

CABINET MINUTE

NAMBOUR
BRISBANE, 28/7/1986

DECISION NO.

49406

SUBJECT: Motor Vehicles Securities Act 1986

(Submission No. 44556)

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R E S T R I C T E D
C A B I N E T M I N U T E

Nambour, 28th July, 1986

Decision No. 49406

Submission No. 44556

TITLE: Motor Vehicles Securities Act
1986.

CABINET decided:-

1. That approval be given for the introduction of a Bill to allow the following amendments to be made to the Motor Vehicles Securities Act 1986 -
 - (a) to make provision for the Minister to approve standard form documents in order that financiers may lodge details of security interests by means of schedule, so long as the particulars prescribed by section 6 are contained therein, and that the schedules are executed by a senior officer of the lodging corporation;
 - (b) to make provision for security holders to cancel security interests by means of scheduling in a similar manner to that outlined in (a);
 - (c) to amend section 38 to widen the scope of the regulation making power in order that it is in conformity with standard drafting procedure and accommodates all necessary administrative arrangements;
 - (d) to make provision for a "recognised State" mechanism in the manner outlined in the Submission.
2. That there be an invitation to discussions to New South Wales in due course with a view to establishing a computer link-up in the manner outlined in the Submission, with the expenditure of the sums outlined in the Submission to upgrade the register's computer to allow such a link-up to be incurred from the Justice Department's existing allocation.
3. That, in relation to paragraph (a)(i) of the recommendation in the Submission, the Honourable the Minister for Justice and Attorney-General bring back a further Submission outlining the effects of the proposal on the priorities of securities in various circumstances and in particular outlining the position of a bill of sale previously registered under the Bills of Sale and Other Instruments Act as compared with a previously unregistered bill of sale that was executed before it.

CIRCULATION: Department of Justice and copy to Minister.
Premier's Department and copy to Premier and Treasurer.
Parliamentary Counsel.
Treasury Department and copy to Minister.
Department of Police and copy to Minister.
Department of Transport and copy to Minister.
The Honourable the Leader of the House.
All other Ministers for perusal and return.

Certified True Copy

7th



[Signature]
A/Secretary to Cabinet.



F O R C A B I N E T

RE: MOTOR VEHICLES SECURITIES ACT 1986

1. Ministers will recall that the Motor Vehicles Securities Act 1986, which provides for the establishment of a public register for the recording of security interests over motor vehicles, was assented to on 8th April, 1986. To date, however, the substantive provisions have not been proclaimed but the transitional provisions have been proclaimed to commence on 1st August, 1986.
2. At the time when the Act was passed by Parliament, only Victoria and Tasmania had enacted similar legislation. However, since that time the New South Wales Parliament has passed the Registration of Interests in Goods Act 1986. The New South Wales Act has not yet been proclaimed.
3. Whilst the Government has always favoured close co-operation between the various State registers so as to maximize the benefits for the citizens in the various States, this has not been possible due to the divergences in legislation and the attitude of some of the other States, especially Victoria.
4. Fortunately, New South Wales has taken Queensland's lead and enacted similar legislation and shares our view as to the desirability of constructive co-operation. Indications are that New South Wales would be prepared to share its recorded information with Queensland if we reciprocated.
5. From preliminary investigations it appears that for approximately an extra \$20,000 outlay on software and an annual \$3,000 fee for Telecom line rental the computers operating the Queensland and New South Wales registries could be linked up. This would allow a person searching our register to obtain at the same time the information stored on the New South Wales register. Such costs can be absorbed by the fees to be imposed under the Act.
6. One example of how this would be of assistance is if a Queensland resident with a Queensland registered but encumbered vehicle, transports such vehicle to New South Wales and re-registers it there. Such person could then sell it in New South Wales free of the Queensland security interest. A similar scenario could be envisaged with respect to stolen vehicles.
7. With the computer link-up, however, a New South Wales purchaser would be notified when searching its register of the situation existing in Queensland.

8. In order that this link-up is given practical effect, a "recognised State" provision will need to be inserted in the Act. This would mean that Queensland could recognise a similar law of another State, or such provisions thereof as may be prescribed, and that law would have effect in Queensland. In the example given above the New South Wales resident would then have notice of the Queensland security interest, and if he proceeded with the sale would take the vehicle subject to it.
9. An amendment along these lines would enhance the integrity of the register and prevent both security holders and consumers being defrauded by irresponsible persons selling re-registered but encumbered vehicles interstate. Obviously the recognised State provision would only be activated by an Order in Council if Queensland was satisfied that another State had a similar provision and would recognise the Motor Vehicles Securities Act 1986.
10. Since the passage of the Act I have also received a number of submissions from industry sources suggesting mechanisms for improving the efficiency of the register and minimising costs for private enterprise persons utilizing the register.
11. At the moment the transitional provisions (section 3) only enable the Registrar to deal with existing registered bills of sale prior to the register operating. It would be most desirable if the Registrar was also able to deal with existing unregistered security interests, such as hire purchase agreements and chattel leases. In addition to facilitate the registration of existing security interests, it would be desirable that provision be made for them to be registered if they are in such form as may be approved by the Registrar, provided that they contain sufficient particulars as prescribed by section 6. All unregistered security interests so dealt with would be deemed to be registered from the first moment of the first day of the operation of the register and would gain priority according to the date of execution.
12. In addition to facilitate the ongoing registration of security interests, it would be desirable to amend the substantive provisions in the Act to also allow the registration of security interests by means of scheduling to an approved standard contract format.
13. I have been informed by representatives of the A.F.C. that the major Queensland financiers each use fairly standard documentation. It would be therefore highly desirable to allow the Minister to approve standard form contracts, and to allow financiers to lodge with the Registrar schedules containing sufficient details of vehicle identification pursuant to section 6 upon certification by a senior representative of the lodging financial institution. A similar procedure would also be desirable when financiers are cancelling their security interests.

14. Such a mechanism would minimise costs for the lodging financier and cut down on the paperwork for the Registrar. It would also extend greater consumer protection by ensuring that in approving a standard form contract undesirable provisions were excluded from the contract.
15. Finally, section 38 of the Act, which contains the regulation making power, is drafted in a very narrow manner, and not in accordance with standard drafting practice. In order that sufficient subordinate legislating power is vested in the Governor in Council to accommodate necessary administrative arrangements this section will need to be expanded.

I RECOMMEND that Cabinet approve:

(a) the following amendments to the Motor Vehicles Securities Act 1986 -

- (i) an amendment to section 3 to allow the Registrar to register existing executed but unregistered security interests (as defined by section 5) provided that they are in a form he has approved and that they contain sufficient particulars as prescribed by section 6, such registration to be possible by means of schedules in a form approved by the Registrar;
 - (ii) to make provision for the Minister to approve standard form documents in order that financiers may lodge details of security interests by means of schedules, so long as the particulars prescribed by section 6 are contained therein, and that the schedules are executed by a senior officer of the lodging corporation;
 - (iii) to make provision for security holders to cancel security interests by means of scheduling in a similar manner to that outlined in (i) and (ii);
 - (iv) amend section 38 to widen the scope of the regulation making power in order that it is in conformity with standard drafting procedure and accommodates all necessary administrative arrangements;
 - (v) to make provision for a "recognised State" mechanism in the manner outlined; and
- (b) the invitation of discussions with New South Wales in due course with a view to establishing a computer link-up in the manner outlined and the expenditure of the sums outlined to upgrade the register's computer to allow such a link-up.

N.J. HARPER
Minister for Justice
and Attorney-General.

BRISBANE,
22nd July, 1986