

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 235

Issued by the authority of the Attorney-General

Personal Property Securities Act 2009

Personal Property Securities Amendment Regulations 2011 (No. 2)

Section 303 of the *Personal Property Securities Act 2009* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

The Act implements a single national law creating a uniform and functional approach to personal property securities. It establishes uniform rules for creating a valid security interest, provides coherent rules governing the priority between competing security interests (and other interests), establishes when a person acquires personal property free of a security interest and streamlines the enforcement of security interests.

The Act will be supported by a single national online register of personal property securities (PPS Register). The PPS Register will replace the existing confusing array of both electronic and paper-based national, State and Territory registers of personal property securities.

The additional Regulations would amend the *Personal Property Securities Regulations 2010* to make a small number of changes that relate to companies incorporated on Norfolk Island. The changes are being made at the request of Norfolk Island and are to manage the interaction of the Act and the *Companies Act 1985* (NI) pending the application of the Commonwealth's *Corporations Act 2001* on Norfolk Island.

Details of the proposed Regulations are set out in the Attachment.

Constitutional authority for the Act is partly based on a referral of power from the States and Territories. The Personal Property Securities Law Agreement 2008 (the PPS Law Agreement) provides that the Commonwealth may not make certain regulations without approval from the State and Territory parties. However, these Regulations, by applying only to Norfolk Island, do not require approval.

This subregulation was prepared at the request of the Chief Minister of Norfolk Island pursuant to its March 2011 Roadmap. The Roadmap anticipates the application of the Commonwealth's *Corporations Act 2001* to Norfolk Island. Officers of the Legal Services Unit within the Administration of Norfolk Island were consulted with by officials from the Commonwealth Attorney-General's Department on possible options for preventing Norfolk Island incorporated companies from having to adjust to both the Norfolk Island Companies Act as it would operate under the Act only to be followed by a second period of adjustment when the Norfolk Island Companies Act becomes defunct under the Roadmap. These regulations represented the most effective solution having regard to delivering the minimum possible disruption to business.

The subregulation was also prepared in consultation with, and without objection from, the Commonwealth Department of the Treasury.

The Act specifies no other conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations will commence on the day after they are registered on the Federal Register of Legislative Instruments.

ATTACHMENT

Details of the Personal Property Securities Amendment Regulations 2011 (No. 2)

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Personal Property Securities Amendment Regulations 2011 (No. 2)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on the day after they are registered.

Regulation 3 – Amendment of Personal Property Securities Regulations 2010

This regulation provides that Schedule 1 amends the *Personal Property Securities Regulations 2010*.

Schedule 1 – Amendments

Item 1 – After subregulation 1.4 (1B)

This item inserts a new subregulation 1.4(1C).

This subregulation prevents the Act from applying to security interests granted by companies incorporated under the Norfolk Island *Companies Act 1985*. It does this under paragraph 8(1)(l) of the Act by declaring that an interest granted by a company incorporated under the Companies Act is not an interest to which the Act applies.

This subregulation also prevents these Regulations from disturbing the application of the Corporations Act to those Norfolk Island companies that are registered under Part 5B.2 of the Corporations Act.