

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 121

Issued by the authority of the Attorney-General

Personal Property Securities 2009

Personal Property Securities Amendment Regulation 2012 (No. 1)

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 provides for 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 is supported by a single national online register of personal property securities (the PPS Register). The PPS Register replaced a confusing array of both electronic and paper-based national, State and Territory registers of personal property securities.

The additional regulation amends the *Personal Property Securities Regulations 2010* to prescribe carbon units issued under the Clean Energy Legislation, Australian carbon credit units issued under the Carbon Farming Initiative, and certain eligible international emissions units issued in accordance with the Kyoto rules as ‘investment instruments’ under the Act.

Details of the regulation 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 provides that the Commonwealth may not make certain regulations without approval from the State and Territory parties. However, the regulation does not require approval as it relates to matters for which the Commonwealth may legislate without approval from the States and Territories.

The regulation was prepared in consultation with the Department of Climate Change and Energy Efficiency and the Department of the Treasury. The regulation is consistent with the treatment of the carbon and emissions units as ‘financial products’ for the purposes of the *Corporations Act 2001* and removes ambiguity that was previously raised in stakeholder forums regarding how the units would be treated under the Act.

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

The regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

ATTACHMENT

Details of the Personal Property Securities Amendment Regulation 2012 (No. 1)

Section 1 – Name of Regulation

This regulation provides that the title of the regulation is the *Personal Property Securities Amendment Regulation 2012 (No. 1)*.

Section 2 – Commencement

This regulation provides for the regulation to commence on 1 July 2012.

Section 3 – Amendment of Personal Property Securities Regulations 2010

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

Schedule 1 – Amendments

Items 1,2,5 and 6 – Subregulations 1.4(1A),(1B),(1C),(2)

This is a minor technical amendment to ensure consecutive numbering of the regulations.

Items 3 and 4 – Subregulation 1.4(1C)

These are minor technical amendments that more clearly state that it is the interest granted by the grantor within the meaning of the Act that is the interest to which the Act does not apply.

Item 7 – Regulation 1.10

This item inserts a new regulation.

The following units are declared as personal property under their respective legislation and therefore personal property for the purposes of the Act:

- A ‘carbon unit’ within the meaning of the *Clean Energy Act 2011*;
- An ‘Australian carbon credit unit’ within the meaning of the *Carbon Credits (Carbon Farming Initiative) Act 2011*;
- An ‘eligible international emissions unit’ mentioned in paragraphs (a), (b), (c) and (d) of section 4 of that definition in the *Australian National Registry of Emissions Units Act 2011* (the ANREU Act). (Each unit is also a ‘Kyoto unit’ as defined in section 4 of the ANREU Act. A ‘Kyoto unit’ registered in an Australian National Registry of Emissions Units account is personal property for the purposes of the Act.)

This regulation prescribes each of those units as being an ‘investment instrument’ in section 10 of the *Personal Property Securities Act 2009*. This regulation is consistent with the treatment of those units as ‘financial products’ for the purposes of the *Corporations Act 2001*.

Item 8 – Amend Part 2.2(2), Schedule 1 of PPS Regulations

This is a minor technical amendment to correct an incorrect cross-reference.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Personal Property Securities Amendment Regulation 2012 (No. 1)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the Legislative Instrument is to identify Australian carbon credit units issued under the Carbon Farming Initiative, eligible international emissions units issued in accordance with the Kyoto rules and carbon units issued under the Clean Energy Legislation, as investment instruments for the purposes of the *Personal Property Securities Act 2009*.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

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