

2008-2009-2010

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Personal Property Securities  
(Corporations and Other  
Amendments) Bill 2010**

**No.     , 2010**

*(Attorney-General)*

**A Bill for an Act to amend certain Acts as a  
consequence of the enactment of the *Personal  
Property Securities Act 2009*, to amend that Act, and  
for related purposes**



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1     **A Bill for an Act to amend certain Acts as a**  
2     **consequence of the enactment of the *Personal***  
3     ***Property Securities Act 2009*, to amend that Act, and**  
4     **for related purposes**

5     The Parliament of Australia enacts:

6     **1 Short title**

7                     This Act may be cited as the *Personal Property Securities*  
8                     (*Corporations and Other Amendments*) Act 2010.

9     **2 Commencement**

10                    (1) Each provision of this Act specified in column 1 of the table  
11                    commences, or is taken to have commenced, in accordance with  
12                    column 2 of the table. Any other statement in column 2 has effect  
13                    according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, items 1 to 185	The registration commencement time within the meaning of section 306 of the <i>Personal Property Securities Act 2009</i> .	
3. Schedule 1, item 186	The day this Act receives the Royal Assent.	
4. Schedule 1, item 187	The registration commencement time within the meaning of section 306 of the <i>Personal Property Securities Act 2009</i> .	
5. Schedule 2, items 1 to 107	The day this Act receives the Royal Assent.	
6. Schedule 2, item 108	The registration commencement time within the meaning of section 306 of the <i>Personal Property Securities Act 2009</i> .	
7. Schedule 2, items 109 to 153	The day this Act receives the Royal Assent.	
8. Schedule 3, item 1	Immediately after the commencement of item 1 of Schedule 2 to the <i>Personal Property Securities (Consequential Amendments) Act 2009</i> .	
9. Schedule 3, item 2	Immediately after the commencement of item 1 of Schedule 1 to the <i>Personal Property Securities (Consequential Amendments) Act 2009</i> .	
10. Schedule 3, items 3 and 4	The registration commencement time within the meaning of section 306 of the <i>Personal Property Securities Act 2009</i> .	
11. Schedule 3, item 5	Immediately after the commencement of item 6 of Schedule 3 to the <i>Personal Property Securities (Consequential Amendments) Act 2009</i> .	
12. Schedule 3,	The registration commencement time within	

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
items 6 to 15	the meaning of section 306 of the <i>Personal Property Securities Act 2009</i> .	
13. Schedule 3, item 16	Immediately after the commencement of item 14 of Schedule 2 to the <i>Personal Property Securities (Consequential Amendments) Act 2009</i> .	
14. Schedule 3, item 17	Immediately after the commencement of item 17 of Schedule 1 to the <i>Personal Property Securities (Consequential Amendments) Act 2009</i> .	
15. Schedule 3, items 18 to 21	The registration commencement time within the meaning of section 306 of the <i>Personal Property Securities Act 2009</i> .	
16. Schedule 3, items 22 and 23	The registration commencement time within the meaning of section 306 of the <i>Personal Property Securities Act 2009</i> . However, if the <i>Crimes Legislation Amendment (Serious and Organised Crime) Act 2010</i> receives the Royal Assent before the registration commencement time within the meaning of section 306 of the <i>Personal Property Securities Act 2009</i> , the provision(s) do not commence at all.	
17. Schedule 3, items 24 to 28	The registration commencement time within the meaning of section 306 of the <i>Personal Property Securities Act 2009</i> .	
18. Schedule 3, item 29	Immediately after the commencement of item 19 of Schedule 1 to the <i>Personal Property Securities (Consequential Amendments) Act 2009</i> .	
19. Schedule 3, item 30	Immediately after the commencement of item 18 of Schedule 2 to the <i>Personal Property Securities (Consequential Amendments) Act 2009</i> .	

1 Note 1: This table relates only to the provisions of this Act as originally  
2 passed by both Houses of the Parliament and assented to. It will not be  
3 expanded to deal with provisions inserted in this Act after assent.





1  
2 **Schedule 1—Corporations Act 2001**

3 **Part 1—New concepts**

4 **1 Section 9**

5 Insert:

6 *circulating security interest* has the meaning given by section 51C.

7 **2 Section 9**

8 Insert:

9 *lease* does not include a lease of goods that gives rise to a PPSA  
10 security interest in the goods.

11 Note: An interest that arises under a lease of goods that in substance secures  
12 the payment or performance of an obligation, or that arises under a  
13 PPS lease within the meaning of the *Personal Property Securities Act*  
14 *2009*, may be a PPSA security interest (see sections 12 and 13 of that  
15 Act and the definition of *PPSA security interest* in section 51 of this  
16 Act).

17 **3 Section 9**

18 Insert:

19 *PPSA retention of title property* (short for Personal Property  
20 Security Act retention of title property) has the meaning given by  
21 section 51F.

22 **4 Section 9**

23 Insert:

24 *PPSA security interest* (short for Personal Property Security Act  
25 security interest) has the meaning given by section 51.

26 **5 Section 9 (at the end of the definition of *property*)**

27 Add:

28 , and:

29 (a) in Part 5.3A (administration)—has a meaning affected by  
30 section 435B; and

- 1 (b) in Part 5.4B (winding up in insolvency or by the Court)—has  
2 a meaning affected by section 465; and
- 3 (c) in Part 5.5 (voluntary winding up)—has a meaning affected  
4 by section 489F; and
- 5 (d) in Part 5.6 (winding up generally)—has a meaning affected  
6 by section 513AA; and
- 7 (e) in Part 5.7B (recovering property or compensation for  
8 creditors of insolvent company)—has a meaning affected by  
9 section 588C; and
- 10 (f) in Part 5.8 (offences relating to external administration)—has  
11 a meaning affected by subsection 589(5); and
- 12 (g) in Part 5A.1 (deregistration, and transfer of registration, of  
13 companies)—has a meaning affected by section 601; and
- 14 (h) in Part 5B.2 (registrable bodies)—has a meaning affected by  
15 section 601C.

16 Note: A reference in this Act to the property of a corporation does not  
17 include a reference to any PPSA retention of title property of the  
18 corporation, unless provided otherwise expressly or by necessary  
19 implication (see section 51F). The sections mentioned in  
20 paragraphs (a) to (h) extend references to property of a corporation in  
21 Parts of this Act to PPSA retention of title property (or to certain  
22 PPSA retention of title property).

## 23 6 Section 9 (definition of *retention of title clause*)

24 Repeal the definition, substitute:

- 25 ***retention of title clause***: property is subject to a ***retention of title***  
26 ***clause*** under a contract for the sale of property:
- 27 (a) if the contract contains a provision the effect of which is that  
28 the seller retains title in the property until the purchase price,  
29 or another amount, has been paid in full; and
- 30 (b) if the purchase price, or the other amount, as the case may be,  
31 has not been paid in full; and
- 32 (c) to the extent that the contract does not give rise to a PPSA  
33 security interest in the property.

34 Note: See also the definitions of ***PPSA security interest*** in section 51 and  
35 ***PPSA retention of title property*** in section 51F.

## 36 7 Section 9

37 Insert:

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1                    *secured creditor* has the meaning given by section 51E.

2        **8 Section 9**

3                    Insert:

4                    *secured party* has the meaning given by section 51B.

5        **9 Section 9**

6                    Insert:

7                    *security interest* has the meaning given by section 51A.

8        **10 After Division 6 of Part 1.2**

9                    Insert:

10        **Division 6A—Security interests**

11        **51 Meaning of PPSA security interest**

12                    In this Act:

13                    *PPSA security interest* (short for Personal Property Securities Act  
14                    security interest) means a security interest within the meaning of  
15                    the *Personal Property Securities Act 2009* and to which that Act  
16                    applies, other than a transitional security interest within the  
17                    meaning of that Act.

18                    Note 1:    The *Personal Property Securities Act 2009* applies to certain security  
19                    interests in personal property. See the following provisions of that  
20                    Act:

- 21                    (a) section 8 (interests to which the Act does not apply);  
22                    (b) section 12 (meaning of *security interest*);  
23                    (c) Chapter 9 (transitional provisions).

24                    Note 2:    For the meaning of *transitional security interest*, see section 308 of  
25                    the *Personal Property Securities Act 2009*.

26        **51A Meaning of security interest**

27                    In this Act:

28                    *security interest* means:

- 29                    (a) a PPSA security interest; or  
30                    (b) a charge, lien or pledge.

1 **51B Meaning of *secured party***

2 In this Act:

3 ***secured party***, in relation to a security interest, means:

- 4 (a) if the security interest is a PPSA security interest—a secured  
5 party within the meaning of the *Personal Property Securities*  
6 *Act 2009*; or  
7 (b) if the security interest is not a PPSA security interest, but  
8 consists of a charge, lien or pledge in relation to the  
9 property—a chargee, lienee or pledgee in relation to the  
10 charge, lien or pledge.

11 Note: Security interests are either PPSA security interests, or charges, liens  
12 or pledges (see section 51A).

13 **51C Meaning of *circulating security interest***

14 In this Act:

15 ***circulating security interest*** means a security interest that is:

- 16 (a) a PPSA security interest, if:  
17 (i) the security interest has attached to a circulating asset  
18 within the meaning of the *Personal Property Securities*  
19 *Act 2009*; and  
20 (ii) the grantor (within the meaning of that Act) has title to  
21 the asset; or  
22 (b) a floating charge.

23 Note: Security interests are either PPSA security interests, or charges, liens  
24 or pledges (see section 51A).

25 **51D Meaning of *possessory security interest***

26 In this Act:

27 ***possessory security interest***, in relation to property, means a  
28 security interest that is:

- 29 (a) a PPSA security interest in the property that is perfected by  
30 possession or control, within the meaning of the *Personal*  
31 *Property Securities Act 2009*; or  
32 (b) a lien or a pledge in relation to the property.

33 Note: Security interests are either PPSA security interests, or charges, liens  
34 or pledges (see section 51A).

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1 **51E Meaning of secured creditor**

2 In this Act:

3 *secured creditor* of a corporation means a creditor of the  
4 corporation, if the debt owing to the creditor is secured by a  
5 security interest.

6 **51F Meaning of PPSA retention of title property**

7 *Definition*

8 (1) Property is *PPSA retention of title property* (short for Personal  
9 Property Securities Act retention of title property) of a corporation  
10 if:

- 11 (a) the property is personal property; and  
12 (b) the property is used or occupied by, or is in the possession of,  
13 the corporation; and  
14 (c) the corporation does not have title to the property; and  
15 (d) a PPSA security interest is attached to the property, within  
16 the meaning of the *Personal Property Securities Act 2009*;  
17 and  
18 (e) the corporation is the grantor in relation to the PPSA security  
19 interest, within the meaning of that Act.

20 Examples: The following personal property is *PPSA retention of title property* if  
21 a PPSA security interest attaches to the property by virtue of the  
22 transaction concerned, and the grantor is a corporation:

- 23 (a) property that is the subject of an agreement to sell subject to  
24 retention of title, or a hire purchase agreement, that secures the  
25 payment or performance of an obligation (see subsection 12(2) of  
26 the *Personal Property Securities Act 2009*);  
27 (b) property that is the subject of a lease, or a consignment  
28 agreement, that secures the payment or performance of an  
29 obligation (see subsection 12(2) of the *Personal Property*  
30 *Securities Act 2009*);  
31 (c) goods that are the subject of a commercial consignment (see  
32 subsection 12(3) of the *Personal Property Securities Act 2009*);  
33 (d) goods that are leased or bailed under a PPS lease (see subsection  
34 12(3) of the *Personal Property Securities Act 2009*).

35 *References to property of a corporation*

36 (2) A reference in this Act to the property of a corporation does not  
37 include a reference to any PPSA retention of title property of the

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**Schedule 1** Corporations Act 2001

**Part 1** New concepts

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1 corporation, unless provided otherwise expressly or by necessary  
2 implication.

3 Note: See also the definition of *property* in section 9.

1

2

## **Part 2—Repeal of Chapter 2K (registration of charges)**

3

4

### **11 Section 9 (paragraphs (a) and (b) of the definition of *company*)**

5

6

Repeal the paragraphs.

7

### **12 Paragraph 3.9 of the small business guide in Part 1.5**

8

Omit “and a register of charges”.

9

### **13 Paragraph 3.9 of the small business guide in Part 1.5**

10

Omit “—1302”, substitute “, 1301”.

11

### **14 Paragraph 3.11 of the small business guide in Part 1.5**

12

Repeal the paragraph.

13

### **15 Paragraph 4.4 of the small business guide in Part 1.5 (table item 2)**

14

15

Omit “, 1302”.

16

### **16 Paragraph 4.4 of the small business guide in Part 1.5 (table item 6)**

17

18

Repeal the item.

19

### **17 Subsection 168(1) (note 1)**

20

Repeal the note.

21

### **18 Chapter 2K**

22

Repeal the Chapter.

23

### **19 Paragraph 283DA(d)**

24

Repeal the paragraph.

25

### **20 Section 553E**

26

Omit “and to section 279”.

1     **21 Paragraph 601BC(6)(c)**

2             Repeal the paragraph.

3     **22 Subsection 601BC(6) (note)**

4             Repeal the note.

5     **23 Paragraphs 601BK(1)(a) and (b)**

6             Repeal the paragraphs, substitute:

7                 (a) set up the register required by section 168; and

8                 (b) include in the register the information that is required to be  
9                     included in the register and that is available to the company  
10                     on registration; and

11     **24 Subsection 601BM(2)**

12             Omit “and sections 263, 266 and 276 set out”, substitute “sets out”.

13     **25 Paragraphs 601CB(d) and 601CE(e)**

14             Repeal the paragraphs.

15     **26 Section 1302**

16             Repeal the section.

17     **27 Section 1446**

18             Repeal the section.



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## **Part 3—Charges and chargees**

### **Division 1—Specific amendments**

#### **28 Subparagraph 283BF(4)(c)(ii)**

Omit “security or charge”, substitute “security interest”.

#### **29 Subsection 420B(1)**

Repeal the subsection, substitute:

- (1) On the application of a managing controller of property of a corporation, the Court may by order authorise the controller to sell, or to dispose of in some other specified way, specified property of the corporation, even though it is subject to a security interest (the *prior security interest*) that has priority over a security interest (the *controller’s security interest*) in that property that the controller is enforcing.

Note: The heading to section 420B is altered by omitting “**charge**” and substituting “**security interest**”.

#### **30 Paragraphs 420B(2)(b) and (d)**

Omit “holder of the prior charge”, substitute “secured party in relation to the prior security interest”.

#### **31 Subsection 420B(3)**

Omit “holder of the prior charge”, substitute “secured party in relation to the prior security interest”.

#### **32 Paragraph 434B(3)(b)**

Omit “holder of the charge”, substitute “secured party in relation to the security interest”.

#### **33 Subsection 434B(5)**

Omit “holder of the charge”, substitute “secured party”.

#### **34 Subsection 436C(1)**

Repeal the subsection, substitute:

1 (1) A person who is entitled to enforce a security interest in the whole,  
2 or substantially the whole, of a company's property may by writing  
3 appoint an administrator of the company if the security interest has  
4 become, and is still, enforceable.

5 (1A) Subsection (1) applies in relation to a PPSA security interest only  
6 if the security interest is perfected within the meaning of the  
7 *Personal Property Securities Act 2009*.

8 Note: The heading to section 436C is altered by omitting "Chargee" and substituting  
9 "Secured party".

### 10 **35 Division 7 of Part 5.3A (heading)**

11 Repeal the heading, substitute:

## 12 **Division 7—Rights of secured party, owner or lessor**

### 13 **Subdivision A—General**

#### 14 **441 Application of Division**

15 Except as expressly provided, nothing in this Division limits the  
16 generality of anything else in it.

### 17 **36 Section 441A**

18 Repeal the section, substitute:

## 19 **Subdivision B—Property subject to security interests**

### 20 **441AA Application of Subdivision—PPSA security interests**

21 This Subdivision only applies in relation to the enforcement of a  
22 PPSA security interest if the security interest is perfected, within  
23 the meaning of the *Personal Property Securities Act 2009*, at the  
24 time the enforcement starts.

### 25 **441A Secured party acts before or during decision period**

26 *Scope*

27 (1) This section applies if:

- 1 (a) the whole, or substantially the whole, of the property of a  
2 company under administration is subject to a security  
3 interest; and  
4 (b) before or during the decision period, the secured party  
5 enforced the security interest in relation to all property  
6 (including any PPSA retention of title property) of the  
7 company subject to the security interest, whether or not the  
8 security interest was enforced in the same way in relation to  
9 all that property.
- 10 (2) This section also applies if:
- 11 (a) a company is under administration; and  
12 (b) the same person is the secured party in relation to each of 2  
13 or more security interests in property (including PPSA  
14 retention of title property) of the company; and  
15 (c) the property of the company (the *secured property*) subject to  
16 the respective security interests together constitutes the  
17 whole, or substantially the whole, of the company's property;  
18 and  
19 (d) before or during the decision period, the secured party  
20 enforced the security interests in relation to all the secured  
21 property:
- 22 (i) whether or not the security interests were enforced in  
23 the same way in relation to all the secured property; and  
24 (ii) whether or not any of the security interests was enforced  
25 in the same way in relation to all the property of the  
26 company subject to that security interest; and  
27 (iii) in so far as the security interests were enforced in  
28 relation to property of the company by a receiver or  
29 controller appointed for the purposes of Part 5.2  
30 (whether under an instrument relating to the security  
31 interest or a court order)—whether or not the same  
32 person was appointed in respect of all of the  
33 last-mentioned property.

34 *Power of enforcement by secured party, receiver or controller*

- 35 (3) Nothing in section 437C, 440B, 440F or 440G, or in an order under  
36 subsection 444F(2), prevents any of the following from enforcing  
37 the security interest, or any of the security interests:  
38 (a) the secured party;
-

1 (b) a receiver or controller appointed for the purposes of Part 5.2  
2 (whether under an instrument relating to the security interest  
3 or a court order, and even if appointed after the decision  
4 period).

5 (4) Section 437D does not apply in relation to a transaction or dealing  
6 that affects property of the company and is entered into by:  
7 (a) the secured party in the performance or exercise of a function  
8 or power as secured party; or  
9 (b) a receiver or controller mentioned in paragraph (3)(b) of this  
10 section, in the performance or exercise of a function or power  
11 as such a receiver or controller.

### 12 **37 Section 441C**

13 Repeal the section, substitute:

### 14 **441C Security interest in perishable property**

#### 15 *Scope*

16 (1) This section applies if perishable property of a company under  
17 administration is subject to a security interest.

#### 18 *Power of enforcement by secured party, receiver or controller*

19 (2) Nothing in section 437C or 440B prevents any of the following  
20 from enforcing the security interest, so far as it is a security interest  
21 in perishable property:

22 (a) the secured party;  
23 (b) a receiver or controller appointed for the purposes of Part 5.2  
24 (whether under an instrument relating to the security interest  
25 or a court order, and even if appointed after the decision  
26 period).

27 (3) Section 437D does not apply in relation to a transaction or dealing  
28 that affects perishable property of the company and is entered into  
29 by:

30 (a) the secured party in the performance or exercise of a function  
31 or power as secured party; or  
32 (b) a receiver or controller mentioned in paragraph (2)(b) of this  
33 section, in the performance or exercise of a function or power  
34 as such a receiver or controller.

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1 **38 Subsection 441D(3)**

2 Omit “chargee’s”, substitute “secured party’s”.

3 Note: The heading to section 441D is altered by omitting “**chargee etc. in relation to**  
4 **charged**” and substituting “**secured party etc. in relation to secured**”.

5 **39 Section 441E**

6 Omit “a charge”, substitute “an agreement or instrument under which a  
7 security interest is created or arises”.

8 Note: The heading to section 441E is altered by omitting “**charge**” and substituting “**security**  
9 **agreement etc.**”.

10 **40 After section 441E**

11 Insert:

12 **441EA Sale of property subject to a possessory security interest**

13 *Scope*

14 (1) This section applies if:

- 15 (a) a company is under administration; and  
16 (b) property of the company is subject to a possessory security  
17 interest; and  
18 (c) the property is in the possession of the secured party; and  
19 (d) the secured party sells the property.

20 *Distribution of proceeds of sale*

21 (2) The secured party is entitled to retain proceeds of the sale as  
22 follows:

- 23 (a) if the net proceeds of sale equals the debt secured by the  
24 possessory security interest—the secured party is entitled to  
25 retain the net proceeds;  
26 (b) if the net proceeds of sale exceeds the debt secured by the  
27 possessory security interest—the secured party is entitled to  
28 retain so much of the net proceeds as equals the amount of  
29 the debt secured by the security interest, but must pay the  
30 excess to the administrator on behalf of the company;  
31 (c) if the net proceeds of sale fall short of the debt secured by the  
32 possessory security interest—the secured party is entitled to  
33 retain the net proceeds.
-

1 **Subdivision C—Property not subject to security interests**

2 **441EB Scope of Subdivision**

3 This Subdivision does not apply in relation to the enforcement of a  
4 right, or the performance or exercise of a function or power, if the  
5 enforcement, performance or exercise is authorised by (or because  
6 of) a transaction or dealing that gives rise to a security interest in  
7 the property concerned.

8 Example: An example of a transaction or dealing in relation to which this  
9 Subdivision does not apply because of this section is a commercial  
10 consignment of personal property. Such a transaction gives rise to a  
11 PPSA security interest because of section 12 of the *Personal Property*  
12 *Securities Act 2009*. The consigned property is PPSA retention of title  
13 property of the company (see sections 51F and 435B).

14 Note: Subdivision B (property subject to security interests) may apply in  
15 relation to transactions or dealings to which this Subdivision does not  
16 apply because of this section. For example, Subdivision B would  
17 apply in relation to a commercial consignment of personal property,  
18 because such a transaction gives rise to a PPSA security interest.

19 **41 Sections 441JA and 441K**

20 Repeal the sections.

21 **42 Paragraphs 442D(1)(a) and (b) and (2)(a) and (b)**

22 Repeal the paragraphs, substitute:

23 (a) the secured party; or

24 (b) a receiver or controller appointed under Part 5.2 (whether  
25 under an instrument relating to the security interest or a court  
26 order, and even if appointed after the decision period).

27 Note: The heading to section 442D is altered by omitting “chargee, receiver etc.” and  
28 substituting “secured party, receiver or controller”.

29 **43 Subsection 442D(3)**

30 Omit “chargee, receiver or other person”, substitute “secured party,  
31 receiver or controller”.

32 **44 Paragraphs 443B(7)(b) and (c)**

33 Repeal the paragraphs, substitute:

34 (b) under an agreement or instrument under which a security  
35 interest in the property is created or arises:

- 1 (i) the secured party appoints an agent to enter into  
2 possession, or to assume control, of the property; or  
3 (ii) the secured party takes possession, or assumes control,  
4 of the property;

5 **45 Subsection 477(2B)**

6 Omit “charge”, substitute “an agreement under which a security interest  
7 arises or is created”.

8 **46 Paragraph 601AE(3)(a)**

9 Omit “charge”, substitute “security interest in”.

10 **47 Paragraph 652C(1)(g)**

11 Omit “charges, or agrees to charge,” substitute “grants, or agrees to  
12 grant, a security interest in”.

13 **48 Paragraph 1020B(3)(b)**

14 Omit “charged or pledged”, substitute “subject to a security interest”.

15 **Division 2—Bulk amendments**

16 **49 Amendments to change references to charges etc. to**  
17 **references to security interests etc.**

18 The specified provisions of the *Corporations Act 2001* listed in items 50  
19 to 85 of this Schedule are amended by:

- 20 (a) omitting “charge on” (wherever occurring) and substituting  
21 “security interest in”; and  
22 (b) omitting “charge” (wherever occurring otherwise than as  
23 mentioned in paragraph (a)) and substituting “security  
24 interest”; and  
25 (c) omitting “charges on” (wherever occurring) and substituting  
26 “security interests in”; and  
27 (d) omitting “charges” (wherever occurring otherwise than as  
28 mentioned in paragraph (c)) and substituting “security  
29 interests”; and  
30 (e) omitting “chargee” (wherever occurring) and substituting  
31 “secured party”; and  
32 (f) omitting “charged” (wherever occurring) and substituting  
33 “secured”.

1 **50 Section 9 (subparagraph (a)(ii) of the definition of *control***  
2 ***day*)**

3 **51 Section 9 (paragraph (b) of the definition of *controller*)**

4 **52 Section 9 (definition of *debenture*)**

5 **53 Section 9 (definition of *decision period*)**

6 **54 Section 9 (definition of *enforce*, except paragraph (e) of**  
7 **the definition)**

8 Note: Paragraph (e) of the definition of *enforce* in section 9 is repealed and a new paragraph  
9 substituted by item 142 in this Schedule.

10 **55 Paragraph 157A(5)(b)**

11 **56 Section 283BE**

12 Note: The heading to section 283BE is altered by omitting “**charges**” and substituting  
13 “**security interests**”.

14 **57 Paragraph 283BF(4)(f)**

15 **58 Subsection 283BF(4) (note)**

16 **59 Subparagraph 283BF(7)(b)(ii)**

17 **60 Paragraphs 283BH(3)(a) and (b)**

18 **61 Section 283CC**

19 Note: The heading to section 283CC is altered by omitting “**charges**” and substituting  
20 “**security interests**”.

21 **62 Subsection 413(2)**

22 **63 Paragraphs 418A(1)(b) and (2)(b)**

23 **64 Subsections 419(1) and (2)**

24 **65 Paragraph 420(2)(s)**

25 **66 Paragraph 420B(2)(a)**

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1 **67 Subsection 420B(4)**

2 **68 Paragraphs 420B(6)(a) and (b)**

3 **69 Subsection 427(1A)**

4 **70 Sub-subparagraph 429(2)(c)(iii)(B)**

5 **71 Subparagraphs 432(1A)(c)(ii), (iii) and (iv)**

6 **72 Paragraphs 434B(5)(a), (b) and (c)**

7 **73 Subsection 434C(1)**

8 **74 Subsections 441B(1) and (2)**

9 Note: The heading to section 441B is altered by omitting “**charge**” and substituting “**security**  
10 **interest**”.

11 **75 Paragraph 441B(3)(a)**

12 **76 Paragraphs 441D(1)(a) and (b)**

13 **77 Subsection 441D(2)**

14 **78 Subsection 449C(2) (subparagraph (b)(iii) of the definition**  
15 **of *appointer*)**

16 **79 Paragraphs 450A(3)(a) and (b)**

17 **80 Subsection 534(3)**

18 **81 Subsection 588E(1) (paragraph (c) of the definition of**  
19 ***recovery proceeding*)**

20 **82 Paragraph 593(5)(b)**

21 **83 Subsection 593(7)**

22 **84 Paragraph 596(1)(b)**

23 **85 Paragraph 981E(2)(b)**

1

2 **Part 4—Floating charges**

3 **86 Paragraph 124(1)(f)**

4 Omit “floating charge”, substitute “circulating security interest”.

5 **87 Paragraph 433(2)(a)**

6 Omit “floating charge” (wherever occurring), substitute “circulating  
7 security interest”.

8 Note: The heading to section 433 is replaced by the heading “**Property subject to circulating**  
9 **security interest—payment of certain debts to have priority**”.

10 **88 Section 442B**

11 Repeal the section, substitute:

12 **442B Dealing with property subject to circulating security interests**

13 *Scope*

14 (1) This section applies if a security interest in property (the *secured*  
15 *property*) of a company under administration was a circulating  
16 security interest when the interest arose, but has stopped being a  
17 circulating security interest because:

18 (a) in the case of a PPSA security interest—the property has  
19 stopped being a circulating asset (within the meaning of the  
20 *Personal Property Securities Act 2009*); or

21 (b) in the case of a security interest that was a floating charge  
22 when it arose—the floating charge has since become a fixed  
23 or specific charge.

24 Note 1: A *circulating security interest* can be either a PPSA security interest  
25 to which a circulating asset has attached, or a floating charge, in the  
26 circumstances set out in section 51C.

27 Note 2: For the meaning of *circulating asset*, see section 340 of the *Personal*  
28 *Property Securities Act 2009*.

29 *Security interest in circulating asset*

30 (2) Subject to sections 442C and 442D, in the case of a PPSA security  
31 interest, the administrator may deal with any of the secured

1 property in any way the company could deal with the secured  
2 property immediately before it stopped being a circulating asset.

3 *Floating charge*

- 4 (3) Subject to sections 442C and 442D, in the case of a security  
5 interest that was a floating charge when it arose, the administrator  
6 may deal with any of the secured property as if the security interest  
7 were still a floating charge.

8 Note: Section 442C deals with the disposal of encumbered property by an  
9 administrator. Section 442D makes the administrator's functions and  
10 powers subject to those of a secured party, receiver or controller.

11 **89 Section 443E**

12 Repeal the section, substitute:

13 **443E Right of indemnity has priority over other debts**

14 *General rule*

- 15 (1) Subject to section 556, a right of indemnity under section 443D has  
16 priority over:  
17 (a) all the company's unsecured debts; and  
18 (b) any debts of the company secured by a PPSA security  
19 interest in property of the company if, when the  
20 administration of the company begins, the security interest is  
21 vested in the company because of the operation of any of the  
22 following provisions:  
23 (i) section 267 or 267A of the *Personal Property Securities*  
24 *Act 2009* (property subject to unperfected security  
25 interests);  
26 (ii) section 588FL of this Act (collateral not registered  
27 within time); and  
28 (c) subject otherwise to this section—debts of the company  
29 secured by a circulating security interest in property of the  
30 company.

31 *Debts secured by circulating security interests—receiver appointed*  
32 *before the beginning of administration etc.*

- 33 (2) A right of indemnity under section 443D does not have priority  
34 over debts of the company under administration that are secured by
-

- 1 a circulating security interest in property of the company, except so  
2 far as the secured party agrees, if:
- 3 (a) before the beginning of the administration, the secured party:
- 4 (i) appointed a receiver of property of the company under a  
5 power contained in an instrument relating to the security  
6 interest; or
- 7 (ii) obtained an order for the appointment of a receiver of  
8 property of the company for the purpose of enforcing  
9 the security interest; or
- 10 (iii) entered into possession, or assumed control, of property  
11 of the company for that purpose; or
- 12 (iv) appointed a person so to enter into possession or assume  
13 control (whether as agent for the secured party or for the  
14 company); and
- 15 (b) the receiver or person is still in office, or the secured party is  
16 still in possession or control of the property.

17 *Debts secured by circulating security interests—receiver appointed*  
18 *during administration etc.*

- 19 (3) Subsection (4) applies if:
- 20 (a) debts of a company under administration are secured by a  
21 circulating security interest in property of the company; and
- 22 (b) during the administration, the secured party, consistently with  
23 this Part:
- 24 (i) appoints a receiver of property of the company under a  
25 power contained in an instrument relating to the security  
26 interest; or
- 27 (ii) obtains an order for the appointment of a receiver of  
28 property of the company for the purpose of enforcing  
29 the security interest; or
- 30 (iii) enters into possession, or assumes control, of property  
31 of the company for that purpose; or
- 32 (iv) appoints a person so to enter into possession or assume  
33 control (whether as agent for the secured party or for the  
34 company).
- 35 (4) A right of indemnity of the administrator under section 443D has  
36 priority over those debts only in so far as it is a right of indemnity  
37 for debts incurred, or remuneration accruing, before written notice

1 of the appointment, or of the entering into possession or assuming  
2 of control, as the case may be, was given to the administrator.

3 *Debts secured by circulating security interests—priority over right*  
4 *of indemnity in relation to repayment of money borrowed etc.*

- 5 (5) A right of indemnity under section 443D does not have priority  
6 over debts of the company under administration that are secured by  
7 a circulating security interest in property of the company, except so  
8 far as the secured party consents in writing, to the extent that the  
9 right of indemnity relates to debts incurred for:  
10 (a) the repayment of money borrowed; or  
11 (b) interest in respect of money borrowed; or  
12 (c) borrowing costs.

13 **90 Paragraph 459C(2)(c)**

14 Omit “floating charge on”, substitute “circulating security interest”.

15 **91 Paragraph 459C(2)(d)**

16 Omit “charge”, substitute “security interest”.

17 **92 Paragraph 459C(2)(f)**

18 Omit “chargee”, substitute “secured party”.

19 **93 Section 561**

20 Omit “chargee in relation to a floating charge”, substitute “secured  
21 party in relation to a circulating security interest”.

22 Note: The heading to section 561 is altered by omitting “**floating charges**” and substituting  
23 “**circulating security interests**”.

24 **94 Section 561**

25 Omit “that charge”, substitute “the circulating security interest”.

26 **95 Paragraph 588FJ(1)(b)**

27 Omit “floating charge on”, substitute “circulating security interest in”.

28 Note: The heading to section 588FJ is altered by omitting “**Floating charge**” and substituting  
29 “**Circulating security interest**”.

30 **96 Subsection 588FJ(2)**

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1 Omit “charge” (first occurring), substitute “circulating security  
2 interest”.

3 **97 Paragraph 588FJ(2)(a)**

4 Omit “charge”, substitute “circulating security interest”.

5 **98 Paragraphs 588FJ(4)(a) and (b)**

6 Omit “chargee”, substitute “secured party”.

7 **99 Subsection 588FJ(6)**

8 Omit “charge” (first occurring), substitute “circulating security  
9 interest”.

10 **100 Subsection 588FJ(6)**

11 Omit “chargee”, substitute “secured party”.

12 **101 Subsection 588FJ(6) (definition of *realisation costs*)**

13 Omit “charge”, substitute “security interest”.

1

2 **Part 5—Security**

3 **102 Paragraph 12.5 of the small business guide in Part 1.5**

4 Omit “security over”, substitute “security interests in”.

5 **103 Paragraph 124(1)(e)**

6 Repeal the paragraph, substitute:

7 (e) grant a security interest in uncalled capital;

8 **104 Paragraph 283BF(4)(g)**

9 Omit “security or the interests”, substitute “security interests or other  
10 interests”.

11 **105 Subsections 444D(2) and 444F(2)**

12 Omit “security”, substitute “security interest”.

13 **106 Paragraph 444F(3)(a)**

14 Omit “security”, substitute “security interest”.

15 **107 Section 471C**

16 Omit “security”, substitute “security interest”.

17 **108 Subsection 510(2)**

18 Omit “security or liens”, substitute “any security interests”.

19 **109 Subsection 510(3)**

20 Omit “security or lien”, substitute “security interest”.

21 **110 Subsections 554E(3) to (6)**

22 Omit “security”, substitute “security interest”.

23 **111 Subsections 554F(1), (2), (3) and (5)**

24 Omit “security” (wherever occurring), substitute “security interest”.

25 Note: The heading to section 554F is altered by omitting “**security**” and substituting “**security**  
26 **interest**”.

27 **112 Subsection 554G(1)**

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1 Omit “security”, substitute “security interest”.

2 **113 Paragraphs 554G(2)(a) and (b)**

3 Omit “security”, substitute “security interest”.

4 **114 Section 554J**

5 Omit “security” (wherever occurring), substitute “security interest”.

6 Note: The heading to section 554J is altered by omitting “security” and substituting “security  
7 interest”.

8 **115 Paragraphs 571(6)(b) and (7)(b) and 579E(6)(b) and (7)(b)**

9 Omit “security”, substitute “security interest”.



1

2 **Part 6—Mortgages and mortgagees**

3 **116 Paragraph 8 of the small business guide in Part 1.5**

4 Omit “mortgage or charge over”, substitute “security interest in”.

5 **117 Paragraph 448C(1)(d)**

6 Omit “mortgagee of”, substitute “secured party in relation to”.

7 **118 Paragraph 467(2)(a)**

8 Repeal the paragraph, substitute:

- 9 (a) the total amount secured by one or more security interests in  
10 the property of the company is equal to or greater than the  
11 value of the property subject to the interest (or interests); or

12 **119 Subsection 505(2)**

13 Omit “A conveyance, assignment, transfer, mortgage, charge or other  
14 disposition of a company’s property made by a liquidator”, substitute  
15 “A disposition of a company’s property by a liquidator (including a  
16 disposition by way of conveyance, assignment, transfer or an instrument  
17 giving rise to a security interest)”.

18 **120 Subparagraph 532(2)(c)(ii)**

19 Omit “mortgagee of”, substitute “secured party in relation to”.

20 **121 Subsection 609(1)**

21 Omit “mortgage, charge or other security”, substitute “security  
22 interest”.

23 **122 Paragraphs 609(1)(a) and (b)**

24 Omit “mortgage, charge or security”, substitute “security interest”.

25 **123 Section 611 (table item 6)**

26 Omit “a mortgage, charge or other security”, substitute “an instrument  
27 or agreement creating or giving rise to a security interest”.

28 **124 Section 611 (paragraph (b) of table item 6)**

29 Omit “security”, substitute “security interest”.

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1

2 **Part 7—Liens and pledges**

3 **125 Paragraph 440JA(c)**

4 Omit “lien or pledge”, substitute “possessory security interest”.

5 **126 Paragraph 440JA(d)**

6 Omit “holder of the lien or pledge”, substitute “secured party”.

7 **127 Paragraph 442C(1)(a)**

8 Omit “charge, lien or pledge”, substitute “security interest”.

9 **128 Paragraph 442C(2)(b)**

10 Omit “chargee, lienee, pledgee”, substitute “secured party”.

11 **129 Subsection 442C(3)**

12 Omit “chargee, lienee, pledgee”, substitute “secured party”.

13 **130 Paragraph 442C(5)(a)**

14 Omit “chargee, lienee or pledgee, as the case may be”, substitute  
15 “secured party”.

16 **131 Paragraph 442C(7)**

17 Omit “charge, lien or pledge” (wherever occurring), substitute “security  
18 interest”.

19 **132 Paragraph 442CA(1)(b)**

20 Omit “lien or pledge”, substitute “possessory security interest”.

21 Note: The heading to section 442CA is altered by omitting “**lien or pledge**” and substituting  
22 “**possessory security interest**”.

23 **133 Subsection 442CA(1)**

24 Omit “holder of the lien or pledge”, substitute “secured party”.

25 **134 Paragraph 442CA(2)(b)**

26 Omit “lien or pledge”, substitute “possessory security interest”.

27 **135 Subsection 442CB(1)**

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1 Repeal the subsection, substitute:

2 (1) If the administrator of a company is entitled to dispose of property  
3 of the company by way of sale, and the property is subject to a  
4 security interest, the administrator must act reasonably in  
5 exercising a power of sale in respect of the property.

6 Note: A company's property includes its PPSA retention of title property  
7 (see the definition of *property* applying to Part 5.3A, in section 435B).

8 Note: The heading to section 442CB is altered by omitting "**lien or pledge**" and substituting  
9 "**security interest**".

### 10 **136 Paragraph 442CC(1)(b)**

11 Omit "lien or pledge", substitute "possessory security interest".

12 Note: The heading to subsection 442CC(1) is altered by omitting "*lien or pledge*" and  
13 substituting "*possessory security interest*".

### 14 **137 Subparagraphs 442CC(1)(d)(i) and (ii) and (e)(i) and (ii)**

15 Repeal the subparagraphs, substitute:

- 16 (i) the possessory security interest; and  
17 (ii) any other security interest in the property, where the  
18 debt secured by the security interest has a priority that is  
19 equal to or higher than the priority of the debt secured  
20 by the possessory security interest;

### 21 **138 Subsection 443F(2)**

22 Omit "a charge", substitute "another security interest".

### 23 **139 Subsection 443F(2)**

24 Omit "the charge", substitute "the other security interest".

1

2

## **Part 8—PPSA retention of title property**

3

### **140 Section 9 (definition of *decision period*)**

4

Omit “in relation to a chargee in relation to a charge on property”,  
substitute “for a secured party in relation to a security interest in  
property (including PPSA retention of title property)”.

5

6

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### **141 Section 9 (paragraph (a) of the definition of *decision period*)**

8

Omit “chargee”, substitute “secured party”.

9

10

### **142 Section 9 (paragraph (e) of the definition of *enforce*)**

11

Repeal the paragraph, substitute:

12

(e) exercise, in relation to property including PPSA retention of  
title property, as the secured party or as a receiver or person  
so appointed, a right, power or remedy existing because of  
the security interest, arising:

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(i) under an agreement or instrument relating to the  
security interest; or

(ii) in the case of a PPSA security interest—under an  
agreement or instrument relating to a transaction or  
dealing giving rise to the security interest; or

(iii) under a written or unwritten law; or

(iv) in any other way.

23

### **143 Section 9 (paragraph (b) of the definition of *transaction*)**

24

Repeal the paragraph, substitute:

25

(b) a security interest granted by the body in its property  
(including a security interest in the body’s PPSA retention of  
title property); and

26

27

28

### **144 Paragraph 21(3)(f)**

29

Omit “charge on property”, substitute “security interest in property,  
including PPSA retention of title property of the body”.

30

31

### **145 Subparagraph 60(1)(a)(vii)**

32

Repeal the subparagraph, substitute:

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- 1 (vii) a person who is entitled to enforce a security interest in  
2 the whole, or substantially the whole, of the company's  
3 property (including any PPSA retention of title  
4 property); and

5 **146 Section 283BG**

6 Repeal the section, substitute:

7 **283BG Exceptions to borrower's duty to report to trustee and ASIC**

8 Section 283BF does not apply in respect of:

9 (a) a borrower, while:

10 (i) it is under external administration; or

11 (ii) a receiver, or a receiver and manager, of property of the  
12 borrower has been appointed and has not ceased to act  
13 under that appointment; or

14 (b) a security interest in PPSA retention of title property.

15 **147 Section 283CD**

16 Repeal the section, substitute:

17 **283CD Exceptions to guarantor's duty to inform trustee**

18 Section 283CC does not apply in respect of:

19 (a) the guarantor, while:

20 (i) it is under external administration; or

21 (ii) a receiver, or a receiver and manager, of property of the  
22 guarantor has been appointed and has not ceased to act  
23 under that appointment; or

24 (b) a security interest in PPSA retention of title property.

25 **148 Paragraph 411(7)(a)**

26 Repeal the paragraph, substitute:

27 (a) is a secured party in relation to any property (including PPSA  
28 retention of title property) of the body; or

29 **149 Paragraph 411(7)(c)**

30 Omit "mortgagee of property of the body", substitute "secured party in  
31 relation to any property (including PPSA retention of title property) of  
32 the body".

---

1 **150 Paragraphs 418(1)(a) and (c)**

2 Omit “mortgagee of property of the corporation”, substitute “secured  
3 party in relation to any property (including PPSA retention of title  
4 property) of the corporation”.

5 **151 Subsection 419(1)**

6 After “leased”, insert “(including a lease of goods that gives rise to a  
7 PPSA security interest in the goods)”.

8 **152 At the end of subsection 419A(1)**

9 Add:  
10 ; and (c) the third party property is not PPSA retention of title property  
11 of the corporation.

12 **153 At the end of section 420**

13 Add:  
14 (5) In this section:  
15 *lease* includes a lease of goods that gives rise to a PPSA security  
16 interest in the goods.

17 **154 Section 435B**

18 Insert:  
19 *property* of a company includes any PPSA retention of title  
20 property of the company.  
21 Note: See sections 9 (definition of *property*) and 51F (PPSA retention of  
22 title property). An extended definition of *property* applies in  
23 subsection 444E(3) (see subsection 444E(4)).

24 **155 At the end of section 437A**

25 Add:  
26 Note: A PPSA security interest in property of a company that is unperfected  
27 (within the meaning of the *Personal Property Securities Act 2009*)  
28 immediately before an administrator of the company is appointed  
29 vests in the company at the time of appointment, subject to certain  
30 exceptions (see section 267 of that Act).

31 **156 Sections 440B to 440C**

32 Repeal the sections, substitute:

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1       **440B Restrictions on exercise of third party property rights**

2                               *General rule*

3               (1) During the administration of a company, the restrictions set out in  
4               the table at the end of this section apply in relation to the exercise  
5               of the rights of a person (the **third party**) in property of the  
6               company, or other property used or occupied by, or in the  
7               possession of, the company, as set out in the table.

8               Note:        The property of the company includes any PPSA retention of title  
9               property of the company (see section 435B).

10                              *Exception—consent of administrator or leave of court*

11              (2) The restrictions set out in the table at the end of this section do not  
12              apply in relation to the exercise of a third party’s rights in property  
13              if the rights are exercised:

- 14                      (a) with the administrator’s written consent; or  
15                      (b) with the leave of the Court.

16                              *Possessory security interests—continued possession*

17              (3) If a company’s property is subject to a possessory security interest,  
18              and the property is in the lawful possession of the secured party,  
19              the secured party may continue to possess the property during the  
20              administration of the company.

21

**Restrictions on exercise of third party rights**

<b>Item</b>	<b>If the third party is ...</b>	<b>then ...</b>
1	a secured party in relation to property of the company, and is not otherwise covered by this table	the third party cannot enforce the security interest.
2	a secured party in relation to a possessory security interest in the property of the company	the third party cannot sell the property, or otherwise enforce the security interest.
3	a lessor of property used or occupied by, or in the possession of, the company, including a secured party (a <b>PPSA secured party</b> ) in relation to a PPSA security interest in goods arising out of a lease of the goods	the following restrictions apply: (a) distress for rent must not be carried out against the property; (b) the third party cannot take possession of the property or otherwise recover it;

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**Restrictions on exercise of third party rights**

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<b>Item</b>	<b>If the third party is ...</b>	<b>then ...</b>
		(c) if the third party is a PPSA secured party—the third party cannot otherwise enforce the security interest.
4	an owner (other than a lessor) of property used or occupied by, or in the possession of, the company, including a secured party (a <i>PPSA secured party</i> ) in relation to a PPSA security interest in the property	the following restrictions apply: (a) the third party cannot take possession of the property or otherwise recover it; (b) if the third party is a PPSA secured party—the third party cannot otherwise enforce the security interest.

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1 **157 Subsections 441F(2) and 441G(1)**

2 Omit “440C”, substitute “440B”.

3 **158 Paragraph 442C(1)(b)**

4 After “property”, insert “(other than PPSA retention of title property)”.

5 **159 At the end of subsection 442C(1)**

6 Add:

7 Note: PPSA retention of title property is subject to a PPSA security interest,  
8 and so is covered by paragraph (a) (see definition of *PPSA retention*  
9 *of title property* in section 51F).

10 **160 Paragraph 442C(8)(c)**

11 Repeal the paragraph, substitute:

12 (c) either:

13 (i) the property is PPSA retention of title property; or

14 (ii) the property is subject to a retention of title clause under  
15 a contract; and

16 **161 After subsection 442CC(1)**

17 Insert:



1 *PPSA retention of title property*

2 (1A) If the administrator of a company disposes of PPSA retention of  
3 title property of the company by way of sale, then the administrator  
4 must apply the net proceeds of the sale in the same way as a  
5 secured party is required, under section 140 of the *Personal*  
6 *Property Securities Act 2009*, to apply an amount, personal  
7 property or proceeds of collateral received by the secured party as  
8 a result of enforcing a security interest in the property.

9 Note: PPSA retention of title property does not include property that is  
10 subject to a retention of title clause (see section 9, definitions of *PPSA*  
11 *retention of title property* and *retention of title clause*).  
12 Subsection (2) deals with property that is subject to a retention of title  
13 clause.

14 **162 At the end of subsection 442CC(2)**

15 Add:

16 Note: Property that is subject to a retention of title clause does not include  
17 PPSA retention of title property (see section 9, definitions of *PPSA*  
18 *retention of title property* and *retention of title clause*).  
19 Subsection (1A) deals with PPSA retention of title property.

20 **163 Paragraph 443A(1)(c)**

21 After “occupied”, insert “, including property consisting of goods that is  
22 subject to a lease that gives rise to a PPSA security interest in the  
23 goods”.

24 **164 At the end of subsection 443B(1)**

25 Add “, including property consisting of goods that is subject to a lease  
26 that gives rise to a PPSA security interest in the goods”.

27 Note 1: The following heading to subsection 443B(1) is inserted “*Scope*”.

28 Note 2: The following heading to subsection 443B(2) is inserted “*General rule*”.

29 **165 After subsection 443B(3)**

30 Insert:

31 (3A) Subsection (3) does not apply to PPSA retention of title property.

32 Note: The following heading to subsection 443B(7) is inserted “*Restrictions on general rule*”.

33 **166 Section 443D**

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1           After “property”, insert “(other than any PPSA retention of title  
2           property subject to a PPSA security interest that is perfected within the  
3           meaning of the *Personal Property Securities Act 2009*)”.

4           **167 After subsection 444D(3)**

5           Insert:

6           (3A) Subsection (3) does not apply in relation to an owner or lessor of  
7           PPSA retention of title property of the company.

8           Note:        Subsection (2) applies in relation to an owner or lessor of PPSA  
9                       retention of title property of the company. Such an owner or lessor is a  
10                      secured creditor of the company (see section 51F (meaning of *PPSA*  
11                      *retention of title property*)).

12           **168 Subsection 444E(4) (definition of *property*)**

13           Repeal the definition, substitute:

14                       *property* of a company includes:

- 15                       (a) any PPSA retention of title property of the company; and  
16                       (b) any other property used or occupied by, or in the possession  
17                       of, the company.

18           Note:        See sections 9 (definition of *property*) and 51F (PPSA retention of  
19                       title property).

20           **169 After subsection 444F(4)**

21           Insert:

22           (4A) Subsection (4) does not apply in relation to PPSA retention of title  
23           property of the company.

24           **170 Subsection 446C(8)**

25           After “property of the company”, insert “(other than its PPSA retention  
26           of title property)”.

27           **171 Before Division 1 of Part 5.4B**

28           Insert:

1 **Division 1A—Preliminary**

2 **465 Definitions**

3 In this Part:

4 **property** of a company includes PPSA retention of title property, if  
5 the security interest in the property is vested in the company  
6 because of the operation of any of the following provisions:

- 7 (a) section 267 or 267A of the *Personal Property Securities Act*  
8 *2009* (property subject to unperfected security interests);  
9 (b) section 588FL of this Act (collateral not registered within  
10 time).

11 Note: See sections 9 (definition of **property**) and 51F (PPSA retention of  
12 title property).

13 **172 Subsection 474(1)**

14 Repeal the subsection, substitute:

15 (1) If a company is being wound up in insolvency or by the Court, or a  
16 provisional liquidator of a company has been appointed:

17 (a) in a case in which a liquidator or provisional liquidator has  
18 been appointed—the liquidator or provisional liquidator must  
19 take into his or her custody, or under his or her control, all  
20 the property which is, or which appears to be, property of the  
21 company; or

22 (b) in a case in which there is no liquidator—all the property of  
23 the company is to be in the custody of the Court.

24 Note: Section 465 extends the meaning of the **property** of the company to  
25 include PPSA retention of title property, if the security interest in the  
26 property has vested in the company in certain situations.

27 **173 Subsection 483(1)**

28 After “property”, insert “of the company”.

29 **174 Before Division 1 of Part 5.5**

30 Insert:

1 **Division 1A—Preliminary**

2 **489F Definitions**

3 In this Part:

4 *property* of a company includes PPSA retention of title property, if  
5 the security interest in the property is vested in the company  
6 because of the operation of any of the following provisions:

- 7 (a) section 267 or 267A of the *Personal Property Securities Act*  
8 *2009* (property subject to unperfected security interests);  
9 (b) section 588FL of this Act (collateral not registered within  
10 time).

11 Note: See sections 9 (definition of *property*) and 51F (PPSA retention of  
12 title property).

13 **175 Subsection 500(3)**

14 After “property”, insert “of the company”.

15 **176 At the end of Division 1 of Part 5.6**

16 Add:

17 **513AA Definitions**

18 In this Part:

19 *property* of a company includes PPSA retention of title property, if  
20 the security interest in the property is vested in the company  
21 because of the operation of any of the following provisions:

- 22 (a) section 267 or 267A of the *Personal Property Securities Act*  
23 *2009* (property subject to unperfected security interests);  
24 (b) section 588FL of this Act (collateral not registered within  
25 time).

26 Note: See sections 9 (definition of *property*) and 51F (PPSA retention of  
27 title property).

28 **177 Subsection 568(1AA)**

29 Repeal the subsection, substitute:

30 (1AA) This section does not apply to:

- 31 (a) an agreement by the company to buy back its own shares; or
-

1 (b) PPSA retention of title property that is taken to form part of  
2 the property of the company because of the definition of  
3 ***property*** in section 513AA.

4 Note: The definition of ***property*** in section 513AA includes PPSA retention  
5 of title property of the company, if the security interest in the property  
6 has vested in the company in certain situations.

7 **178 At the end of section 588**

8 Add:

9 (5) In this section:

10 ***property*** of a body includes PPSA retention of title property, if the  
11 security interest in the property is vested in the body because of the  
12 operation of any of the following provisions:

13 (a) section 267 or 267A of the *Personal Property Securities Act*  
14 2009 (property subject to unperfected security interests);

15 (b) section 588FL of this Act (collateral not registered within  
16 time).

17 Note: See sections 9 (definition of ***property***) and 51F (PPSA retention of  
18 title property).

19 **179 Before section 588D**

20 Insert:

21 **588C Definitions**

22 In this Part:

23 ***property*** of a company includes PPSA retention of title property, if  
24 the security interest in the property is vested in the company  
25 because of the operation of any of the following provisions:

26 (a) section 267 or 267A of the *Personal Property Securities Act*  
27 2009 (property subject to unperfected security interests);

28 (b) section 588FL of this Act (collateral not registered within  
29 time).

30 Note: See sections 9 (definition of ***property***) and 51F (PPSA retention of  
31 title property).

32 **180 Subsection 589(5)**

33 Insert:

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1

2 **Part 9—Special requirements for security interests**

3 **183 After Division 2 of Part 5.7B**

4 Insert:

5 **Division 2A—Vesting of PPSA security interests if not**  
6 **continuously perfected**

7 **588FK Interpretation and application**

8 (1) A word or expression used in this Division has the same meaning  
9 as in the *Personal Property Securities Act 2009*.

10 (2) Subsection (1) applies despite any other provision of this Act  
11 (subject to subsection (4)).

12 (3) For the purposes of this Division, whether or not a person has  
13 acquired actual or constructive knowledge of a circumstance is to  
14 be determined in accordance with sections 297 to 300 of the  
15 *Personal Property Securities Act 2009*.

16 (4) In this Division:

17 ***PPSA security interest*** has the meaning given by section 51.

18 Note: As a result of this section, in this Division, ***company*** has the same  
19 meaning as in the *Personal Property Securities Act 2009*. At the time  
20 this section was enacted, section 10 of that Act provided that ***company***  
21 means:

- 22 (a) a company registered under Part 2A.2 or Part 5B.1 of the  
23 *Corporations Act 2001*; or  
24 (b) a registrable body that is registered under Division 1 or 2 of  
25 Part 5B.2 of that Act.

26 **588FL Vesting of PPSA security interests if collateral not registered**  
27 **within time**

28 *Scope*

29 (1) This section applies if:

- 30 (a) any of the following events occurs:

- 1 (i) an order is made, or a resolution is passed, for the  
2 winding up of a company;  
3 (ii) an administrator of a company is appointed under  
4 section 436A, 436B or 436C;  
5 (iii) a company executes a deed of company arrangement  
6 under Part 5.3A; and  
7 (b) a PPSA security interest granted by the company in collateral  
8 is covered by subsection (2) or (3).

9 Note: A security interest granted by a company in relation to which  
10 paragraph (a) applies that is unperfected at the critical time may vest  
11 in the company under section 267 or 267A of the *Personal Property*  
12 *Securities Act 2009*.

13 *Australian law governs security interest*

- 14 (2) This subsection covers a PPSA security interest if:  
15 (a) at the critical time, or, if the security interest arises after the  
16 critical time, when the security interest arises:  
17 (i) the security interest is enforceable against third parties  
18 under the law of Australia; and  
19 (ii) the security interest is perfected by registration, and by  
20 no other means; and  
21 (b) the registration time for the collateral is after the latest of the  
22 following times:  
23 (i) 6 months before the critical time;  
24 (ii) the time that is the end of 20 business days after the  
25 security agreement that gave rise to the security interest  
26 came into force, or the time that is the critical time,  
27 whichever time is earlier;  
28 (iii) if the security agreement giving rise to the security  
29 interest came into force under the law of a foreign  
30 jurisdiction, but the security interest first became  
31 enforceable against third parties under the law of  
32 Australia after the time that is 6 months before the  
33 critical time—the time that is the end of 56 days after  
34 the security interest became so enforceable, or the time  
35 that is the critical time, whichever time is earlier;  
36 (iv) a later time ordered by the Court under section 588FM.

37 Note 1: For the meaning of *critical time*, see subsection (7).



- 1                    Note 2:    For when a security interest is enforceable against third parties under  
2                    the law of Australia, see section 20 of the *Personal Property*  
3                    *Securities Act 2009*.
- 4                    Note 3:    A security interest may become perfected at a particular time by a  
5                    registration that is made earlier than that time, if the security interest  
6                    attaches to the collateral at the later time (after registration). See  
7                    section 21 of the *Personal Property Securities Act 2009*.
- 8                    Note 4:    The *Personal Property Securities Act 2009* provides for perfection by  
9                    registration, possession or control, or by force of that Act (see  
10                  section 21 of that Act).

11                    *Foreign law governs security interest*

- 12                  (3) This subsection covers a PPSA security interest if:
- 13                    (a) at the critical time, or, if the security interest arises after the  
14                    critical time, when the security interest arises, the security  
15                    interest is enforceable against third parties under the law of a  
16                    foreign jurisdiction (the *relevant foreign law*); and
- 17                    (b) the relevant foreign law provides for the public registration or  
18                    recording of the security interest, or of a notice relating to the  
19                    security interest; and
- 20                    (c) the security interest or notice has not been so registered or  
21                    recorded, in accordance with the relevant foreign law, before  
22                    the latest of the following times:
- 23                            (i) 6 months before the critical time;
- 24                            (ii) the time that is the end of 20 business days after the  
25                            security agreement that gave rise to the security interest  
26                            came into force, or the time that is the critical time,  
27                            whichever time is earlier;
- 28                            (iii) if the security agreement giving rise to the security  
29                            interest came into force under the law of a jurisdiction  
30                            other than the relevant foreign law, but the security  
31                            interest first became enforceable against third parties  
32                            under the relevant foreign law after the time that is 6  
33                            months before the critical time—the time that is the end  
34                            of 56 days after the security interest became so  
35                            enforceable, or the time that is the critical time,  
36                            whichever time is earlier;
- 37                            (iv) a later time ordered by the Court under section 588FM.

38                  Note:        For the meaning of *critical time*, see subsection (7).

*Vesting of security interest in company*

- 1
- 2 (4) The PPSA security interest vests in the company at the following
- 3 time, unless the security interest is unaffected by this section
- 4 because of section 588FN:
- 5 (a) if the security interest first becomes enforceable against third
- 6 parties at or before the critical time—immediately before the
- 7 event mentioned in paragraph (1)(a);
- 8 (b) if the security interest first becomes enforceable against third
- 9 parties after the critical time—at the time it first becomes so
- 10 enforceable.

11 Note: For the meaning of *critical time*, see subsection (7).

12 *Property acquired for new value without knowledge*

- 13 (5) Subsection (4) does not affect the title of a person to personal
- 14 property if:
- 15 (a) the person acquires the personal property for new value from
- 16 a secured party, from a person on behalf of a secured party,
- 17 or from a receiver in the exercise of powers:
- 18 (i) conferred by the security agreement providing for the
- 19 security interest; or
- 20 (ii) implied by the general law; and
- 21 (b) at the time the person acquires the property, the person has
- 22 no actual or constructive knowledge of the following (as the
- 23 case requires):
- 24 (i) the filing of an application for an order to wind up the
- 25 company;
- 26 (ii) the passing of a resolution to wind up the company;
- 27 (iii) the appointment of an administrator of the company
- 28 under section 436A, 436B or 436C;
- 29 (iv) the execution of a deed of company arrangement by the
- 30 company under Part 5.3A.

31 Note: For what is actual or constructive knowledge, see sections 297

32 and 298 of the *Personal Property Securities Act 2009*.

- 33 (6) In a proceeding in Australia under this Act, the onus of proving the
- 34 fact that a person acquires personal property without actual or
- 35 constructive knowledge as mentioned in paragraph (5)(b) lies with
- 36 the person asserting that fact.

1 (7) In this section:

2 *critical time*, in relation to a company, means:

- 3 (a) if the company is being wound up—when, on a day, the  
4 event occurs by virtue of which the winding up is taken to  
5 have begun or commenced on that day under section 513A or  
6 513B; or  
7 (b) in any other case—when, on a day, the event occurs by virtue  
8 of which the day is the section 513C day for the company.

9 **588FM Extension of time for registration**

10 (1) A company, or any person interested, may apply to the Court  
11 (within the meaning of section 58AA) for an order fixing a later  
12 time for the purposes of subparagraph 588FL(2)(b)(iv) or  
13 (3)(c)(iv).

14 Note: Paragraphs 588FL(2)(b) and (3)(c) fix times within which certain  
15 events must take place (for example, registration under the *Personal*  
16 *Property Securities Act 2009*), failing which a PPSA security interest  
17 may vest in a company granting the security interest. The paragraphs  
18 only apply if an insolvency-related event occurs in relation to the  
19 company under subsection 588FL(1).

20 (2) On an application under this section, the Court may make the order  
21 sought if it is satisfied that:

- 22 (a) the failure to register the collateral earlier:  
23 (i) was accidental or due to inadvertence or some other  
24 sufficient cause; or  
25 (ii) is not of such a nature as to prejudice the position of  
26 creditors or shareholders; or  
27 (b) on other grounds, it is just and equitable to grant relief.

28 (3) The Court may make the order sought on any terms and conditions  
29 that seem just and expedient to the Court.

30 **588FN PPSA security interests unaffected by section 588FL**

31 *PPSA security interests arising under certain transactions*

32 (1) Subsection 588FL(4) (vesting of security interests in company)  
33 does not apply to a PPSA security interest provided for by any of  
34 the following transactions, if the interest does not secure the  
35 payment or performance of an obligation:

---

- 1 (a) a transfer of an account or chattel paper;  
2 (b) a PPS lease, if paragraph (e) (serial numbered goods) of the  
3 definition of *PPS lease* in subsection 13(1) of the *Personal*  
4 *Property Securities Act 2009* applies to the lease, and none of  
5 paragraphs (a) to (d) of that definition applies to the lease;  
6 (c) a commercial consignment.

7 Example: An example of a PPSA security interest mentioned in paragraph (b) is  
8 a PPS lease of goods that does not secure the payment or performance  
9 of an obligation, if:

- 10 (a) the goods leased may or must be described by serial number in  
11 accordance with regulations made for the purposes of the  
12 *Personal Property Securities Act 2009*; and  
13 (b) the lease is for a term of between 90 days and 1 year; and  
14 (c) paragraphs (c) and (d) of the definition of *PPS lease* in  
15 subsection 13(1) of the *Personal Property Securities Act 2009* do  
16 not apply to the lease.

17 *PPSA security interests and subordinated debts*

- 18 (2) Subsection 588FL(4) (vesting of security interests in company)  
19 does not apply to a PPSA security interest in an account if all of the  
20 following conditions are satisfied:  
21 (a) a person (the *obligor*) owes money to another person (the  
22 *senior creditor*);  
23 (b) the obligor also owes money to a third person (the *junior*  
24 *creditor*);  
25 (c) an agreement between the senior creditor and the junior  
26 creditor provides (in substance):  
27 (i) for the postponement or subordination of the obligor's  
28 debt to the junior creditor, to the obligor's debt to the  
29 senior creditor; and  
30 (ii) in the event of the obligor's debt to the junior creditor  
31 being discharged (whether wholly or partly) by the  
32 obligor transferring personal property to the junior  
33 creditor—for the junior creditor to transfer the property,  
34 or proceeds of the property, to the senior creditor to the  
35 value of the amount owed by the obligor to the senior  
36 creditor; and  
37 (iii) in the event that the property or proceeds are not  
38 transferred—for the junior creditor to hold the property  
39 or proceeds on trust for the senior creditor to that value;  
40 and
-

- 1 (iv) in the event of such a trust arising—for a security  
2 interest to be granted by the junior creditor to the senior  
3 creditor over the personal property or proceeds securing  
4 payment of the obligor's debt to the senior creditor;  
5 (d) the security interest is a security interest granted under the  
6 agreement, in the circumstances described in  
7 subparagraph (c)(iv).

8 *Transfer of collateral subject to PPSA security interests*

- 9 (3) Subsection 588FL(4) (vesting of security interests in company)  
10 does not apply to a PPSA security interest covered by subsection  
11 588FL(2) (Australian law governs security interest) if:  
12 (a) before the critical time that applies under section 588FL, the  
13 company acquired, by transfer, the collateral in which the  
14 PPSA security interest is granted; and  
15 (b) the company did not acquire the collateral free of the security  
16 interest; and  
17 (c) the security interest became perfected before the critical time;  
18 and  
19 (d) the security interest was continuously perfected by  
20 registration during a period covered by subsection (4) that  
21 begins before the critical time.  
22 (4) The period covered by this subsection:  
23 (a) begins at whichever of the following times is applicable:  
24 (i) in a case in which the secured party consented to the  
25 transfer—the end of 5 business days after the day of the  
26 transfer;  
27 (ii) in a case in which the secured party otherwise acquires  
28 the actual or constructive knowledge required to perfect  
29 the secured party's interest by registration (or to  
30 re-perfect the interest by an amendment of a  
31 registration)—the end of 5 business days after the day  
32 the secured party acquires the knowledge; and  
33 (b) ends no earlier than at the critical time that applies under  
34 section 588FL.

35 Note: For what is actual or constructive knowledge, see sections 297 and  
36 298 of the *Personal Property Securities Act 2009*.

1 **588FO Certain lessors, bailors and consignors entitled to damages**

2 *Scope*

- 3 (1) This section applies if either of the following PPSA security  
4 interests is vested in a company under section 588FL:  
5 (a) a PPSA security interest of a consignor under a commercial  
6 consignment;  
7 (b) a PPSA security interest of a lessor or bailor under a PPS  
8 lease.

9 *Entitlement to damages and compensation*

- 10 (2) The consignor, lessor or bailor:  
11 (a) is taken to have suffered damage immediately before the  
12 PPSA security interest was vested in the company; and  
13 (b) may recover an amount of compensation from the company  
14 equal to the greater of the following amounts:  
15 (i) the amount determined in accordance with the  
16 consignment, lease or bailment;  
17 (ii) the sum of the market value of the consigned, leased or  
18 bailed property immediately before the critical time that  
19 applies under section 588FL, and the amount of any  
20 other damage or loss resulting from the termination of  
21 the consignment, lease or bailment.

22 Note: The consignor, lessor or bailor may be able to prove the amount of  
23 compensation in proceedings related to the winding up of the  
24 company.

25 **Division 2B—Security interests in favour of company**  
26 **officers etc.**

27 **588FP Security interests in favour of an officer of a company etc.**  
28 **void**

29 *General rule*

- 30 (1) A security interest, and any powers purporting to be conferred by  
31 the instrument under which the security interest is created, are  
32 void, and are taken always to have been void, if:  
33 (a) a company grants the security interest; and
-

- 1 (b) a person covered by subsection (2) is a secured party; and  
2 (c) the secured party purports to take a step to enforce the  
3 security interest, within 6 months after the time (the *relevant*  
4 *time*) the instrument is made, without the leave of the Court  
5 under subsection (4).

6 (2) This subsection covers the following persons:

- 7 (a) a person who is an officer (including a local agent of a  
8 foreign company) of the company at the relevant time;  
9 (b) a person who has been such an officer of the company at any  
10 time within the period of 6 months ending at the relevant  
11 time;  
12 (c) a person associated, in relation to the creation of the security  
13 interest, with a person of a kind mentioned in paragraph (a)  
14 or (b).

15 (3) Without limiting paragraph (1)(c), a secured party takes a step to  
16 enforce a security interest if:

- 17 (a) the secured party appoints a receiver, or a receiver and  
18 manager, under powers conferred by an instrument creating  
19 or evidencing the security interest; or  
20 (b) whether directly or by an agent, the secured party enters into  
21 possession or assumes control of property of a company for  
22 the purposes of enforcing the security interest; or  
23 (c) the secured party seizes the property under section 123 of the  
24 *Personal Property Securities Act 2009* for the purposes of  
25 enforcing the security interest.

26 *Extension of time on application to the Court*

- 27 (4) On application by a secured party, the Court may give leave for a  
28 security interest granted by a company to be enforced by the  
29 secured party within 6 months after the relevant time, if it is  
30 satisfied that:  
31 (a) the company was solvent immediately before the relevant  
32 time; and  
33 (b) in all the circumstances of the case, it is just and equitable for  
34 the Court to do so.

1                                    *Exception for security interests in PPSA retention of title property*

2                                    (5) This section does not apply in relation to a PPSA security interest  
3                                    in PPSA retention of title property.

4                                    *Effect on debts, liabilities, obligations and title*

5                                    (6) A debt, liability or obligation is not affected by the fact that the  
6                                    security interest securing the debt, liability or obligation is void  
7                                    under subsection (1).

8                                    (7) Subsection (1) does not affect the title of a person to property if:  
9                                    (a) the person acquires the property for new value (within the  
10                                    meaning of the *Personal Property Securities Act 2009*) from  
11                                    any of the following persons (the *seller*):  
12                                    (i) a person covered by subsection (2);  
13                                    (ii) another person on behalf of a person covered by  
14                                    subsection (2);  
15                                    (iii) a receiver, or receiver and manager, appointed under  
16                                    powers conferred by an instrument creating or  
17                                    evidencing the security interest; and  
18                                    (b) at the time the person acquires the property, the person has  
19                                    no actual or constructive knowledge that the seller is a  
20                                    secured party or acting on behalf of a secured party.

21                                    (8) Sections 297 to 300 of the *Personal Property Securities Act 2009*  
22                                    apply in relation to the determination of whether or not a person  
23                                    has actual or constructive knowledge as mentioned in  
24                                    paragraph (7)(b) of this section.

25                                    *Onus of proof*

26                                    (9) In a proceeding in Australia under this Act, the onus of proving the  
27                                    fact that a person acquires property without actual or constructive  
28                                    knowledge as mentioned in paragraph (7)(b) lies with the person  
29                                    asserting that fact.



1

2 **Part 10—Transitional provisions**

3 **184 At the end of subsection 1483(9)**

4 Add:

5 Note: Section 440BA was repealed by the *Personal Property Securities*  
6 *(Corporations and Other Amendments) Act 2010*, and was replaced  
7 with a new section 440B incorporating the same substantive rules.  
8 Section 1506 preserves the operation of this subsection.

9 **185 At the end of subsection 1483(10)**

10 Add:

11 Note: Section 440BB was repealed by the *Personal Property Securities*  
12 *(Corporations and Other Amendments) Act 2010*, and was replaced  
13 with a new section 440B incorporating the same substantive rules.  
14 Section 1506 preserves the operation of this subsection.

15 **186 After Part 10.12**

16 Insert:

17 **Part 10.13—Transitional provisions relating to the**  
18 **Personal Property Securities (Corporations**  
19 **and Other Amendments) Act 2009**  
20

21 **1498A Commencement of provisions in Part 10.13**

22 Sections 1499 to 1510, which are inserted by the *Personal*  
23 *Property Securities (Corporations and Other Amendments) Act*  
24 *2010*, are to commence at the registration commencement time  
25 within the meaning of section 306 of the *Personal Property*  
26 *Securities Act 2009*.

27 Note: See item 187 of Schedule 1 to the *Personal Property Securities*  
28 *(Corporations and Other Amendments) Act 2010*. The commencement  
29 of that item is provided for by section 2 of that Act.

30 **187 Section 1498A**

31 Repeal the section, substitute:

1 **1499 Definitions**

2 In this Part:

3 ***amending Act*** means the *Personal Property Securities*  
4 *(Corporations and Other Amendments) Act 2010*.

5 ***commencement time*** means the time item 187 of Schedule 1 to the  
6 amending Act commences.

7 Note: Item 187 of Schedule 1 to the amending Act inserts sections 1499 to  
8 1510. The item commences at the registration commencement time  
9 within the meaning of section 306 of the *Personal Property Securities*  
10 *Act 2009* (as provided by section 2 of the amending Act).

11 ***registrable charge*** means a charge created before the  
12 commencement time that was a registrable charge within the  
13 meaning of section 261 when it was created.

14 **1500 Charges, liens and pledges—continuation of restriction of**  
15 **references**

- 16 (1) This section applies despite the amendment of this Act made by  
17 item 10 of Schedule 1 to the amending Act if a reference to a  
18 charge in a provision of this Act, as in force immediately before  
19 the commencement time, did not include a reference to a lien or a  
20 pledge, or any other particular form of security over the property.

21 Note: Item 10 of Schedule 1 to the amending Act inserts the definition of  
22 ***security interest*** in section 51A.

- 23 (2) In its application in relation to an interest in property created or  
24 arising before the commencement time, or under an agreement or  
25 instrument made before that time, the reference in that provision  
26 (as amended by the amending Act) to a security interest does not  
27 include a reference to a lien or a pledge, or that particular form of  
28 security over the property, as the case may be.

29 **1501 References to security interests etc.**

30 The amendments made by Part 1 (new concepts) of Schedule 1 to  
31 the amending Act apply:

- 32 (a) in relation to charges, liens and pledges, whether created or  
33 arising before, at or after the commencement time; and

- 1 (b) in relation to property owned, occupied or used by, or in the  
2 possession of, a corporation, whether the ownership,  
3 occupation, use or possession started before, at or after the  
4 commencement time.

5 **1502 Repeal of Chapter 2K (charges)—general**

- 6 (1) For the period of 7 years after the commencement time, the  
7 amendments made by Part 2 of Schedule 1 to the amending Act do  
8 not apply in relation to registrable charges.

9 Note: The amendments made by Part 2 of Schedule 1 to the amending Act  
10 repeal Chapter 2K and make consequential amendments to other  
11 provisions.

- 12 (2) This section applies subject to sections 1503 to 1506.

13 **1503 Repeal of Chapter 2K (charges)—cessation of requirements in**  
14 **relation to documents or notices**

15 *Scope*

- 16 (1) This section applies if, immediately before the commencement  
17 time, a document (however described) or notice is required to be  
18 lodged or given by a company or other person under one of the  
19 following provisions:

- 20 (a) paragraph 263(1)(a), (b) or (c);  
21 (b) paragraph 263(2)(b);  
22 (c) subsection 263(3);  
23 (d) paragraph 264(1)(a) or (b);  
24 (e) paragraph 265(6)(b);  
25 (f) paragraph 268(1)(a) or (b);  
26 (g) subsection 268(2);  
27 (h) subsection 269(1) or (2);  
28 (i) subsection 270(4).

29 *Requirements that stop applying*

- 30 (2) Whichever of the following requirements would otherwise apply  
31 stops applying at the commencement time:  
32 (a) the requirement to lodge or give the document or notice;

- 1 (b) the requirement for ASIC to enter or delete particulars in the  
2 Register in relation to the document or notice.

3 **1504 Repeal of Chapter 2K (charges)—application of section 266**

- 4 (1) Subject to this section, section 266 stops applying at the  
5 commencement time in relation to registrable charges.
- 6 (2) However, if a registrable charge is void under section 266  
7 immediately before the commencement time, that section continues  
8 to apply in relation to the charge, subject to subsection (3) of this  
9 section.
- 10 (3) The Court may, on such terms and conditions as seem to the Court  
11 just and expedient, by order, declare a registrable charge not to be,  
12 and never to have been, void under subsection 266(1) or (3), if:  
13 (a) before the commencement time, the charge is void under  
14 subsection 266(1) or (3) (as the case requires); and  
15 (b) either:  
16 (i) an application is made to the Court under subsection  
17 266(4) before the commencement time for an extension  
18 of the relevant period, and as at the commencement  
19 time, the Court had not made a decision in relation to  
20 the application; or  
21 (ii) an application is made to the Court at or after the  
22 commencement time for an order under this subsection;  
23 and  
24 (c) the Court is satisfied of the matters set out in subsection  
25 266(4).

26 **1505 Repeal of Chapter 2K (charges)—cessation of company**  
27 **registration requirements**

28 The requirements in section 271 (company documentation and  
29 registration of charges) stop applying in relation to registrable  
30 charges at the commencement time.

31 **1506 Repeal of Chapter 2K (charges)—priority between registrable**  
32 **charges**

33 At and after the commencement time, registrable charges have the  
34 priority between themselves that they would have had under this

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1 Act as in force immediately before the commencement time,  
2 subject to Chapter 9 (Transitional provisions) of the *Personal*  
3 *Property Securities Act 2009*.

4 **1507 New section 440B (restrictions on third party property rights)**

5 The repeal of sections 440B, 440BA, 440BB and 440C by  
6 item 156 of Schedule 1 to the amending Act does not affect the  
7 operation of subsections 1483(9) and (10) in relation to:

- 8 (a) the administration of a company that began at or after the  
9 start of the day section 440BA commenced, and before the  
10 commencement time within the meaning of section 1499; or  
11 (b) distress for rent that began to be carried out before the day  
12 section 440BB commenced.

13 Note: Sections 440BA and 440BB commenced on 31 December 2007.

14 **1508 New subsection 442CB(1) (administrator's duty of care)**

15 The amendment of this Act by item 135 of Schedule 1 to the  
16 amending Act does not apply in relation to the exercise of a power  
17 of sale if the power began to be exercised before the  
18 commencement time.

19 Note: Item 135 of Schedule 1 to the amending Act repealed subsection  
20 442CB(1) and substituted a new subsection.

21 **1509 New section 588FP (security interests in favour of an officer of**  
22 **a company etc. void)**

23 Section 588FP does not apply in relation to a registrable charge.

24 **1510 Winding up applied for at or after the commencement time**

25 Subject to this Part, the amendments made by the amending Act do  
26 not apply in relation to the winding up of a company under  
27 Part 5.4, Part 5.4A or Part 5.4B, or the subsequent liquidation of  
28 the company, if the application for winding up for the purposes of  
29 those Parts is made before the commencement time.

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## Schedule 2—Personal Property Securities Act 2009

### Part 1—Specific amendments

#### 1 Section 3

Omit:

- (a) it has attached to collateral; and
- (b) certain extra steps (possession or control of the collateral, or registration on the Register of Personal Property Securities) have been taken to protect the interest, or the interest is perfected by force of this Act.

Substitute:

- (a) it has attached to collateral; and
  - (b) it is enforceable against third parties; and
  - (c) certain extra steps (possession or control of the collateral, or registration on the Register of Personal Property Securities) have been taken to protect the interest.
- Certain security interests are also declared to be temporarily perfected, or perfected, under this Act.

#### 2 Section 3

Omit:

- (f) rules about the transfer and assignment of interests in collateral (Part 2.7).

Substitute:

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2

(f) rules about the transfer of interests in collateral  
(Part 2.7).

3 **3 Section 3**

4

Omit:

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Chapter 9 also deals with references to charges and fixed and floating charges in this Act and in security agreements, and provides for an independent review of the Act within 3 years after it is enacted.

9

Substitute:

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The Act starts to apply under Part 9.3 at the registration commencement time, which is 1 February 2012 (the first day of the month that is 26 months after this Act was given the Royal Assent), or an earlier time determined by the Minister.

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Chapter 9 also deals with references to charges and fixed and floating charges in this Act and in security agreements, and provides for the review of the operation of the Act within 3 years after it starts to apply.

18 **4 Paragraph 6(2)(c)**

19

Repeal the paragraph, substitute:

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22

(c) the security interest is an interest of a transferor under a transfer of intangible property that consists of an account or chattel paper, and:

23

(i) the transferor is an Australian entity; or

24

(ii) the account or chattel paper is payable in Australia; or

25 **5 At the end of subparagraph 8(1)(f)(v)**

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27  
28

Add “, except a transfer of a right to an insurance payment or other payment as indemnity or compensation for loss of, or damage to, collateral (or proceeds of collateral)”.

29 **6 Subparagraph 8(1)(f)(vi)**

30

Omit “an assignment”, substitute “a transfer”.

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1 **7 Subparagraph 8(1)(f)(vi)**

2 Omit “the assignment”, substitute “the transfer”.

3 **8 Subparagraph 8(1)(f)(vii)**

4 Omit “an assignment of an account, if the assignee’s”, substitute “a  
5 transfer of an account, if the transferee’s”.

6 **9 Subparagraph 8(1)(f)(viii)**

7 Omit “an assignment”, substitute “a transfer”.

8 **10 Subparagraph 8(1)(f)(x)**

9 Repeal the subparagraph, substitute:

- 10 (x) a transfer of the beneficial interest in a monetary  
11 obligation where, after the transfer, the transferee holds  
12 the monetary obligation on trust for the transferor;

13 **11 At the end of paragraph 8(1)(i)**

14 Add:

15 Note: See also subsection (5).

16 **12 After paragraph 8(1)(j)**

17 Insert:

- 18 (ja) a security interest in personal property taken by a  
19 pawnbroker, if subsection (6) applies to the security interest;  
20 (jb) an interest that a person has:  
21 (i) as a member of a superannuation fund (within the  
22 meaning of the *Superannuation Industry (Supervision)*  
23 *Act 1993*); or  
24 (ii) as a member of an approved deposit fund (within the  
25 meaning of the *Superannuation Industry (Supervision)*  
26 *Act 1993*); or  
27 (iii) as a holder of a retirement savings account (within the  
28 meaning of the *Retirement Savings Accounts Act 1997*);  
29 or  
30 (iv) in an account kept under the *Small Superannuation*  
31 *Accounts Act 1995* in the name of the person; or  
32 (v) as a holder of a superannuation annuity (within the  
33 meaning of the *Income Tax Assessment Act 1997*);



- 1 (jc) a charge created by either of the following provisions:  
2 (i) section 6 of the *Commonwealth Inscribed Stock Act*  
3 *1911*;  
4 (ii) section 5 of the *Loans Redemption and Conversion Act*  
5 *1921*;

6 **13 Subsection 8(4)**

7 Omit “or assignment”.

8 Note: The heading to subsection 8(4) is altered by omitting “*and assignments*”.

9 **14 At the end of section 8**

10 Add:

11 *Water rights*

- 12 (5) In paragraph (1)(i), the reference to a right in relation to the  
13 control, use or flow of water includes, but is not limited to, a  
14 reference to a right that a person has against another person to  
15 receive (or otherwise gain access to) water.

16 *Pawnbroker security interests*

- 17 (6) For the purposes of paragraph (1)(ja), this subsection applies to a  
18 security interest taken by a pawnbroker if:  
19 (a) the pawnbroker holds a licence or is otherwise expressly  
20 authorised (for example, by registration) by a law of a State  
21 or Territory to carry on a pawnbroking business (however  
22 described in that law); and  
23 (b) the taking of the security interest is authorised by that licence  
24 or authorisation, and is not in contravention of that law of the  
25 State or Territory; and  
26 (c) the security interest is taken in the ordinary course of the  
27 pawnbroker’s business as a pawnbroker; and  
28 (d) at the time the security interest is taken, the market value of  
29 the payment or obligation secured by the security interest is  
30 less than or equal to:  
31 (i) \$5,000; or  
32 (ii) if a greater amount has been prescribed by regulations  
33 made for the purposes of subsection 47(1)—that  
34 amount; and

- 1 (e) at the time the security interest is taken, the pawnbroker  
2 believes, and it is actually the case, that the market value of  
3 the personal property is less than or equal to:  
4 (i) \$5,000; or  
5 (ii) if a greater amount has been prescribed by regulations  
6 made for the purposes of paragraph 47(2)(c)—that  
7 amount; and  
8 (f) the personal property is not of a kind that the regulations  
9 provide may, or must, be described by serial number in a  
10 registration.

11 Note: Section 47 deals with taking personal, domestic or household property  
12 free of a security interest.

13 **15 Section 10 (paragraph (b) of the definition of *description*)**

14 Repeal the paragraph, substitute:

- 15 (b) in the case of a class of personal property—a description that  
16 identifies the class, including a description that identifies the  
17 class by identifying a larger class of personal property that  
18 wholly includes the class.

19 Example 1: A description that identifies collateral as “sheep” (a type of  
20 livestock) is sufficient to identify collateral that is sheep wool (a  
21 product of livestock, which is a class of collateral wholly  
22 included in the larger class of “sheep”).

23 Example 2: A description that identifies collateral as “fruit” is sufficient to  
24 identify collateral that is apples.

25 **16 Section 10 (definition of *financial product*)**

26 Repeal the definition, substitute:

27 ***financial product:***

- 28 (a) for the purposes of the definition of *investment instrument* in  
29 this section—has the meaning given by the *Corporations Act*  
30 *2001*; and  
31 (b) for any other purposes—means any of the following, or an  
32 interest in any of the following, other than cash:  
33 (i) shares;  
34 (ii) bonds;  
35 (iii) any other financial instrument;  
36 (iv) any other financial asset.
-

1 **17 Section 10 (paragraph (a) of the definition of *grantor*)**

2 Omit “owns the personal property, or has the interest in the personal  
3 property,”, substitute “has the interest in the personal property”.

4 **18 Section 10 (at the end of the definition of *intellectual*  
5 *property*)**

6 Add:

7 ; (g) a right under or for the purposes of a law of a foreign country  
8 that corresponds to a right mentioned in any of paragraphs (a)  
9 to (f).

10 **19 Section 10**

11 Insert:

12 *intermediary* has the meaning given by section 15.

13 **20 Section 10**

14 Insert:

15 *intermediated security* has the meaning given by section 15.

16 **21 Section 10 (definition of *investment entitlement*)**

17 Repeal the definition.

18 **22 Section 10 (definition of *investment entitlement account*)**

19 Repeal the definition.

20 **23 Section 10 (definition of *investment entitlement*  
21 *intermediary*)**

22 Repeal the definition.

23 **24 Section 10 (at the end of the definition of *livestock*)**

24 Add:

25 ; and (c) the products of livestock before they become proceeds (for  
26 example, the wool on a sheep’s back before the sheep is  
27 shorn).

28 **25 Section 10 (paragraph (d) of the definition of *negotiable*  
29 *instrument*)**

- 1 Repeal the paragraph, substitute:  
2 (d) any other writing that evidences a right to payment of  
3 currency, if:  
4 (i) the writing is of a kind that, in the ordinary course of  
5 business, is transferred by delivery with any necessary  
6 endorsement or assignment; or  
7 (ii) the writing satisfies the requirements for negotiability  
8 under the law governing negotiable instruments  
9 (including, but not limited to, instruments that are  
10 negotiable instruments within the meaning of this  
11 definition); or

12 **26 Section 10 (at the end of the definition of *new value*)**

13 Add “owed to the person providing the value”.

14 **27 Section 10**

15 Insert:

16 *referred PPS matters* (short for referred Personal Property  
17 Securities matters) has the meaning given by section 245.

18 **28 Section 10 (after paragraph (a) of the definition of**  
19 ***registration time*)**

20 Insert:

21 (aa) section 333 (registration with respect to migrated data); or

22 **29 Section 10**

23 Insert:

24 *securities account* has the meaning given by section 15.

25 **30 Section 10**

26 Insert:

27 *take* has the meaning given by section 138A.

28 **31 Section 10**

29 Insert:

30 *water source* has the meaning given by section 138A.

1 **32 Subsections 12(4) and (4A)**

2 Repeal the subsections, substitute:

3 (3A) A person who owes payment or performance of an obligation to  
4 another person may take a security interest in the other person's  
5 right to require the payment or the performance of the obligation.

6 (4) Without limiting subsection (3A):

7 (a) an account debtor, in relation to an account or chattel paper,  
8 may take a security interest in the account or chattel paper;  
9 and

10 (b) an ADI may take a security interest in an ADI account that is  
11 kept with the ADI.

12 **33 Subsection 13(3)**

13 Repeal the subsection (not including the heading), substitute:

14 (3) This section only applies to a bailment for which the bailee  
15 provides value.

16 **34 Section 15**

17 Repeal the section, substitute:

18 **15 Meaning of *intermediated security* and related terms**

19 *Meaning of intermediated security*

20 (1) An *intermediated security* is the rights of a person in whose name  
21 an intermediary maintains a securities account.

22 *Meaning of intermediary*

23 (2) An *intermediary* is:

24 (a) a person (including a central securities depository) who holds  
25 an Australian financial services licence (within the meaning  
26 of the *Corporations Act 2001*) permitting the person, in the  
27 course of business or other regular activity, to maintain  
28 securities accounts:

29 (i) on behalf of others; or

30 (ii) on behalf of others as well as on the person's own  
31 behalf; or

- 1 (b) a person who operates a clearing and settlement facility under  
2 an Australian CS facility licence (within the meaning of the  
3 *Corporations Act 2001*), other than such a person prescribed  
4 by regulations made for the purposes of this paragraph; or  
5 (c) a person (including a central securities depository) who holds  
6 a licence issued under the law of a foreign jurisdiction  
7 permitting the person, in the course of business or other  
8 regular activity, to maintain securities accounts:  
9 (i) on behalf of others; or  
10 (ii) on behalf of others as well as on the person's own  
11 behalf.
- 12 (3) An *intermediary* does not include a central bank.
- 13 (4) An intermediary (including a central securities depository) is an  
14 *intermediary* only while acting in the capacity of an intermediary.
- 15 (5) A person is not an *intermediary* merely because the person  
16 maintains a securities account on behalf of the issuer of the  
17 financial products to which the account relates.
- 18 (6) Without limiting subsection (5), a person is not an *intermediary*  
19 merely because the person:  
20 (a) acts as a central securities depository, registrar or transfer  
21 agent for an issuer of a financial product; or  
22 (b) records details of interests in financial products in the  
23 person's own books, being interests credited to securities  
24 accounts in the names of other persons for whom the person  
25 acts as manager or agent or otherwise in a purely  
26 administrative capacity.

27 *Meaning of securities account*

- 28 (7) In this Act:  
29 *securities account* means an account to which interests in financial  
30 products may be credited or debited.

31 **35 Subsection 19(5)**

32 After "leased", insert "or bailed".

33 Note: The heading to subsection 19(5) is altered by inserting "*bailed*," after "*leased*,".

1 **36 At the end of section 19**

2 Add:

3 Note: A security interest may attach to crops while they are growing, and to  
4 the products of livestock, before they become proceeds of the crops or  
5 livestock (for example, wool before it is shorn). See subsections 31(4)  
6 and (5) (meaning of *proceeds*) and section 84A (security interests in  
7 crops and livestock).

8 **37 Subparagraph 20(2)(a)(ii)**

9 Omit “specified in the writing that is”, substitute “, or omission, that  
10 reasonably appears to be”.

11 **38 Paragraph 21(1)(b)**

12 Repeal the paragraph, substitute:

13 (b) all of the following apply:

- 14 (i) the security interest is attached to the collateral;  
15 (ii) the security interest is enforceable against a third party;  
16 (iii) subsection (2) applies.

17 **39 Subparagraph 21(2)(c)(i)**

18 Repeal the subparagraph, substitute:

- 19 (i) an ADI account in relation to which the ADI is the  
20 secured party;

21 **40 Paragraphs 24(5)(b) and (d)**

22 Omit “assignee”, substitute “transferee”.

23 **41 Section 26**

24 Repeal the section, substitute:

25 **26 Control of intermediated securities**

26 *Main rule*

- 27 (1) A person has *control* of an intermediated security that is credited to  
28 a securities account if, and only if, this section so provides.

29 *Control by agreement*

- 30 (2) A secured party has *control* of an intermediated security if:

- 1 (a) one of the following conditions is satisfied:
- 2 (i) there is an agreement in force between the grantor, the
- 3 secured party and the intermediary who maintains the
- 4 securities account;
- 5 (ii) there is an agreement in force between the grantor and
- 6 the intermediary;
- 7 (iii) there is an agreement in force between the grantor and
- 8 the secured party, and notice of the agreement is given
- 9 to the intermediary; and
- 10 (b) the agreement has the effect that:
- 11 (i) the intermediary must not comply with instructions
- 12 given by the grantor in relation to the intermediated
- 13 security without seeking the consent of the secured
- 14 party (or a person who has agreed to act on the
- 15 instructions of the secured party); or
- 16 (ii) the intermediary must comply, or must comply in one or
- 17 more specified circumstances, with instructions
- 18 (including instructions to debit the account) given by the
- 19 secured party in relation to the intermediated security
- 20 without seeking the consent of the grantor (or any
- 21 person who has agreed to act on the instructions of the
- 22 grantor).

- 23 (3) If the intermediary who maintains the securities account is an
- 24 intermediary because of paragraph 15(2)(b), a reference to the
- 25 intermediary in subparagraphs (2)(a)(i) to (iii) of this section
- 26 includes a reference to a person prescribed by regulations made for
- 27 the purposes of this subsection.

28 Note 1: Under paragraph 15(2)(b), a person is an *intermediary* if the person

29 operates a clearing and settlement facility under an Australian CS

30 facilities licence (within the meaning of the *Corporations Act 2001*),

31 other than such a person prescribed by regulations made for the

32 purposes of that paragraph.

33 Note 2: The regulations may prescribe a person by reference to a class or

34 classes of persons (see subsection 33(3A) of the *Acts Interpretation*

35 *Act 1901*).

36 *Control by secured party in whose name securities account is*

37 *maintained*

- 38 (4) A secured party has *control* of an intermediated security if:
-



- 1 (a) the securities account is maintained in the secured party's  
2 name; or  
3 (b) the securities account is maintained in the name of another  
4 person (who is not the grantor or debtor), and that person  
5 acknowledges in writing that he, she or it holds the  
6 intermediated security on behalf of the secured party.

7 **42 Paragraph 32(1)(a)**

8 Repeal the paragraph, substitute:

- 9 (a) continues in the collateral, unless:  
10 (i) the secured party expressly or impliedly authorised a  
11 disposal giving rise to the proceeds; or  
12 (ii) the secured party expressly or impliedly agreed that a  
13 dealing giving rise to the proceeds would extinguish the  
14 security interest; and

15 **43 Paragraph 44(2)(b)**

16 Repeal the paragraph, substitute:

- 17 (b) the security interest was created or provided for by a  
18 transaction to which the buyer or lessee is a party, unless the  
19 personal property concerned is of a kind prescribed by  
20 regulations for the purposes of this paragraph.

21 **44 Subsection 44(3)**

22 Repeal the subsection.

23 **45 Subsection 51(2)**

24 Repeal the subsection, substitute:

25 *Exception*

- 26 (2) Subsection (1) does not apply if, at the time the interest is taken,  
27 the transferee has actual or constructive knowledge that crediting  
28 the interest in the financial product constitutes a breach of a  
29 security agreement that provides for a security interest in any  
30 intermediated security or financial product.

31 Note: The heading to section 51 is altered by omitting “**investment entitlement**” and  
32 substituting “**intermediated security**”.

33 **46 Subsection 52(1)**

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1 Omit “(other than section 322)”, substitute “(or perfected by force of  
2 section 322)”.

3 **47 Subsection 52(1) (note)**

4 Repeal the note, substitute:

5 Note: Section 322 provides for the perfection of transitional security  
6 interests.

7 **48 Section 54 (before the paragraph relating to Division 3)**

8 Insert:

9 For example, a security interest held by an ADI in an ADI account  
10 with the ADI has priority over any other security interest in the  
11 ADI account. An ADI has control over an ADI account held with  
12 the ADI (see section 25). Only the ADI with which an ADI  
13 account is held may perfect a security interest in the ADI account  
14 by control (see section 21). A security interest perfected by control  
15 has priority over any other security interest in the same collateral  
16 (see section 57).

17 **49 Section 54 (paragraph relating to Division 6)**

18 Repeal the paragraph, substitute:

19 Division 6 deals with priorities in relation to the following:

20 (a) interests that arise under law;

21 (b) interests of execution creditors;

22 (c) security interests in returned goods;

23 (d) security interests in accounts, financial property or  
24 intermediated securities if a foreign law governs  
25 their perfection but does not provide for public  
26 registration.

27 **50 After subsection 57(2)**

28 Insert:

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1 (2A) A perfected security interest (the *priority interest*) in the proceeds  
2 of original collateral has priority over any other security interest in  
3 the proceeds, except a security interest in the proceeds as original  
4 collateral that is perfected by control, if:

- 5 (a) the security interest in the first-mentioned original collateral  
6 was perfected by control when the collateral gave rise to  
7 proceeds; and  
8 (b) the priority interest is not perfected by control.

9 **51 Paragraphs 62(3)(b) and 63(c) and (d)**

10 Omit “10 business days”, substitute “15 business days”.

11 **52 Subparagraph 64(1)(b)(ii)**

12 Omit “5 business days”, substitute “15 business days”.

13 **53 At the end of subsection 64(3)**

14 Add:

- 15 ; and (c) the new value is taken to be an account for the purposes of  
16 this Act (except for the purposes of this section or paragraph  
17 12(3)(a) (account transferee’s interest taken to be security  
18 interest)).

19 **54 At the end of section 64**

20 Add:

- 21 (4) However, if the new value mentioned in paragraph (3)(c) would be  
22 an account for the purposes of this Act in the absence of that  
23 paragraph, the paragraph does not prevent the new value from  
24 being an account for the purposes of this section or paragraph  
25 12(3)(a).

26 **55 Paragraph 68(2)(c)**

27 Omit “transferee-granted interest”, substitute “collateral”.

28 **56 Paragraph 68(2)(d)**

29 Omit:

- 30 (d) the transferee-granted interest secures performance of an  
31 advance made, or an obligation incurred, by the transferee’s  
32 secured party before:

- 1 (i) the transferor-granted interest is re-perfected as  
2 mentioned in paragraph (1)(d); and  
3 (ii) the notice is given under paragraph (1)(e);  
4 but only to the extent of the advance or obligation.

5 Substitute:

- 6 (d) the transferee-granted interest secures performance of an  
7 advance made, or an obligation incurred, by the transferee's  
8 secured party before:  
9 (i) the transferor-granted interest is re-perfected as  
10 mentioned in paragraph (1)(d); and  
11 (ii) the notice is given under paragraph (1)(e);  
12 but only to the extent of the advance or obligation.

13 Note: The amendment made by this item corrects a formatting error.

14 **57 Subsection 71(1) (note)**

15 Omit "assignment", substitute "transfer".

16 **58 Subparagraph 72(b)(ii)**

17 Omit "negotiable instrument", substitute "document of title".

18 **59 Subsection 77(3)**

19 Omit "financial property or an investment entitlement", substitute  
20 "personal property that is financial property or an intermediated  
21 security".

22 Note: The heading to subsection 77(3) is replaced by the heading "*Security interests in*  
23 *financial property and intermediated securities*".

24 **60 Subsection 77(3)**

25 Omit "the financial property or investment entitlement", substitute "the  
26 personal property".

27 **61 Paragraphs 77(3)(a) and (b)**

28 Omit "property" (wherever occurring), substitute "personal property".

29 **62 Subsection 77(4)**

30 Omit "240(3)", substitute "240(4) or (5)".

31 **63 Part 2.7 (heading)**

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1 Repeal the heading, substitute:

2 **Part 2.7—Transfer of interests in collateral**

3 **64 Section 78**

4 Omit:

5 

This Part deals with the transfer and assignment of interests in 6 collateral.
---

7 Substitute:

8 

This Part deals with the transfer of interests in collateral.
---

9 **65 Section 83**

10 Repeal the section, substitute:

11 **83 Guide to this Part**

12 

This Part includes rules on 3 topics:
---------------------------------------

- 13 (a) the relationship between a security interest in crops  
14 and interests in the land on which the crops are  
15 growing; and
- 16 (b) the capacity for a security interest to attach to  
17 crops while they are growing, and to the products  
18 of livestock, before the crops or products become  
19 proceeds (for example, the wool on a sheep's back  
20 before it is shorn); and
- 21 (c) the priority to be given to security interests in  
22 crops (and proceeds) granted to enable the crops to  
23 be produced, and security interests in livestock  
24 (and proceeds) granted to enable the livestock to be  
25 fed and developed.

26 Other provisions of this Act that deal with agricultural interests are  
27 subsections 31(4), (5) and (6) (meaning of *proceeds* of crops and

1 livestock) and Division 6 of Part 4.3 (enforcement of security  
2 interests in crops and livestock).

3 **66 After section 84**

4 Insert:

5 **84A Attachment of security interests to crops while they are growing**  
6 **and to the products of livestock**

7 *Security interest in crops while they are growing*

- 8 (1) To avoid doubt, a security interest may attach to crops while they  
9 are growing.

10 *Security interest in the products of livestock*

- 11 (2) To avoid doubt, a security interest may attach to the products of  
12 livestock before they become proceeds (for example, the wool on a  
13 sheep's back before the sheep is shorn).

14 Note 1: **Livestock** includes the products of livestock before they become  
15 proceeds (see section 10).

16 Note 2: For what are the **proceeds** of crops and livestock, see subsections  
17 31(4), (5) and (6).

18 **67 Section 85**

19 Omit “in crops has priority over any other security interest in crops that  
20 is granted by the same grantor in the same crops”, substitute “that is  
21 granted by a grantor in crops or the proceeds of crops has priority over  
22 any other security interest that is granted by the same grantor in the  
23 same crops or proceeds”.

24 **68 Section 86**

25 Omit “livestock has priority over any other security interest (other than  
26 a purchase money security interest) that is granted by the same grantor  
27 in the same livestock”, substitute “livestock or the proceeds of livestock  
28 has priority over any other security interest (other than a purchase  
29 money security interest) that is granted by the same grantor in the same  
30 livestock or proceeds”.

31 **69 At the end of section 108**

32 Add:

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2

; (e) rules relating to the enforcement of security  
interests in crops and livestock.

3 **70 After paragraph 109(5)(b)**

4  
5

Insert:

(ba) section 126 (apparent possession of collateral);

6 **71 After paragraph 115(1)(p)**

7  
8

Insert:

(pa) Division 6 of Part 4.3 (seizure and disposal or retention of  
crops and livestock), or any particular provision of that  
Division;

9  
10  
11 **72 Subsection 115(4)**

12

Repeal the subsection.

13 **73 At the end of section 116**

14

Add:

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18

(3) Despite subsection (1), if a grantor of a security interest in property  
is an individual, this Chapter applies in relation to the security  
interest while a person is a receiver, or a receiver and manager, of  
the property.

19 **74 Section 122**

20

Omit:

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23

If a secured party proposes to dispose of, or retain, collateral, the  
party must give notice to the grantor and any other secured party  
with a security interest in the collateral that has a higher priority.

24  
25  
26

A person may object to a proposal by a secured party to enforce a  
security interest by purchasing or retaining the collateral (see  
Division 5).

27

Substitute:

28  
29

If a secured party proposes to dispose of, or retain, collateral, the  
party must give notice to the grantor and any other secured party

---

1 with a security interest in the collateral that has a higher priority. A  
2 notice of disposal may be given in the approved form, while a  
3 notice of retention must be given in the approved form.

4 A person may object if a secured party proposes to enforce a  
5 security interest by purchasing or retaining the collateral (see  
6 Division 5).

7 A person exercising or discharging rights, duties and obligations  
8 arising under this Part must act honestly and in a commercially  
9 reasonable manner (see section 111).

10 **75 At the end of subsection 126(1)**

11 Add:

12 Note: This section does not apply in relation to collateral that is used  
13 predominantly for personal, domestic or household purposes (see  
14 subsection 109(5)).

15 **76 Subsection 135(4)**

16 Omit “may be given”, substitute “must be given”.

17 **77 At the end of section 136**

18 Add:

19 *Extinguishment of obligation owed to the secured party*

- 20 (5) If a secured party (the *retaining secured party*) takes collateral  
21 under this section free of the interests referred to in subsection (2):  
22 (a) the debt or other obligation secured by the security interest  
23 held by the retaining secured party is extinguished; but  
24 (b) paragraph (2)(c) does not have the effect that a debt or other  
25 obligation secured by another security interest in the  
26 collateral is extinguished, if the other security interest has a  
27 lower priority than the security interest of the retaining  
28 secured party.

29 **78 At the end of Part 4.3**

30 Add:



1 **Division 6—Seizure and disposal or retention of crops and**  
2 **livestock**

3 **138A Meaning of *take* and *water source***

4 In this Act:

5 *take* fish includes:

- 6 (a) catch or kill fish; and  
7 (b) gather or collect fish; and  
8 (c) remove fish from any rock or other matter.

9 Note: *Livestock* includes fish (see section 10).

10 *water source* means:

- 11 (a) a river, lake, creek or pond, tidal waters or any other land that  
12 is submerged by water (whether permanently or  
13 intermittently or whether naturally or artificially); or  
14 (b) any part of such a river, lake, creek or pond, tidal waters or  
15 submerged land.

16 **138B Seizure and disposal or retention of crops**

- 17 (1) Without limiting section 123 (secured party may seize collateral),  
18 for the purposes of seizing collateral under that section that is  
19 crops, or the proceeds of crops, the secured party may:  
20 (a) take possession of the crops or the proceeds; or  
21 (b) cut, gather or harvest the crops or the proceeds.
- 22 (2) The secured party may dispose of, or retain, collateral that is crops,  
23 or the proceeds of crops, after they have been taken, cut, gathered  
24 or harvested, subject to Divisions 2, 3, 4 and 5 (seizure, disposal or  
25 retention of collateral and objections).
- 26 (3) For the purposes of exercising a power under subsection (1) or (2),  
27 or performing any related function under Division 2, 3 or 4, the  
28 secured party may enter the land on which, or the water source in  
29 which, the crops are, or were, growing.
- 30 (4) However, the secured party may exercise the power to enter land or  
31 a water source under subsection (3) for a purpose mentioned in  
32 subsection (1) or (2) only to the same extent as the grantor would  
33 be entitled to enter the land or water source for the same purpose.
-

1 **138C Seizure and disposal or retention of livestock**

- 2 (1) Without limiting section 123 (secured party may seize collateral),  
3 for the purposes of seizing collateral under that section that is  
4 livestock, or the proceeds of livestock, the secured party may:  
5 (a) take possession of the livestock or proceeds wherever it is  
6 located; or  
7 (b) slaughter the livestock wherever it is located; or  
8 (c) take livestock that is fish; or  
9 (d) extract products from livestock (for example, by shearing  
10 sheep to extract wool).

11 Note: A security interest may attach to a livestock product (for  
12 example, the wool of a sheep) as original collateral as mentioned  
13 in subsection 84A(2), or as proceeds.

- 14 (2) The secured party may dispose of, or retain, collateral that is  
15 livestock, or the proceeds of livestock, after it has been taken,  
16 slaughtered or extracted, subject to Divisions 2, 3, 4 and 5 (seizure,  
17 disposal or retention of collateral and objections).
- 18 (3) For the purposes of exercising a power under subsection (1) or (2),  
19 or performing any related function under Division 2, 3 or 4, the  
20 secured party may enter the land on which, or the water source in  
21 which, the livestock or proceeds is located.

22 **79 At the end of section 139**

23 Add:

24 A person exercising or discharging rights, duties and obligations  
25 arising under this Part must act honestly and in a commercially  
26 reasonable manner (see section 111).

27 **80 After subsection 140(1)**

28 Insert:

- 29 (1A) This section does not prevent the operation of another law of the  
30 Commonwealth, or a law of a State or Territory, to the extent that  
31 the law requires the amount, personal property or proceeds to be  
32 applied towards one or more obligations to persons that do not hold  
33 security interests (or any other interests) in the collateral before

1 being applied towards any (or all) of the obligations mentioned in  
2 subsection (2).

3 Example: This section does not prevent the operation of section 561 of the  
4 *Corporations Act 2001*, which gives priority to the satisfaction of  
5 certain unsecured obligations over the claims of a secured party  
6 holding a circulating security interest in a debtor's property.

### 7 **81 Section 141**

8 Omit “, if the grantor could take those steps”, substitute “that the person  
9 whose title to the collateral is extinguished because of the disposal or  
10 retention could take”.

### 11 **82 At the end of subsection 151(1) (after the note)**

12 Add:

13 Example 1: A person applies to register a financing statement that describes  
14 collateral as “all present and after-acquired property” of the grantor  
15 described in the statement. It is sufficient to comply with this  
16 subsection if the applicant believes on reasonable grounds that the  
17 secured party described in the statement will take a security interest in  
18 a particular class of items of personal property held (or later acquired)  
19 by the grantor (see paragraph (b) of the definition of *description* in  
20 section 10).

21 Example 2: A person applies to register a financing statement that describes  
22 collateral as “fruit”. It is sufficient to comply with this subsection if  
23 the applicant believes on reasonable grounds that the secured party  
24 described in the statement will take a security interest in apples (see  
25 paragraph (b) of the definition of *description* in section 10).

### 26 **83 Paragraph 174(2)(c)**

27 Repeal the paragraph, substitute:

28 (c) the chronological order of any of the events mentioned in  
29 paragraph (b), in relation to one or more registrations.

### 30 **84 Subsection 178(3)**

31 Omit “collateral that is consumer property.”, substitute:

32 collateral that:

33 (a) at the time the security interest attached to the collateral, the  
34 grantor intended to use predominantly for personal, domestic  
35 or household purposes; or

36 (b) the grantor is using predominantly for personal, domestic or  
37 household purposes.

1 **85 Paragraph 237(2)(b)**

2 Omit “an assignment”, substitute “a transfer”.

3 **86 Subsection 239(3)**

4 Repeal the subsection (not including the heading), substitute:

5 (3) In relation to a security interest in intellectual property or an  
6 intellectual property licence:

7 (a) subject to paragraph (c), the validity of the security interest is  
8 governed by the law of the jurisdiction (other than the law  
9 relating to conflict of laws) in which the grantor is located  
10 when the security interest attaches, under that law, to the  
11 property or licence; and

12 (b) subject to paragraph (c), at a particular time, the perfection,  
13 and the effect of perfection or non-perfection, of the security  
14 interest is governed by the law of the jurisdiction (other than  
15 the law relating to conflict of laws) in which the grantor is  
16 located at that time; and

17 (c) the following matters are governed by the law of the  
18 jurisdiction (other than the law relating to conflict of laws) by  
19 or under which the property or licence is granted, if that law  
20 provides for the public registration or recording of the  
21 security interest, or of a notice relating to the security  
22 interest:

23 (i) whether a successor in title to the grantor’s interest in  
24 the property or licence takes it free of a security interest;

25 (ii) the validity of the security interest against a transferee  
26 of the property or licence.

27 **87 Subsections 241(1) and (2)**

28 Omit “, other than proceeds that are an account,”.

29 **88 At the end of section 241**

30 Add:

31 (4) However, this section does not apply in relation to proceeds that  
32 are an account unless the account arises from the dealing that gave  
33 rise to the proceeds.

34 Note: If this section does not apply in relation to proceeds that are an  
35 account, the law governing the validity and the perfection of a security  
36 interest consisting of a transfer of the account is determined by the law

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1 of the jurisdiction in which the grantor is located (see section 239  
2 (governing laws—intangible property)).

3 **89 Before section 242**

4 Insert:

5 **Division 1—Introduction**

6 **90 Section 242**

7 Omit:

- |   |
|---|
| 8 (a) this Act operates in any State that has referred to<br>9 the Commonwealth power to enact and amend it<br>10 for the purposes of paragraph 51(xxxvii) of the<br>11 Constitution; |
| 12 (b) this Act operates in that State and any other State,<br>13 to the extent that other constitutional powers<br>14 permit its operation;  |

15 Substitute:

- |  |
|--|
| 16 (a) this Act operates in any State that has given the<br>17 Commonwealth power to legislate accordingly for<br>18 the purposes of paragraph 51(xxxvii) of the<br>19 Constitution; |
| 20 (b) this Act operates in any State to the extent that<br>21 other constitutional powers permit its operation;   |

22 **91 After section 242**

23 Insert:

24 **Division 2—Constitutional basis**

25 **92 Paragraph 243(1)(b)**

26 Omit “in respect of matters to which this Act relates because those  
27 matters are referred to it”, substitute “because of a reference or  
28 adoption”.

1 **93 Subsection 243(1) (note 1)**

2 Repeal the note.

3 **94 Subsection 243(1) (note 2)**

4 Omit “Note 2”, substitute “Note”.

5 **95 Subsections 244(1) and (2)**

6 Repeal the subsections, substitute:

7 *General meaning*

8 (1) A State is a *referring State* if, for the purposes of paragraph  
9 51(xxxvii) of the Constitution, the Parliament of the State has,  
10 before the registration commencement time:

11 (a) referred the matters covered by subsections (3) and (4) to the  
12 Commonwealth Parliament; or

13 (b) both:

14 (i) adopted the relevant version of this Act; and

15 (ii) referred the matters covered by subsection (4) to the  
16 Commonwealth Parliament.

17 Note 1: For *registration commencement time*, see section 306.

18 Note 2: Subsections (5), (6) and (7) deal with when a State stops being a  
19 *referring State*.

20 (2) A State is a *referring State* even if the State’s referral law provides  
21 that:

22 (a) the reference to the Commonwealth of a matter covered by  
23 subsection (3) or (4) is to terminate in particular  
24 circumstances; or

25 (b) the adoption of the relevant version of this Act is to terminate  
26 in particular circumstances; or

27 (c) any or all of the State’s amendment references have not  
28 commenced in relation to a particular kind (or kinds) of  
29 personal property (or so commence at or after the registration  
30 commencement time); or

31 (d) the reference to the Commonwealth Parliament of a matter  
32 covered by subsection (3) or (4) has effect only:

33 (i) if, and to the extent that, the matter is not otherwise  
34 included in the legislative powers of the Commonwealth

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1 Parliament (otherwise than by a reference under  
2 paragraph 51(xxxvii) of the Constitution); or  
3 (ii) if and to the extent that the matter is included in the  
4 legislative powers of the Parliament of the State.

5 **96 Subsection 244(3)**

6 Omit “referral version”, substitute “relevant version”.

7 Note: The heading to subsection 244(3) is replaced by the heading “*Reference covering the*  
8 *relevant version of this Act*”.

9 **97 Subsection 244(5)**

10 Repeal the subsection, substitute:

11 (5) A State stops being a *referring State* if:

12 (a) in the case where the Parliament of the State has referred to  
13 the Commonwealth Parliament the matters covered by  
14 subsection (3)—that reference terminates; or

15 (b) in the case where the Parliament of the State has adopted the  
16 relevant version of this Act—the adoption terminates.

17 **98 Subsections 244(6) and (7)**

18 Omit “referring State”, substitute “*referring State*”.

19 **99 Subsection 244(8) (definition of *initial reference*)**

20 Repeal the definition.

21 **100 Subsection 244(8) (definition of *referral law*)**

22 Omit “matters, as mentioned in subsection (1),”, substitute “the matters  
23 covered by subsection (4)”.

24 **101 Subsection 244(8) (definition of *referral version of this*  
25 *Act*)**

26 Repeal the definition.

27 **102 Subsection 244(8) (definition of *referred provisions*)**

28 Omit “referral”, substitute “relevant”.

29 **103 Subsection 244(8)**

30 Insert:

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1 **107 Subsection 267(1) (note 2)**

2 Omit “section 266”, substitute “sections 266 and 267”.

3 Note: Note 2 to subsection 267(1) will be further amended to take account of the amendments  
4 of the *Corporations Act 2001* in Schedule 1 to this Act when item 108 of this Schedule  
5 commences.

6 **108 Subsection 267(1) (note 2)**

7 Omit “sections 266 and 267”, substitute “Division 2A of Part 5.7B”.

8 Note: Division 2A of Part 5.7B of the *Corporations Act 2001* is inserted by the amendments  
9 of the *Corporations Act 2001* in Part 9 of Schedule 1 to this Act. This item will  
10 commence at the same time as Part 9 of Schedule 1 to this Act, which commences at the  
11 registration commencement time within the meaning of the *Personal Property*  
12 *Securities Act 2009*.

13 **109 Subsection 267(3) (at the end of the note)**

14 Add “under this subsection”.

15 **110 After section 267**

16 Insert:

17 **267A Vesting in grantor of security interest that attaches after**  
18 **winding up etc.**

19 *Vesting of security interest*

- 20 (1) A security interest vests in the grantor when it attaches to the  
21 collateral if:
- 22 (a) paragraph 267(1)(a) applies in relation to the grantor; and
  - 23 (b) before the time (the *critical time*) mentioned in paragraph  
24 267(1)(b), the grantor enters into a security agreement with  
25 the secured party that provides for the secured party to take a  
26 security interest in collateral from the grantor; and
  - 27 (c) at the critical time:
    - 28 (i) the security interest has not attached to the collateral;
    - 29 and
    - 30 (ii) there is no registration that would perfect the security  
31 interest when it attaches to the collateral; and
  - 32 (d) after the critical time, the security interest attaches to the  
33 collateral; and
  - 34 (e) at the time of attachment:

- 1 (i) the security interest is unperfected; or  
2 (ii) if the security interest is perfected, it is perfected only  
3 by a registration for which the registration time is after  
4 the critical time.

5 Note: This section does not apply to certain security interests (see  
6 section 268).

7 *Property acquired for new value without knowledge*

- 8 (2) Subsection (1) does not affect the title of a person to personal  
9 property if:  
10 (a) the person acquires the personal property for new value from  
11 a secured party, from a person on behalf of a secured party,  
12 or from a receiver in the exercise of powers:  
13 (i) conferred by the security agreement providing for the  
14 security interest; or  
15 (ii) implied by the general law; and  
16 (b) at the time the person acquires the property, the person has  
17 no actual or constructive knowledge of the following (as the  
18 case requires):  
19 (i) the filing of an application for an order to wind up the  
20 company;  
21 (ii) the passing of a resolution to wind up the company;  
22 (iii) the appointment of an administrator of the company  
23 under section 436A, 436B or 436C of the *Corporations*  
24 *Act 2001*;  
25 (iv) the execution of a deed of company arrangement by the  
26 company.

27 Note: Section 296 deals with the onus of proving matters under this  
28 subsection.

29 **111 Subsection 268(1)**

30 Omit “Subsection 267(2) (security interests vested in grantor) does not  
31 apply”, substitute “Subsection 267(2) and section 267A (security  
32 interests vested in grantor) do not apply”.

33 **112 After paragraph 268(1)(a)**

34 Insert:

- 35 (aa) a security interest for which perfection, and the effect of  
36 perfection or non-perfection, is governed by the law of a
-

1 foreign jurisdiction at the time mentioned in paragraph  
2 267(1)(b);

3 **113 Subsection 269(1)**

4 After “section 267”, insert “or 267A”.

5 **114 Paragraph 269(2)(a)**

6 Repeal the paragraph, substitute:

7 (a) is taken to have suffered damage immediately before the time  
8 the security interest vests in the grantor under section 267 or  
9 267A (as the case requires); and

10 **115 Subparagraph 269(2)(b)(ii)**

11 Omit “day referred to in paragraph 267(1)(b)”, substitute “time  
12 mentioned in paragraph 267(1)(b)”.

13 **116 Section 304**

14 Omit:

15 Part 9.3 deals with the initial application of this Act. Generally  
16 speaking, the Act starts to apply at the *registration commencement*  
17 *time*, which is 26 months after the Act is given the Royal Assent,  
18 or an earlier time determined by the Minister.

19 Substitute:

20 Part 9.3 deals with the initial application of this Act. Generally  
21 speaking, the Act starts to apply at the registration commencement  
22 time, which is 1 February 2012 (the first day of the month that is  
23 26 months after this Act was given the Royal Assent), or an earlier  
24 time determined by the Minister.

25 **117 Section 304**

26 Omit:

27 This includes rules for determining priority between these interests  
28 and the vesting and extinguishment of interests in some situations.

29 Substitute:

1 This includes rules about the attachment, perfection and priority of  
2 transitional security interests.

3 **118 Section 307 (definition of *transitional security***  
4 ***agreement*)**

5 Repeal the definition (including the note), substitute:

6 *transitional security agreement* means a security agreement that is  
7 in force immediately before the registration commencement time,  
8 and that continues in force at and after that time.

9 **119 Section 311**

10 Repeal the section, substitute:

11 **311 Enforceability of transitional security interests against third**  
12 **parties**

13 Despite section 20, a transitional security interest is enforceable  
14 against a third party in respect of particular personal property if it  
15 would have been so enforceable under the law that applied to the  
16 enforceability of security interests immediately before the  
17 registration commencement time, and as if this Act had not been  
18 enacted (whether the security interest arises before, at or after the  
19 registration commencement time).

20 **120 Section 313**

21 Repeal the section, substitute:

22 **313 Enforcement of security interests in intellectual property**  
23 **licences**

24 Section 106 applies in relation to security interests in intellectual  
25 property licences only if the security interests are provided for by  
26 security agreements made at or after the registration  
27 commencement time.

28 **121 Divisions 1 to 5 of Part 9.4**

29 Repeal the Divisions, substitute:

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1 **Division 1—Introduction**

2 **319 Guide to this Part**

3 This Part deals with the transitional application of this Act.

4 This Part applies to transitional security interests, which are  
5 security interests provided for by security agreements (transitional  
6 security agreements) in force immediately before the registration  
7 commencement time. A transitional security interest may arise  
8 before, at or after the registration commencement time.

9 The registration commencement time is 1 February 2012 (the first  
10 day of the month that is 26 months after this Act was given the  
11 Royal Assent), or an earlier time determined by the Minister.

12 Division 2 is about the attachment, perfection and priority of  
13 transitional security interests. Transitional security interests are  
14 declared to be perfected until the end of the month that is 24  
15 months after the registration commencement time, or until they are  
16 earlier perfected by other means (for example, by registration).

17 Division 6 is about the migration of data about personal property  
18 from Commonwealth, State and Territory registers onto the  
19 Personal Property Securities Register. The Registrar may register  
20 migrated data about transitional security interests with effect from  
21 the registration commencement time. Such transitional security  
22 interests are known as migrated security interests.

23 Migrated security interests are perfected under Division 2 from  
24 immediately before the registration commencement time.

25 Division 7 provides for preparatory registration with respect to  
26 transitional security interests in anticipation of the commencement  
27 of the Personal Property Securities Register. Other data may also  
28 be registered under this Division before the registration  
29 commencement time.

30 Transitional security interests that are registered in this way are  
31 perfected under Division 2 from immediately before the  
32 registration commencement time.

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Division 8 provides rules for dealing with defective registrations with respect to transitional security interests. For example, omissions arising from the migration of data onto the Personal Property Securities Register will not automatically render the registration of the data ineffective.

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**Division 2—Attachment, perfection and priority of transitional security interests**

8

**320 Guide to priority rules for transitional security interests**

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(1) The following table is a guide to how this Act applies to the determination of priorities involving transitional security interests:

<b>Priorities involving transitional security interests</b>			
<b>Item</b>	<b>The following security interest:</b>	<b>has priority over ...</b>	<b>because of ...</b>
1	a perfected transitional security interest	an unperfected security interest (whether transitional or not)	subsection 55(3).
2	a perfected transitional security interest	a perfected security interest that is not a transitional security interest	subsection 55(5) and section 322.
3	an unperfected transitional security interest	an unperfected security interest that is not a transitional security interest	subsection 55(2) and section 321.
4	a perfected security interest (whether transitional or not)	an unperfected transitional security interest	subsection 55(3).

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(2) Other priorities involving transitional security interests are dealt with under this Division as follows:

- (a) for the priority between 2 perfected transitional security interests, see section 323;
- (b) for the priority between 2 unperfected transitional security interests, see section 323;

1 (c) for the priority between 2 security interests, one or both of  
2 which is a transitional security interest, if the priority comes  
3 to be determined after the end of the month that is 24 months  
4 after the registration commencement time in circumstances  
5 involving insolvency or bankruptcy, see section 324.

6 (3) In this section, a reference to a perfected transitional security  
7 interest is taken to be a reference to a transitional security interest  
8 that has been continuously perfected, at the time the priority comes  
9 to be determined, since immediately before the registration  
10 commencement time.

### 11 **321 Attachment rule**

12 For the purposes of subparagraph 21(1)(b)(i) and section 55, a  
13 transitional security interest in collateral is taken to have attached  
14 to the collateral immediately before the registration  
15 commencement time, whether the security interest arises before, at  
16 or after the registration commencement time.

17 Note 1: Subparagraph 21(1)(b)(i) provides that unless a security interest in  
18 collateral is perfected by force of this Act, the security interest must  
19 have attached to the collateral in order to be perfected.

20 Note 2: Section 55 provides for the default rules for determining priority  
21 between security interests in the same collateral. In some cases, these  
22 rules depend on when a security interest attaches. For example, the  
23 priority between 2 unperfected security interests is generally  
24 determined by their order of attachment (see subsection 55(2)).

25 However, 2 unperfected transitional security interests have the priority  
26 they would have had between themselves if this Act had not been  
27 enacted (see section 323).

28 Note 3: See section 320 for a general summary of priority rules as they affect  
29 transitional security interests.

### 30 **322 Perfection rule**

#### 31 *Main rule*

32 (1) A transitional security interest in collateral is perfected from  
33 immediately before the registration commencement time, whether  
34 the security interest arises before, at or after the registration  
35 commencement time (including a transitional security interest that  
36 arises after the end of the month that is 24 months after the  
37 registration commencement time).

1 Note 1: As a result of this subsection, the priority time for a transitional  
2 security interest under subsection 55(4) will be immediately before the  
3 registration commencement time, as long as the security interest  
4 remains continuously perfected.

5 Note 2: See section 320 for a general summary of priority rules as they affect  
6 transitional security interests.

- 7 (2) However, the transitional security interest stops being perfected  
8 under subsection (1) at the earliest of the following times:
- 9 (a) when the security interest is perfected by registration under  
10 Division 6 (migration of personal property interests);
  - 11 (b) when the security interest is perfected by preparatory  
12 registration under Division 7;
  - 13 (c) when a registration under Division 6 or 7 is amended so that  
14 the registration perfects the security interest;
  - 15 (d) when the security interest is otherwise perfected by  
16 registration, or is perfected by possession or control;
  - 17 (e) when the security interest is otherwise perfected (but not  
18 temporarily perfected) by this Act, other than under this  
19 section;
  - 20 (f) the end of the month that is 24 months after the registration  
21 commencement time.

22 Note: In the case of a transitional security interest in collateral that does not  
23 arise until after the end of the month that is 24 months after the  
24 registration commencement time, this section has the same effect as  
25 for other transitional security interests. In particular:

- 26 (a) if a financing statement describing the collateral is registered  
27 before the end of that month, by the operation of sections 21, 55,  
28 321 and this section, the security interest is continuously  
29 perfected from the registration time for the collateral until the  
30 registration stops being effective; and
- 31 (b) if the security interest is not perfected (otherwise than under this  
32 section) at the end of the month that is 24 months after the  
33 registration commencement time, the security interest will  
34 become unperfected at that time.

35 *Exception*

- 36 (3) Subsections (1) and (2) do not apply to a transitional security  
37 interest in collateral if the interest is of a class prescribed by  
38 regulations made for the purposes of this subsection.



1 **323 Priority rule—priority otherwise undetermined**

2 If the priority between 2 transitional security interests is not  
3 otherwise able to be determined under this Act, they have the  
4 priority between themselves that they would have had under the  
5 law that applied to such priority immediately before the  
6 registration commencement time, and as if this Act had not been  
7 enacted.

8 Note: The priority between the following transitional security interests is not  
9 otherwise able to be determined under this Act:

- 10 (a) 2 unperfected transitional security interests (because of  
11 section 321, the order of attachment between these interests  
12 cannot be determined for the purposes of subsection 55(2));  
13 (b) 2 transitional security interests that have been continuously  
14 perfected since immediately before the registration  
15 commencement time (because of sections 321 and 322, the order  
16 of the priority times for these interests cannot be determined for  
17 the purposes of subsection 55(4)).

18 **324 Priority rule—certain security interests upon insolvency or**  
19 **bankruptcy**

20 (1) The priority between 2 security interests in the same collateral is to  
21 be determined under this Act, as if section 322 had not been  
22 enacted, if:

- 23 (a) the priority between the security interests comes to be  
24 determined after the end of the month that is 24 months after  
25 the registration commencement time; and  
26 (b) either (or each) of the interests is a transitional security  
27 interest that has not been perfected, apart from under  
28 section 322; and  
29 (c) the grantor or secured party in relation to either (or each) of  
30 the security interests is insolvent or bankrupt.

31 (2) Subsection (1) is in addition to, and does not derogate from, any  
32 other provision of this Division.

33 **122 Paragraph 333(3)(a)**

34 Repeal the paragraph, substitute:

- 35 (a) either:  
36 (i) if subsection (4) applies—state the transitional  
37 registration end time as the end time for the effective  
38 registration in respect of the personal property; or
-

- 1 (ii) if subsection (4) does not apply—not state an end time  
2 for the effective registration in respect of the personal  
3 property; and

4 **123 Subsection 333(4)**

5 Repeal the subsection, substitute:

- 6 (4) This subsection applies if, in the Registrar’s opinion, the  
7 registration of the interest in the personal property in the  
8 transitional register would have ended at a particular time (the  
9 *transitional registration end time*) in accordance with the law  
10 under which the transitional register was maintained (as in force  
11 immediately before the migration time).

12 *Registration time*

- 13 (5) The *registration time* for the personal property is the registration  
14 commencement time.

15 Note: However, the migrated security interest in the personal property is  
16 perfected from immediately before the registration commencement  
17 time (see section 322).

18 **124 Section 336**

19 Repeal the section, substitute:

20 **336 Preparatory registration—transitional security interests**

21 *Application for preparatory registration*

- 22 (1) At or after the migration time, and before the registration  
23 commencement time, a person may apply to the Registrar, in the  
24 approved form, for the registration of any of the following:  
25 (a) a financing statement that describes collateral with respect to  
26 a transitional security interest;  
27 (b) a financing statement with respect to personal property  
28 prescribed by regulations made for the purposes of paragraph  
29 148(c);  
30 (c) a financing change statement to amend a financing statement  
31 mentioned in paragraph (a) or (b) that is registered under this  
32 section.

- 1 (2) The Registrar may accept an application made under  
2 subsection (1), but only if:  
3 (a) in the case of a financing statement, or a financing change  
4 statement, with respect to a transitional security interest—the  
5 Registrar is satisfied on reasonable grounds that a transitional  
6 security interest will (whether before, at or after the  
7 registration commencement time) be:  
8 (i) attached to the collateral; and  
9 (ii) held by the applicant; and  
10 (b) in any case—in the Registrar’s opinion, it is operationally  
11 practicable for the Registrar to register the financing  
12 statement, or financing change statement, before the  
13 registration commencement time.

14 *Registration*

- 15 (3) If the Registrar accepts the application for registration, the  
16 Registrar may register the financing statement (or financing change  
17 statement), in accordance with the application, before the  
18 registration commencement time.

19 Note: The Registrar must give a verification statement to a secured party  
20 affected by the registration.

- 21 (4) A registration under this section with respect to a transitional  
22 security interest must disclose that the collateral is covered by a  
23 transitional security agreement.

- 24 (5) In the case of a registration with respect to a transitional security  
25 interest, the *registration time* for the collateral is the registration  
26 commencement time.

27 Note: However, a transitional security interest in the personal property  
28 arising under the agreement is perfected from immediately before the  
29 registration commencement time, no matter whether the security  
30 interest arises before, at or after that time (see section 322).

- 31 (6) Chapter 5 (registration) applies in relation to an application for  
32 registration under this section, and to such a registration, subject to  
33 this section.

34 **125 Section 337**

35 Repeal the section, substitute:

---

1       **337 Registration effective despite certain defects**

2                       *Scope*

- 3           (1) This section applies if:
- 4               (a) a registration describes collateral covered by a transitional
- 5               security agreement; and
- 6               (b) the transitional security agreement has given rise to a
- 7               transitional security interest; and
- 8               (c) the registration would not, apart from this section, be
- 9               effective in respect of the collateral because of a defect in the
- 10              registered data (including the omission of data); and
- 11              (d) the Registrar has made a determination under subsection (2)
- 12              in relation to defects of that type; and
- 13              (e) the determination applies to the registration.

14           Note:       Sections 164 and 165 provide that serious or misleading defects in a

15                       registration, and certain particular types of defect, make a registration

16                       ineffective.

- 17           (2) For the purposes of paragraph (1)(d), the Registrar may, by
- 18           legislative instrument, determine that registrations in a stated class
- 19           are effective despite stated types of defect.
- 20           (3) A determination under subsection (2) may provide that the
- 21           determination does not apply in relation to a stated type of defect
- 22           unless the registration includes particular data in relation to the
- 23           defect (or in substitution for omitted data).

24                       *Registration temporarily unaffected by the defect*

- 25           (4) Despite sections 164 and 165, the defect does not make the
- 26           registration ineffective for the period starting at the registration
- 27           time for the collateral and ending at the following time:
- 28               (a) if the financing statement, as initially registered, states an end
- 29               time—that end time (or an earlier end time, if the registration
- 30               is amended to state an earlier end time);
- 31               (b) if the financing statement, as initially registered, does not
- 32               state an end time—the end of the month that is 60 months
- 33               after the registration commencement time (or an earlier end
- 34               time, if the registration is amended to state an end time).

1                    *Registration becomes ineffective*

- 2                    (5) However, the registration becomes ineffective under section 164  
3                    because of the defect immediately after the end of the period  
4                    mentioned in subsection (4), unless, at or before that time, the  
5                    registration is amended to correct the defect.

6                    **337A Registration defective if collateral is not covered by**  
7                    **transitional security agreement**

8                    Without limiting section 164 (defects in registration), a registration  
9                    that discloses that collateral is covered by a transitional security  
10                    agreement is ineffective to the extent that it describes collateral that  
11                    is not covered by a transitional security agreement.

12                    **126 Subsection 340(2) (note)**

13                    Repeal the note, substitute:

14                    Note:            For the meaning of *control* in this subsection, see section 341.

15                    **127 At the end of subsection 340(5)**

16                    Add:

17                    Note:            For the meaning of *inventory* in this subsection, see section 341.

18                    **128 Before subsection 341(1)**

19                    Insert:

20                    *General rules*

- 21                    (1A) For the purposes of subsection 340(2), a secured party has **control**  
22                    of personal property if:  
23                    (a) the secured party has control of the property within the  
24                    ordinary meaning of the term “control”; or  
25                    (b) the secured party has control of the property within the  
26                    meaning of Part 2.3 (possession and control of personal  
27                    property); or  
28                    (c) in a case in which the personal property is inventory or an  
29                    account—the secured party has control of the inventory or  
30                    account because of:  
31                    (i) paragraph (a) or (b); or  
32                    (ii) subsection (1), (2), (3) or (4).

- 1 (1B) For the purposes of subsection 340(5) and this section:  
2 (a) *inventory* has its ordinary meaning; and  
3 (b) the definition of *inventory* in section 10 does not apply.

4 Note: The heading to section 341 is replaced by the heading “**Meaning of control and**  
5 ***inventory***”.

6 **129 Subsection 341(1)**

7 Omit “For the purposes of determining whether inventory is a  
8 circulating asset under section 340, a secured party has *control* of the  
9 inventory if”, substitute “For the purposes of subsection 340(2), a  
10 secured party has *control* of inventory if”.

11 **130 Subsection 341(2)**

12 Omit “For the purposes of determining whether an account is a  
13 circulating asset under section 340”, substitute “For the purposes of  
14 subsection 340(2)”.

15 **131 Subsection 341(2)**

16 After “subsections (3) and (4)”, insert “of this section”.

17 **132 Subsection 341(5)**

18 Repeal the subsection.

1

2 **Part 2—Bulk amendments**

3 **133 Amendments to change references to investment**  
4 **entitlements etc. to references to intermediated**  
5 **securities etc.**

6 The specified provisions of the *Personal Property Securities Act 2009*  
7 listed in items 134 to 153 of this Schedule are amended by:

- 8 (a) omitting “investment entitlement intermediary” (wherever  
9 occurring) and substituting “intermediary”; and  
10 (b) omitting “investment entitlement account” (wherever  
11 occurring) and substituting “securities account”; and  
12 (c) omitting “investment entitlement” (wherever occurring  
13 otherwise than as mentioned in paragraph (a) or (b)) and  
14 substituting “intermediated security”; and  
15 (d) omitting “entitlement” (wherever occurring otherwise than as  
16 mentioned in paragraphs (a), (b) and (c)) and substituting  
17 “intermediated security”; and  
18 (e) omitting “investment entitlements” (wherever occurring) and  
19 substituting “intermediated securities”.

20 **134 Subsection 6(1A)**

21 **135 Section 10 (paragraph (e) of the definition of *account*)**

22 **136 Section 10 (paragraph (d) of the definition of *chattel***  
23 ***paper*)**

24 **137 Section 10 (definition of *goods*)**

25 **138 Section 10 (paragraph (c) of the definition of *intangible***  
26 ***property*)**

27 **139 Section 10 (paragraph (m) of the definition of *investment***  
28 ***instrument*)**

29 **140 Section 10 (paragraph (h) of the definition of *negotiable***  
30 ***instrument*)**

1 **141 Paragraph 14(2)(b)**

2 **142 Subparagraph 21(2)(c)(ii)**

3 **143 Section 23**

4 **144 Section 30**

5 **145 Subsection 31(1) (subparagraph (c)(iv) of the definition of**  
6 ***proceeds*)**

7 **146 Subsection 31(1) (paragraph (e) of the definition of**  
8 ***proceeds*)**

9 **147 Subsection 32(2)**

10 **148 Paragraphs 41(g) and (i)**

11 **149 Paragraph 42(b)**

12 **150 Section 49**

13 Note: The heading to section 49 is altered by omitting “**entitlement**” and substituting  
14 “**intermediated security**”.

15 **151 Subsection 51(1)**

16 **152 Subsection 77(1)**

17 **153 Paragraph 109(3)(b)**

18 Note: The heading to subsection 109(3) is altered by omitting “*investment entitlements*” and  
19 substituting “*intermediated securities*”.



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1  
2  
3

## Schedule 3—Amendment of other Acts

4

### *Designs Act 2003*

5

#### **1 Section 5 (definition of *PPSA security interest*)**

6 Repeal the definition, substitute:

7 ***PPSA security interest*** (short for Personal Property Securities Act  
8 security interest) means a security interest within the meaning of  
9 the *Personal Property Securities Act 2009* and to which that Act  
10 applies, other than a transitional security interest within the  
11 meaning of that Act.

12 Note 1: The *Personal Property Securities Act 2009* applies to certain security  
13 interests in personal property. See the following provisions of that  
14 Act:

- 15 (a) section 8 (interests to which the Act does not apply);  
16 (b) section 12 (meaning of ***security interest***);  
17 (c) Chapter 9 (transitional provisions).

18 Note 2: For the meaning of ***transitional security interest***, see section 308 of  
19 the *Personal Property Securities Act 2009*.

20 Note: This amendment replaces the definition inserted by item 1 of Schedule 2 to the *Personal*  
21 *Property Securities (Consequential Amendments) Act 2009*.

22

### *Fisheries Management Act 1991*

23

#### **2 Subsection 4(1) (definition of *PPSA security interest*)**

24 Repeal the definition, substitute:

25 ***PPSA security interest*** (short for Personal Property Securities Act  
26 security interest) means a security interest within the meaning of  
27 the *Personal Property Securities Act 2009* and to which that Act  
28 applies, other than a transitional security interest within the  
29 meaning of that Act.

30 Note 1: The *Personal Property Securities Act 2009* applies to certain security  
31 interests in personal property. See the following provisions of that  
32 Act:

- 33 (a) section 8 (interests to which the Act does not apply);  
34 (b) section 12 (meaning of ***security interest***);  
35 (c) Chapter 9 (transitional provisions).

1 Note 2: For the meaning of *transitional security interest*, see section 308 of  
2 the *Personal Property Securities Act 2009*.

3 Note: This amendment replaces the definition inserted by item 1 of Schedule 1 to the *Personal*  
4 *Property Securities (Consequential Amendments) Act 2009*.

## 5 ***Mutual Assistance in Criminal Matters Act 1987***

### 6 **3 At the end of section 35J**

7 Add:

8 (4) Subsection 73(2) of the *Personal Property Securities Act 2009*  
9 applies to the charge (to the extent, if any, to which that Act  
10 applies in relation to the property charged).

11 Note 1: The effect of this subsection is that the priority between the charge  
12 and a security interest in the property to which the *Personal Property*  
13 *Securities Act 2009* applies is to be determined in accordance with this  
14 Act rather than the *Personal Property Securities Act 2009*.

15 Note 2: Subsection 73(2) of the *Personal Property Securities Act 2009* applies  
16 to charges created by this section after the commencement of  
17 subsection (4) (which is at the registration commencement time within  
18 the meaning of the *Personal Property Securities Act 2009*).

### 19 **4 Subsection 35L(4) (definition of *registration authority*)**

20 Repeal the definition, substitute:

21 ***registration authority***, in relation to property of a particular kind,  
22 means:

- 23 (a) an authority responsible for administering a law of the  
24 Commonwealth, a State or a Territory providing for  
25 registration of title to, or charges over, property of that kind;  
26 or  
27 (b) the Registrar of Personal Property Securities, if the *Personal*  
28 *Property Securities Act 2009* provides for the registration of  
29 data in relation to that kind of personal property for the  
30 purposes of paragraph 148(c) of that Act.

31 Note: The *Personal Property Securities Act 2009* provides for the  
32 registration of such data if regulations are made for the purposes  
33 of paragraph 148(c) of that Act.

## 34 ***Navigation Act 1912***

### 35 **5 Subsection 6(1) (definition of *PPSA security interest*)**

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1 Repeal the definition, substitute:

2 ***PPSA security interest*** (short for Personal Property Securities Act  
3 security interest) means a security interest within the meaning of  
4 the *Personal Property Securities Act 2009* and to which that Act  
5 applies, other than a transitional security interest within the  
6 meaning of that Act.

7 Note 1: The *Personal Property Securities Act 2009* applies to certain security  
8 interests in personal property. See the following provisions of that  
9 Act:

- 10 (a) section 8 (interests to which the Act does not apply);  
11 (b) section 12 (meaning of ***security interest***);  
12 (c) Chapter 9 (transitional provisions).

13 Note 2: For the meaning of ***transitional security interest***, see section 308 of  
14 the *Personal Property Securities Act 2009*.

15 Note: This amendment replaces the definition inserted by item 6 of Schedule 3 to the *Personal*  
16 *Property Securities (Consequential Amendments) Act 2009*.

## 17 ***Offshore Petroleum and Greenhouse Gas Storage Act 2006***

### 18 **6 Section 7 (definition of *charge*)**

19 Repeal the definition.

### 20 **7 Section 7 (definition of *debenture*)**

21 Repeal the definition.

### 22 **8 Subsections 489(5) and (6)**

23 Repeal the subsections.

### 24 **9 Paragraph 490(2)(c)**

25 Omit “instrument;”, substitute “instrument.”.

### 26 **10 Paragraph 490(2)(d)**

27 Repeal the paragraph.

### 28 **11 Subsections 499(5) and (6)**

29 Repeal the subsections.

### 30 **12 Paragraph 500(2)(c)**

31 Omit “instrument;”, substitute “instrument.”.

1 **13 Paragraph 500(2)(d)**

2 Repeal the paragraph.

3 **14 Subsections 540(5) and 549(5)**

4 Repeal the subsections.

5 **15 Transitional—repeal of definition of *debenture***

6 The amendment made by item 7 applies in relation to dealings taking  
7 place after the time that item commences.

8 Note 1: Sections 468 and 520 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*  
9 are about dealings in series of debentures.

10 Note 2: Item 7 of this Schedule commences at the registration commencement time within the  
11 meaning of section 306 of the *Personal Property Securities Act 2009* (as provided by  
12 section 2 of this Act).

13 ***Patents Act 1990***

14 **16 Schedule 1 (Dictionary) (definition of *PPSA security*  
15 *interest*)**

16 Repeal the definition, substitute:

17 ***PPSA security interest*** (short for Personal Property Securities Act  
18 security interest) means a security interest within the meaning of  
19 the *Personal Property Securities Act 2009* and to which that Act  
20 applies, other than a transitional security interest within the  
21 meaning of that Act.

22 Note 1: The *Personal Property Securities Act 2009* applies to certain security  
23 interests in personal property. See the following provisions of that  
24 Act:

- 25 (a) section 8 (interests to which the Act does not apply);  
26 (b) section 12 (meaning of ***security interest***);  
27 (c) Chapter 9 (transitional provisions).

28 Note 2: For the meaning of ***transitional security interest***, see section 308 of  
29 the *Personal Property Securities Act 2009*.

30 Note: This amendment replaces the definition inserted by item 14 of Schedule 2 to the  
31 *Personal Property Securities (Consequential Amendments) Act 2009*.

1 ***Personal Property Securities (Consequential Amendments)***  
2 ***Act 2009***

3 **17 Item 17 of Schedule 1**

4 Repeal the item.

5 Note: The repealed item is redundant because of the amendment in item 2 of this Schedule.

6 ***Proceeds of Crime Act 2002***

7 **18 At the end of section 142**

8 Add:

9 (4) Subsection 73(2) of the *Personal Property Securities Act 2009*  
10 applies to the charge (to the extent, if any, to which that Act  
11 applies in relation to the property charged).

12 Note 1: The effect of this subsection is that the priority between the charge  
13 and a security interest in the property to which the *Personal Property*  
14 *Securities Act 2009* applies is to be determined in accordance with this  
15 Act rather than the *Personal Property Securities Act 2009*.

16 Note 2: Subsection 73(2) of the *Personal Property Securities Act 2009* applies  
17 to charges created by this section after the commencement of  
18 subsection (4) (which is at the registration commencement time within  
19 the meaning of the *Personal Property Securities Act 2009*).

20 **19 At the end of section 143**

21 Add:

22 (3) In this section:

23 **registration** of a charge on a particular kind of personal property  
24 within the meaning of the *Personal Property Securities Act 2009*  
25 includes the registration of data in relation to that kind of property  
26 for the purposes of paragraph 148(c) of that Act.

27 Note: The *Personal Property Securities Act 2009* provides for the  
28 registration of such data only if regulations are made for the purposes  
29 of paragraph 148(c) of that Act.

30 **20 At the end of section 169**

31 Add:

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1 (4) Subsection 73(2) of the *Personal Property Securities Act 2009*  
2 applies to the charge (to the extent, if any, to which that Act  
3 applies in relation to the property charged).

4 Note 1: The effect of this subsection is that the priority between the charge  
5 and a security interest in the property to which the *Personal Property*  
6 *Securities Act 2009* applies is to be determined in accordance with this  
7 Act rather than the *Personal Property Securities Act 2009*.

8 Note 2: Subsection 73(2) of the *Personal Property Securities Act 2009* applies  
9 to charges created by this section after the commencement of  
10 subsection (4) (which is at the registration commencement time within  
11 the meaning of the *Personal Property Securities Act 2009*).

## 12 **21 At the end of section 170**

13 Add:

14 (3) In this section:

15 **registration** of a charge on a particular kind of personal property  
16 within the meaning of the *Personal Property Securities Act 2009*  
17 includes the registration of data in relation to that kind of property  
18 for the purposes of paragraph 148(c) of that Act.

19 Note: The *Personal Property Securities Act 2009* provides for the  
20 registration of such data only if regulations are made for the purposes  
21 of paragraph 148(c) of that Act.

## 22 **22 Section 302**

23 Before “If a charge”, insert “(1)”.

## 24 **23 At the end of section 302**

25 Add:

26 (2) Subsection 73(2) of the *Personal Property Securities Act 2009*  
27 applies to the commission’s charge (to the extent, if any, to which  
28 that Act applies in relation to the property charged).

29 Note 1: The effect of this subsection is that the priority between the  
30 commission’s charge and a security interest in the property to which  
31 the *Personal Property Securities Act 2009* applies is to be determined  
32 in accordance with this Act rather than the *Personal Property*  
33 *Securities Act 2009*.

34 Note 2: Subsection 73(2) of the *Personal Property Securities Act 2009* applies  
35 to commission charges created by section 300 after the  
36 commencement of subsection (2) (which is at the registration  
37 commencement time within the meaning of the *Personal Property*  
38 *Securities Act 2009*).

1 **24 Section 302C**

2 Before “If a charge”, insert “(1)”.

3 **25 At the end of section 302C**

4 Add:

5 (2) Subsection 73(2) of the *Personal Property Securities Act 2009*  
6 applies to the Commonwealth’s charge (to the extent, if any, to  
7 which that Act applies in relation to the property charged).

8 Note 1: The effect of this subsection is that the priority between the  
9 Commonwealth’s charge and a security interest in the property to  
10 which the *Personal Property Securities Act 2009* applies is to be  
11 determined in accordance with this Act rather than the *Personal*  
12 *Property Securities Act 2009*.

13 Note 2: Subsection 73(2) of the *Personal Property Securities Act 2009* applies  
14 to Commonwealth charges created by section 302A after the  
15 commencement of subsection (2) (which is at the registration  
16 commencement time within the meaning of the *Personal Property*  
17 *Securities Act 2009*).

18 **26 After subsection 307(3)**

19 Insert:

20 (3A) Subsection 73(2) of the *Personal Property Securities Act 2009*  
21 applies to a charge created by subsection (1) (to the extent, if any,  
22 to which that Act applies in relation to the property charged).

23 Note 1: The effect of this subsection is that the priority between the charge  
24 and a security interest in the property to which the *Personal Property*  
25 *Securities Act 2009* applies is to be determined in accordance with this  
26 Act rather than the *Personal Property Securities Act 2009*.

27 Note 2: Subsection 73(2) of the *Personal Property Securities Act 2009* applies  
28 to charges created by subsection (1) after the commencement of  
29 subsection (3A) (which is at the registration commencement time  
30 within the meaning of the *Personal Property Securities Act 2009*).

31 **27 At the end of section 307**

32 Add:

33 (5) In this section:

34 **registration** of a charge on a particular kind of personal property  
35 within the meaning of the *Personal Property Securities Act 2009*  
36 includes the registration of data in relation to that kind of property  
37 for the purposes of paragraph 148(c) of that Act.

---

1 Note: The *Personal Property Securities Act 2009* provides for the  
2 registration of such data if regulations are made for the purposes of  
3 paragraph 148(c) of that Act.

4 **28 Section 338 (definition of *registration authority*)**

5 Repeal the definition, substitute:

6 ***registration authority***, in relation to property of a particular kind,  
7 means:

- 8 (a) an authority responsible for administering a law of the  
9 Commonwealth, a State or a Territory providing for  
10 registration of title to, or charges over, property of that kind;  
11 or  
12 (b) the Registrar of Personal Property Securities, if the *Personal*  
13 *Property Securities Act 2009* provides for the registration of  
14 data in relation to that kind of personal property for the  
15 purposes of paragraph 148(c) of that Act.

16 Note: The *Personal Property Securities Act 2009* provides for the  
17 registration of such data if regulations are made for the purposes  
18 of paragraph 148(c) of that Act.

19 ***Torres Strait Fisheries Act 1984***

20 **29 Subsection 3(1) (definition of *PPSA security interest*)**

21 Repeal the definition, substitute:

22 ***PPSA security interest*** (short for Personal Property Securities Act  
23 security interest) means a security interest within the meaning of  
24 the *Personal Property Securities Act 2009* and to which that Act  
25 applies, other than a transitional security interest within the  
26 meaning of that Act.

27 Note 1: The *Personal Property Securities Act 2009* applies to certain security  
28 interests in personal property. See the following provisions of that  
29 Act:

- 30 (a) section 8 (interests to which the Act does not apply);  
31 (b) section 12 (meaning of ***security interest***);  
32 (c) Chapter 9 (transitional provisions).

33 Note 2: For the meaning of ***transitional security interest***, see section 308 of  
34 the *Personal Property Securities Act 2009*.

35 Note: This amendment replaces the definition inserted by item 19 of Schedule 1 to the  
36 *Personal Property Securities (Consequential Amendments) Act 2009*.



1 ***Trade Marks Act 1995***

2 **30 Section 6 (definition of *PPSA security interest*)**

3 Repeal the definition, substitute:

4 ***PPSA security interest*** (short for Personal Property Securities Act  
5 security interest) means a security interest within the meaning of  
6 the *Personal Property Securities Act 2009* and to which that Act  
7 applies, other than a transitional security interest within the  
8 meaning of that Act.

9 Note 1: The *Personal Property Securities Act 2009* applies to certain security  
10 interests in personal property. See the following provisions of that  
11 Act:

- 12 (a) section 8 (interests to which the Act does not apply);  
13 (b) section 12 (meaning of ***security interest***);  
14 (c) Chapter 9 (transitional provisions).

15 Note 2: For the meaning of ***transitional security interest***, see section 308 of  
16 the *Personal Property Securities Act 2009*.

17 Note: This amendment replaces the definition inserted by item 18 of Schedule 2 to the  
18 *Personal Property Securities (Consequential Amendments) Act 2009*.