</i> ) (correction in <i>Gazette</i> 24 Mar 2006 p. 1102)			
<i>Corporations (Consequential Amendments) Act (No. 2) 2003</i> Pt. 4	20 of 2003	23 Apr 2003	15 Jul 2001 (see s. 2(1) and Cwlth <i>Gazette</i> 13 Jul 2001 No. S285)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 34	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)

## Chattel Securities Act 1987

Short title	Number and year	Assent	Commencement
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 18</i> <sup>3</sup>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<b>Reprint 2: The <i>Chattel Securities Act 1987</i> as at 21 Apr 2006</b> (includes amendments listed above except those in the <i>Road Traffic Amendment (Vehicle Licensing) Act 2001</i> )			
<i>Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 4 Div. 4</i> <sup>4</sup>	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<i>Financial Legislation Amendment and Repeal Act 2006 s. 4</i>	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 30</i>	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
<i>Acts Amendment (Fair Trading) Act 2010 s. 186</i>	58 of 2010	8 Dec 2010	1 Jan 2011 (see s. 2(c) and <i>Gazette</i> 24 Dec 2010 p. 6805)
<b>Reprint 3: The <i>Chattel Securities Act 1987</i> as at 23 Sep 2011</b> (includes amendments listed above)			
<i>Personal Property Securities (Consequential Repeals and Amendments) Act 2011 Pt. 4 Div. 2</i>	42 of 2011	4 Oct 2011	5 Oct 2011 (see s. 2(b))

<sup>1a</sup> [On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.](#)

### Provisions that have not come into operation

<u>Short title</u>	<u>Number and year</u>	<u>Assent</u>	<u>Commencement</u>
<a href="#">Road Traffic Legislation Amendment Act 2012 Pt. 4 Div. 5</a> <sup>4</sup>	<a href="#">8 of 2012</a>	<a href="#">21 May 2012</a>	<a href="#">Operative on commencement of the Road Traffic (Administration) Act 2008 (see s. 2(d))</a>



- <sup>2</sup> The provision in this Act amending the *Consumer Affairs Act 1971* has been omitted under the *Reprints Act 1984* s. 7(4)(e).
- <sup>3</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant to this Act.
- <sup>4</sup> On the date as at which this compilation was prepared, the *Road Traffic Legislation Amendment Act 2012* Pt. 4 Div. 5 had not come into operation. It reads as follows:

**Division 5 — Chattel Securities Act 1987 amended**

**48. Act amended**

This Division amends the *Chattel Securities Act 1987*.

**49. Section 3 amended**

In section 3(1) in the definition of *lease*:

- (a) in paragraph (b) delete “within the meaning of the *Road Traffic Act 1974* of which the lessor is registered or an applicant for registration as the owner under the *Road Traffic Act 1974* or a corresponding Act of the Commonwealth or another state or territory of the Commonwealth; or” and insert:

as defined in the *Road Traffic (Administration) Act 2008* section 4 of which the lessor is, or is applying to be, a licence holder as defined in section 6(1) of that Act; or

- (b) in paragraph (c) delete “within the meaning of the *Road Traffic Act 1974*,” and insert:

as defined in the *Road Traffic (Administration) Act 2008* section 4.

**50. Section 7 amended**

(1) In section 7(5)(b):

- (a) delete “within the meaning of the *Road Traffic Act 1974*” and insert:

as defined in the *Road Traffic (Administration) Act 2008*  
section 4

(b) delete “*Road Traffic Act 1974* but” and insert:

*Road Traffic (Vehicles) Act 2012* but

(2) In section 7(6)(d):

(a) delete “within the meaning of the *Road Traffic Act 1974*”  
and insert:

as defined in the *Road Traffic (Administration) Act 2008*  
section 4

(b) delete “*Road Traffic Act 1974* but” and insert:

*Road Traffic (Vehicles) Act 2012* but

**51. Section 13 amended**

In section 13:

(a) in paragraph (a) delete “within the meaning of the *Road*  
*Traffic Act 1974*,” and insert:

as defined in the *Road Traffic (Administration) Act 2008*  
section 4.

(b) in paragraph (a) delete “that Act;” and insert:

the *Road Traffic (Vehicles) Act 2012*;

(c) in paragraph (b) delete “that Act;” and insert:

the *Road Traffic (Vehicles) Act 2012*;

**52. Section 30 amended**

In section 30(3)(c) delete “*Road Traffic Act 1974*” and insert:

[Road Traffic \(Vehicles\) Act 2012](#)