

NORTHERN TERRITORY OF AUSTRALIA
REGISTRATION OF INTERESTS IN MOTOR VEHICLES
AND OTHER GOODS ACT 1989

No. 85 of 1989

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NORTHERN TERRITORY OF AUSTRALIA

No. 85 of 1989

AN ACT

to provide, in relation to motor vehicles and other prescribed goods, for the registration of security interests, the interests of lessors, and the interests of owners under hire-purchase agreements, and for related matters

[Assented to 22 December 1989]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

PART I - PRELIMINARY

1. SHORT TITLE

This Act may be cited as the *Registration of Interests in Motor Vehicles and Other Goods Act 1989*.

2. COMMENCEMENT

The provisions of this Act shall come into operation on such date or dates as is or are fixed by the Administrator by notice in the *Gazette*.

3. INTERPRETATION

(1) In this Act, unless the contrary intention appears -

"approved" means approved by the Registrar;

"Commissioner of Police" means the Commissioner of Police appointed under the *Police Administration Act*, and, where the context requires it, includes a person holding an office in a State or another Territory of the Commonwealth equivalent to that of the Commissioner of Police;

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"creditor", in relation to a registrable interest in goods, means the person in whom the registrable interest is vested;

"dealer", in relation to goods, means -

- (a) where the goods are a motor vehicle, a dealer within the meaning of the *Motor Vehicle Dealers Act*; or
- (b) in any other case, a person prescribed as a dealer in the goods;

"debtor", in relation to a registrable interest in goods, means -

- (a) where the registrable interest is a security interest in the goods, the person whose performance of an obligation is secured by the security interest;
- (b) where the registrable interest is the interest in the goods of a lessor, the lessee of the goods;
- (c) where the registrable interest is the interest in the goods of the owner under a hire-purchase agreement to which the goods are subject, the hirer of the goods; or
- (d) where the registrable interest is any other prescribed interest in the goods, the person prescribed as the debtor;

"goods" means all chattels personal other than -

- (a) things in action and money; and
- (b) anything the subject of a lien or mortgage under Part III or IV of the *Instruments Act* or to which either of those Parts apply;

"hire-purchase" means an agreement for -

- (a) letting goods with an option to purchase them; or
- (b) the purchase of goods by instalments (whether described as rent or hire or otherwise) not being an agreement whereby the property in the goods being purchased passes at the time of the agreement or on, or at any time before, delivery of the goods.

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"hirer", in relation to a hire-purchase agreement, means the person to whom goods are let, hired or agreed to be sold under the hire-purchase agreement;

"lease", in relation to goods, means -

- (a) a contract for the hiring of the goods which is not a hire-purchase agreement; or
- (b) a licence to use the goods;

"motor vehicle" means a motor car, motor carriage, motor cycle, tractor or other vehicle propelled wholly or partly by volatile spirit, steam, gas, oil or electricity, or by any means other than human or animal power, and includes a trailer or caravan, but does not include a vehicle used on a railway or tramway;

"owner", in relation to a hire-purchase agreement, means the person by whom goods are let, hired or agreed to be sold under the hire-purchase agreement;

"participating State" means a prescribed State or Territory of the Commonwealth, being a State or Territory which has enacted legislation that provides for the registration of interests in goods that arise under a law of that State or Territory;

"prescribed", in relation to fees, means prescribed by the Minister under section 15(1);

"prescribed goods" means -

- (a) a motor vehicle; or
- (b) any other goods prescribed by the Regulations;

"prime identifier", in relation to goods, means the particular of those goods prescribed as the prime identifier for the purposes of this Act;

"purchase", in relation to goods, means acquire the goods from a person selling or exchanging the goods and having, or purporting to have, authority to dispose of the goods by that means;

"Register" means -

- (a) the Register of Interests in Motor Vehicles and Other Goods maintained under section 6; or

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- (b) where the Minister has entered into an agreement under section 24 which provides for the registration of security interests in goods in the Territory in the register maintained under the law for the registration of security interests of the State or other Territory of the Commonwealth with which the agreement is made, the register kept under that law;

"registered" means recorded in the Register otherwise than in accordance with section 9;

"registrable interest", in relation to goods, means the interest in the goods of -

- (a) the person to whom is owed the obligation the performance of which is secured by a security interest to which the goods are subject;
- (b) a lessor of the goods;
- (c) the owner under a hire-purchase agreement relating to the goods; or
- (d) any other prescribed interest in the goods, whether arising under a law of the Territory or of a participating State;

"Registrar" means the Registrar of Interests in Goods specified in section 4, and includes an officer or authority of a State or other Territory of the Commonwealth exercising and discharging the powers and authorities, and performing the functions and duties of the Registrar pursuant to an agreement under section 24(1);

"security interest", in relation to goods, means an interest or power -

- (a) reserved in or over an interest in the goods; or
- (b) created or otherwise arising in or over an interest in the goods under a bill of sale, mortgage, charge, trust, or power,

by way of security for the payment of a debt or other pecuniary obligation or the performance of any other obligation, but does not include an interest or a power reserved or created, or otherwise arising, under a lease or hire-purchase agreement or an agreement excluded from this definition by the Regulations.

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(2) In this Act, a reference to the payment of a purchase price is a reference -

- (a) where the purchase is effected otherwise than by an exchange, to a manner of giving valuable consideration in satisfaction of the purchase price;
- (b) where the whole of the purchase price is not paid at one time, to the first payment of part of the purchase price; or
- (c) where the purchase is effected by an exchange, to the making of the exchange.

PART II - ADMINISTRATION

4. REGISTRAR OF INTERESTS IN GOODS

The Registrar of Interests in Goods is the Registrar-General.

5. DELEGATION

(1) The Registrar may, by instrument in writing, delegate to a person, including the person from time to time holding, acting in or performing the duties of, an office, designation or position, any of the Registrar's powers and functions under this Act, other than this power of delegation.

(2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Registrar.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Registrar.

6. REGISTER

(1) The Registrar shall maintain a Register of Interests in Motor Vehicles and Other Goods for the purposes of this Act.

(2) The Register shall be maintained in or on any medium, or combination of mediums, capable of having information recorded in or on it or them.

(3) The Registrar may, from time to time, vary the manner or form in which the whole or part of the Register is maintained.

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7. REGISTRAR NOT TO BE CONCERNED WITH STAMP DUTIES

Notwithstanding anything to the contrary in the *Taxation (Administration) Act* or the *Stamp Duty Act*, the Registrar, for the purposes of making a recording in the Register of a registrable interest under this Act, shall not be concerned to inquire whether the instrument giving rise to the registrable interest is liable to stamp duty, or is unstamped, or is insufficiently stamped.

PART III - REGISTRATION OF INTERESTS

8. REGISTRATION OF INTEREST

(1) An application for the registration of a registrable interest may be made to the Registrar.

(2) An application under subsection (1) shall -

(a) be made in the approved manner;

(b) specify the prime identifier of the goods covered and such other information, if any, relating to the goods and the interest as is prescribed; and

(c) be accompanied by, or have had arrangements made with the Registrar for the payment of, the prescribed fee (if any).

(3) The Registrar shall, on receipt of an application under subsection (1), and after being satisfied that subsection (2) is complied with, register the registrable interest to which the application relates by recording in the Register the prescribed information relating to the goods and interest.

9. NOTIFICATION IN REGISTER OF INFORMATION PROVIDED BY COMMISSIONER OF POLICE

(1) In addition to registrable interests recorded under section 8, the Registrar may record in the Register such other information as is provided by a Commissioner of Police relating to prescribed goods reported to be stolen or otherwise unlawfully obtained, and the Registrar may cancel or amend any such recording.

(2) A recording made under subsection (1) does not operate to create a registrable interest in prescribed goods to which the recording relates.

10. VARIATION OF PRESCRIBED INFORMATION

(1) An application for the variation of information recorded in the Register under section 8 may be made to the Registrar.

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(2) An application under section (1) shall -

- (a) be made in the approved manner; and
- (b) be accompanied by, or have had arrangements made with the Registrar for the payment of, the prescribed fee (if any).

(3) The Registrar shall, on receipt of an application under subsection (1) and after being satisfied that subsection (2) is complied with, vary the prescribed information recorded in the Register in relation to the prescribed interest to which the application relates.

(4) Where, in the circumstances of a particular case (other than circumstances requiring or permitting a cancellation of the registration of a registrable interest), the Registrar is satisfied that the information recorded in the Register in relation to a registrable interest is inaccurate, the Registrar may, whether or not an application has been made under subsection (1), vary the information in a manner which rectifies the inaccuracy.

(5) The Registrar shall not make a variation under subsection (4) involving the prime identifier of goods or 2 or more particulars of goods -

- (a) without first giving written notice of the proposed variation to the person registered as holder of the interest concerned, requiring the person to advise the Registrar in writing within a specified period as to whether the variation should be made; and
- (b) until the period specified in the notice for the giving of that advice has expired.

(6) If a person fails to advise the Registrar as required by a notice under subsection (5), the Registrar may -

- (a) by further notice in writing to the person, require the person to furnish that advice within a specified further period and warn that a failure to do so may lead to cancellation of registration of the person's interest; and
- (b) cancel the registration of the interest concerned if the person fails to advise the Registrar as required by that further notice.

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(7) If the Registrar makes a variation under subsection (4) -

- (a) the Registrar shall give notice of the variation to the person who is registered as holder of the interest concerned; and
- (b) that person shall, if the Registrar so requires, pay the prescribed fee to the Registrar.

(8) A notice is sufficiently given to a person under this section if it is given by post, and a proper address for that purpose is the address of the person recorded in the Register.

11. CANCELLATION OF REGISTRATION

(1) The Registrar may cancel the registration of an interest after the date ("the expiry date") specified in the Register as the date on which the interest ceases to be a registrable interest and may cancel that registration before the expiry date if -

- (a) a period of at least 7 years has elapsed since the current registration of the interest commenced; and
- (b) (if the expiry date has been varied) a period of at least 7 years has elapsed since the date of the most recent variation of the expiry date.

(2) The Registrar may cancel the registration of an interest under subsection (1) only if -

- (a) the Registrar has given notice in writing to the person registered as the holder of the interest of the Registrar's intention to cancel the registration unless application is made for variation of the date specified in the Register as the date on which the interest ceases to be a registrable interest; and
- (b) the person has not, within the period required by the notice, properly made application for the variation under section 10.

(3) Where -

- (a) a registered interest ceases to be a registrable interest before its registration may be cancelled under subsection (1); and
- (b) the prescribed documents are lodged with the Registrar or the Registrar is, in an approved manner, otherwise notified that paragraph (a) applies,

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the Registrar shall cancel the registration of the interest.

- (4) Where -
 - (a) an interest, or a purported interest, in goods has been registered;
 - (b) it appears to the Registrar that -
 - (i) the interest has ceased to exist; or
 - (ii) the interest never existed; and
 - (c) the Registrar is not authorized by subsection (1) or (3) to cancel the registration,

the Registrar may, by notice in writing given to the person registered as the holder of the interest, require the person, within a period (being not less than 14 days) specified in the notice, to show cause why the registration should not be cancelled.

(5) Where a notice has been given under subsection (4) the Registrar shall, not earlier than the expiration of the period specified in the notice, cancel the registration of the interest to which the notice relates unless -

- (a) cause has been shown why the registration should not be cancelled; or
- (b) an order of the Local Court staying or prohibiting the cancellation, or written notice of such an order, has been served on the Registrar.

(6) A notice is sufficiently given to a person under subsection (4) if it is given by post, and a proper address for that purpose is the address of the person recorded in the Register.

(7) The Registrar need not retain any record relating to an interest for more than 7 years after registration of the interest is cancelled.

12. SEARCH CERTIFICATES AND NOTICE

(1) The Registrar shall, upon application made in relation to prescribed goods, issue a certificate specifying -

- (a) the time and date of its issue;
- (b) whether or not the goods are, at that time, affected by a registered interest; and

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- (c) if the goods are so affected, such particulars as may be prescribed.
- (2) A certificate may take the form of a statement or other approved form.
- (3) The Registrar may include in a certificate under subsection (1) information relating to matters recorded under section 9.
- (4) For the purposes of this Act, a person, or the legal representative or agent of a person, who obtains a certificate under subsection (1) -
 - (a) shall be deemed to have made a proper search of the Register for the registrable interests in the goods to which the certificate relates, the result of the search being correctly reflected in the certificate; and
 - (b) is not affected by notice of any information (other than the information in the certificate) relating to a registrable interest in those goods by reason only of a failure to make a further search in the Register before the end of the day that next succeeds the day of issue of the certificate.
- (5) For the purposes of this Act, a person is not, by reason only of a failure by the person, or by any other person, to make a search as to -
 - (a) interests registered under any Act other than this Act; or
 - (b) instruments registered, deposited, filed or recorded under any Act or registered under the *Companies (Northern Territory) Code*,affected by notice of a registrable interest in prescribed goods.
- (6) The Registrar may, in relation to prescribed goods, issue a certificate as to the state of the Register in relation to those goods at a particular time, or during a particular period, that preceded the time and date of issue of the certificate.
- (7) The Registrar may charge for a certificate under subsection (1) or (6) such fee as may be prescribed.
- (8) A certificate purporting to have been issued under subsection (1) or (6) is, without proof of the signature (if any) of the Registrar or, as the case may be, the delegate of the Registrar, admissible in evidence in any proceedings and, except in relation to matter

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recorded under section 9, is evidence of the matters specified in the certificate.

(9) If a certificate under this section specifies that goods are not affected by a registered interest, the certificate is evidence only in relation to the goods identified by the prime identifier specified in the certificate despite any other information used to identify goods that is also specified in the certificate.

(10) The Territory is not liable, and the Registrar and other persons engaged in the administration of this Act are not liable, in respect of the reliability of any information given by the Registrar or any such person in relation to a matter recorded under section 9.

13. PURCHASE OF GOODS SUBJECT TO REGISTRABLE INTEREST

(1) The Minister may, by notice in the *Gazette*, declare that on and from a specified day, this section applies to prescribed goods of a class specified in the notice.

(2) Where goods of a class specified in a notice under subsection (1) are the subject of a registrable interest (whether the registrable interest arose before, or arises on or after, the day specified in the notice), and the goods are purchased as provided by subsection (3) or (4) -

(a) the property (if any) in the goods of the creditor who has the registrable interest is divested from the creditor and vested in the purchaser; and

(b) the purchaser acquires the goods freed and discharged from the registrable interest.

(3) Goods are purchased as provided by this subsection if the goods are purchased -

(a) by a person who is not a dealer in the goods from a dealer in the goods;

(b) in good faith and for value; and

(c) with or without notice of the registrable interest.

(4) Goods are purchased as provided by this subsection if the goods are purchased otherwise than as referred to in subsection (3)(a) -

(a) from the debtor under the registrable interest to which the goods are subject;

(b) in good faith and for value; and

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- (c) without notice, at the time of payment of the purchase price, of the registrable interest.

(5) Subject to subsection (6), in any proceedings an assertion that a specified purchase was a purchase as provided by subsection (3) or (4) is, except in relation to the giving of value, evidence that the purchase specified was a purchase in accordance with the assertion.

(6) In any proceedings it shall be presumed, unless the contrary is proved, that a purchase is not a purchase as provided by subsection (3) or (4) if -

- (a) the purchaser and the seller are corporations that are, for the purposes of the *Companies (Northern Territory) Code*, deemed to be related to each other;
- (b) one of the purchaser and the seller is a corporation and the other a natural person who, within the meaning of the *Companies (Northern Territory) Code*, is a director or officer of the corporation; or
- (c) the purchaser and the seller are related to, or associated with, each other as prescribed.

(7) In subsection (4) a reference to a purchase from the debtor under a registrable interest includes a reference to a purchase from a person other than the debtor who is in possession of the goods in circumstances where the debtor's right to possession of the goods has been lost or the debtor is estopped from asserting that right against the purchaser.

14. RIGHT OF CREDITOR AND PURCHASER WHERE REGISTRABLE INTEREST DEFEATED

- (1) Where -
 - (a) a person who is not a dealer in prescribed goods of a class specified in a notice in force under section 13(1) purchases any such goods from a dealer;
 - (b) at any time before payment of the purchase price, the dealer had notice that the goods were subject to a registrable interest; and
 - (c) immediately before payment of the purchase price, the registrable interest had not been discharged or cancelled,

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the dealer is liable to the creditor who had the registrable interest for loss sustained by the creditor by reason of the operation of section 13 in relation to the registrable interest.

(2) A dealer is not liable to a creditor in the circumstances referred to in subsection (1) if the dealer purchases the goods concerned freed and discharged from the registrable interest of the creditor by the operation of section 13.

(3) Where by the operation of section 13 a purchaser of goods acquires the goods freed and discharged from a registrable interest but, at the time of the acquisition, part only of the purchase price is paid to the seller -

- (a) the creditor who had the registrable interest is, to the extent of the amount that was owed by the debtor to the creditor under the registrable interest, subrogated to the rights that, but for the subrogation, the seller would have in relation to payment by the purchaser of the balance of the purchase price of the goods; and
- (b) the purchaser of the goods obtains a good discharge -
 - (i) as against the debtor, for any payment of part of the purchase price made under paragraph (a) to the creditor; and
 - (ii) as against the debtor and the creditor, for any payment of part of the purchase price made before the purchaser is notified in writing of the rights of the creditor under that paragraph.

(4) Where -

- (a) by the operation of section 13, a purchase of goods results in the goods being freed and discharged from a registrable interest; and
- (b) the contract of purchase is subsequently rescinded,

the registrable interest revives and has effect as if the purchase had not occurred.

PART IV - MISCELLANEOUS

15. FEES AND COMPENSATION PAYMENTS

(1) The Minister may, by notice in the *Gazette*, prescribe any fees payable for the purposes of this Act (including an agreement made under section 24).

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(2) Subject to an agreement made under section 24, the fees paid and payable to the Registrar under this Act shall be paid into the Consolidated Fund.

(3) Any compensation awarded under this Act shall be paid out of money provided by the Territory.

16. LIMITED RIGHT TO COMPENSATION

(1) Where -

(a) within 6 months after the commencement of this section, in relation to motor vehicles, or within 6 months after the commencement of regulations prescribing other goods to which this Act applies, a person who holds a registrable interest sustains a loss by reason of the operation of this Act;

(b) there was not, immediately before that day, a notice in force under section 13(1) relating to goods of that class; and

(c) the creditor did not, before sustaining the loss, apply for registration of the registrable interest,

that person may apply to the Registrar for an order awarding compensation for that loss.

(2) Where the Registrar is satisfied, on an application under subsection (1), that a person failed to register the registrable interest under section 8 by reason of circumstances -

(a) beyond the applicant's control; or

(b) from which it might reasonably be inferred that the person was not aware of the necessity to register the interest in order to avoid sustaining a loss by reason of the operation of this Act,

the Registrar may make an order awarding the applicant compensation for that loss.

17. AWARD OF COMPENSATION FOR LOSS

(1) Where -

(a) an application is made to register a registrable interest under section 8;

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- (b) a certificate issued under section 12(1) does not disclose the registrable interest (whether or not the registrable interest has been registered) resulting in a lack of notice being given; and
- (c) as a result of the lack of notice, the operation of section 13, in relation to a purchase of the goods, causes the creditor under the registrable interest to sustain a loss,

the Registrar may, on application by the creditor, make an order awarding the creditor compensation for that loss.

(2) Compensation is not payable under this section if the lack of notice referred to in subsection (1) resulted from -

- (a) the prime identifier of the goods concerned being incorrectly specified in the application for registration of the registrable interest concerned;
- (b) the fact that the interest concerned was not registered before the end of the next business day following the making of the application for registration;
- (c) the cancellation in accordance with this Act of the registration of the registrable interest concerned; or
- (d) the rejection of the application for registration of the registrable interest because it was not properly made.

18. ASSESSMENT OF COMPENSATION

(1) Compensation awarded to a creditor under section 16 or 17 shall be such amount as is determined by the Registrar under that section but shall not in any case exceed the amount of the loss sustained by the creditor by reason of the operation of this Act or the amount of the loss, whichever is the lesser amount.

(2) Where, by the operation of this Act, a creditor has, by subrogation, rights against the purchaser of goods in relation to which that creditor had a registrable interest, the maximum amount of compensation which may be awarded to that creditor under section 16 or 17 is the amount (if any) by which the creditor's loss exceeds the unpaid balance of the purchase price.

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19. APPEAL TO LOCAL COURT

(1) A person aggrieved by a decision of the Registrar on an application under section 16 or 17 may appeal against the decision to the Local Court.

(2) On the hearing of an appeal under this section, the Local Court may -

(a) make any order which the Registrar could have made in relation to the matter of the appeal; or

(b) dismiss the appeal.

(3) The Registrar shall give effect to an order of the Local Court under this section.

20. OFFENCES

(1) A person shall not, in relation to an application for -

(a) registration of an interest in goods; or

(b) a variation of information recorded in the Register,

make a statement, or provide information, that is false or misleading by reason of the inclusion of false or misleading matter or the omission of any material matter.

Penalty: \$1,000.

(2) Where a registered interest in goods ceases to be a registrable interest before the Registrar is authorized by section 11 to cancel the registration, the holder of the interest shall, not later than 7 days after the interest ceases to be a registrable interest, lodge with the Registrar the documents, or other notification, necessary to obtain cancellation of the registration under section 11(3).

Penalty: \$500.

(3) It is a defence to a prosecution of a person for an offence against subsection (1) if it is proved that when the statement was made or the information was given, the person -

(a) believed on reasonable grounds that the false matter was true;

(b) believed on reasonable grounds that the misleading matter was not misleading; or

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(c) in the case of an omission -

- (i) believed on reasonable grounds that material matter had not been omitted; or
- (ii) did not know that the omitted matter was material.

21. OFFENCE BY CORPORATION

Where an offence against this Act committed by a corporation is proved to have been committed with the consent or connivance of a person who, within the meaning of the *Companies (Northern Territory) Code*, is a director, manager, secretary or other officer of the corporation, the person is guilty of the same offence.

22. PROCEEDINGS MAY BE COMMENCED WITHIN 3 YEARS

Proceedings for an offence against this Act may be commenced not later than 3 years after the time of the commission of the alleged offence or, with the consent of the Minister, at any later time.

23. SAVING OF RIGHTS AND REMEDIES

(1) Except to the extent that this Act expressly provides otherwise, nothing in this Act modifies or excludes a right or remedy that a person would have had if this Act had not been enacted.

(2) A provision in an agreement (whether or not in writing) with a purchaser under which the operation of a provision of this Act is excluded, modified or restricted is void.

(3) A person shall not enter into an agreement with a purchaser if the agreement includes a provision that, under subsection (2), is void.

Penalty: \$1,000.

24. AGREEMENT WITH STATES OR OTHER TERRITORIES

(1) The Minister may enter into such agreements as the Minister thinks fit with a person acting on behalf of a State or another Territory of the Commonwealth for the exercise and discharge by an officer or authority of the State or other Territory, on behalf of the Northern Territory, of the powers, authorities, functions and duties of the Registrar under this Act.

(2) An agreement under this section may make provision for all or any matters necessary or convenient to be provided for or incidental to carrying out the agreement.

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(3) Without limiting the generality of subsection (2), the agreement may make provision for -

- (a) it to be terminated by the Minister after reasonable notice;
- (b) the payment or reimbursement of fees, charges and compensation, and for other financial arrangements;
- (c) the State or other Territory equivalent of the Registrar to advise the Registrar of any suspicions as to the commission of an offence against this Act, and to give assistance to the Registrar, members of the Police Force or other persons in prosecuting offenders; or
- (d) the appointment of the Registrar-General or another person as a representative or agent in the Northern Territory.

25. REGULATIONS

The Administrator may make regulations, not inconsistent with this Act, prescribing matters -

- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
-