

## **Chattel Securities (Amendment) Bill**

### **EXPLANATORY MEMORANDUM**

#### **Background**

A National Working Party established by the Ministerial Council on Consumer Affairs (MCCA) in 1994 has progressively worked towards achieving the linkage of State and Territory operated Vehicle Security Registers and nationally consistent laws to support the linked systems. Professor Tony Duggan prepared a report for the Working Party defining options for legislative change. Most of the report's recommendations were accepted by the Working Party and on 29 August 1997 MCCA gave, in principle, support for legislative change to achieve substantial national consistency in the laws relating to the registration of vehicle securities. The Chattel Securities (Amendment) Bill implements the recommended changes in Victoria.

#### **PART 1—PRELIMINARY**

- Clause 1 sets out the purpose of the Act.
- Clause 2 provides for the commencement of the Act.
- Clause 3 states that the Principal Act is the **Chattel Securities Act 1987**.

#### **PART 2—AMENDMENTS CONSEQUENT ON ESTABLISHMENT OF VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

- Clause 4 amends the definition of Tribunal in the Principal Act as a consequence of the establishment of the Victorian Civil and Administrative Tribunal and makes minor drafting amendments.

#### **PART 3—AMENDMENTS CONSEQUENT ON ESTABLISHMENT OF NATIONAL VEHICLE SECURITY ENQUIRY REGISTER**

- Clause 5 amends section 3 of the Principal Act to define new expressions used and items added to the list of "registrable goods" and re-define some existing terms to achieve the objectives of the Act.

- Clause 6 repeals section 4(1)(a) of the Principal Act, a choice of law provision which may conflict with the law in other jurisdictions.
- Clause 7 inserts new section 7(1A) which achieves two objectives. Firstly, it provides that if, as a result of an administrative or systems error, a registered security interest is not disclosed on a certificate and the purchaser purchases the goods for value in good faith and without notice, the security interest is extinguished. (The security holder may apply for compensation under section 25(1B)). Secondly, it provides for the extinguishment on purchase of goods of a security interest that was registered after a search certificate was issued to the purchaser (provided that the certificate was issued on the day of the purchase or the preceding day). This effectively provides the purchaser with a period of time to complete the purchase with certainty that the goods are not encumbered.
- Clause 8 substitutes "Corporations Law" for "Companies (Victoria) Code" in section 8(1) of the Principal Act and applies section 50 of the Corporations Law in ascertaining whether bodies corporate are related to each other.
- The clause also substitutes a new section 8(2) which provides, in effect, that an unregistered security interest is not extinguished if, where the vehicle is sold to a financier who supplies the vehicle by way of hire-purchase or lease to a consumer, that consumer did not act in good faith and without notice of the security interest (ie. acted in concert with the debtor).
- Clause 9 substitutes "Corporations Law" for "Companies (Victoria) Code" in Section 10(2) of the Principal Act; and
- inserts a new section 10(4) which provides that a repairer' lien on goods, whether or not registered under Part 3, ranks in priority to any registered security interest in respect of those goods.
- Clause 10 substitutes new definitions for motor vehicles and trailers in section 13(1) of the Principal Act to permit motor vehicles and trailers which are unregistered but eligible for registration to be included as "registrable goods" and adds a new category of registrable goods being agricultural machines and agricultural implements.

Clause 11 inserts new section 25(1B) which permits a person who suffers loss or damage because a security interest that was registered before a search certificate was issued is not disclosed on the certificate and therefore is extinguished under section 7(1A) to apply to the Tribunal for compensation.

The clause also repeals section 26 of the Principal Act and inserts a transitional provision.

