





# **Personal Property Securities (Consequential Amendments) Act 2009**

**No. 131, 2009**

**An Act to deal with consequential matters arising  
from the enactment of the *Personal Property  
Securities Act 2009*, to amend that Act, and for  
related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Personal Property Securities (Consequential Amendments) Act 2009**

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**An Act to deal with consequential matters arising  
from the enactment of the *Personal Property  
Securities Act 2009*, to amend that Act, and for  
related purposes**

*[Assented to 14 December 2009]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Personal Property Securities  
(Consequential Amendments) Act 2009*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect 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. Schedules 1, 2 and 3	<p>The registration commencement time within the meaning of section 306 of the <i>Personal Property Securities Act 2009</i>.</p> <p>However, the provision(s) do not commence at all if the <i>Personal Property Securities Act 2009</i> does not commence.</p>	
2. Schedule 4, items 1 to 7	<p>The later of:</p> <p>(a) the start of the day this Act receives the Royal Assent; and</p> <p>(b) immediately after the commencement of the <i>Personal Property Securities Act 2009</i>.</p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p>	15 December 2009
3. Schedule 4, item 8	<p>The latest of:</p> <p>(a) the start of the day this Act receives the Royal Assent; and</p> <p>(b) immediately after the commencement of the <i>Personal Property Securities Act 2009</i>; and</p> <p>(c) the start of the day on which section 3 of the <i>National Consumer Credit Protection Act 2009</i> commences.</p> <p>However, the provision(s) do not commence at all if either of the events mentioned in paragraphs (b) and (c) does not occur.</p>	
4. Schedule 4, items 9 to 35	<p>The later of:</p> <p>(a) the start of the day this Act receives the Royal Assent; and</p>	15 December 2009

<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>
	(b) immediately after the commencement of the <i>Personal Property Securities Act 2009</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
5. Schedule 4, item 36	The latest of: (a) the start of the day this Act receives the Royal Assent; and (b) immediately after the commencement of the <i>Personal Property Securities Act 2009</i> ; and (c) the start of the day on which section 3 of the <i>National Consumer Credit Protection Act 2009</i> commences.  However, the provision(s) do not commence at all if either of the events mentioned in paragraphs (b) and (c) does not occur.	
6. Schedule 4, items 37 to 64	The later of: (a) the start of the day this Act receives the Royal Assent; and (b) immediately after the commencement of the <i>Personal Property Securities Act 2009</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	15 December 2009
7. Schedule 5, items 1 to 18	The registration commencement time within the meaning of section 306 of the <i>Personal Property Securities Act 2009</i> .  However, the provision(s) do not commence at all if the <i>Personal Property Securities Act 2009</i> does not commence.	
8. Schedule 5, items 19 and 20	The later of: (a) the start of the day this Act receives the Royal Assent; and (b) immediately after the commencement of	15 December 2009

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<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>
	the <i>Personal Property Securities Act 2009</i> .	
	However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
9. Schedule 5, items 21 to 50	The registration commencement time within the meaning of section 306 of the <i>Personal Property Securities Act 2009</i> .	
	However, the provision(s) do not commence at all if the <i>Personal Property Securities Act 2009</i> does not commence.	

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

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## Schedule 1—Fisheries legislation

### *Fisheries Management Act 1991*

#### **1 Subsection 4(1)**

Insert:

***PPSA security interest*** (short for Personal Property Securities Act security interest) means:

- (a) a security interest within the meaning of the *Personal Property Securities Act 2009* and to which that Act applies (other than a transitional security interest within the meaning of that Act); or
- (b) a transitional security interest within the meaning of that Act, and to which Division 4 of Part 9.4 of that Act applies.

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

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

Note 2: For the meaning of ***transitional security interest***, see section 308 of the *Personal Property Securities Act 2009*. Division 4 of Part 9.4 of that Act applies to transitional security interests in situations including the bankruptcy or insolvency of a secured party, grantor or debtor.

#### **2 Subsection 4(1)**

Insert:

***statutory fishing rights option*** has the meaning given by section 31A.

#### **3 Subsection 31A(1)**

Omit “statutory fishing rights option”, substitute “***statutory fishing rights option***”.

#### **4 Subsection 31A(4)**

Omit “***statutory fishing rights option***”, substitute “statutory fishing rights option”.

## 5 At the end of subsection 31F(1)

Add “, other than an interest that is a PPSA security interest”.

Note 1: The heading to section 31F is altered by omitting “**Creation etc. of interests**” and substituting “**Registration of dealings**”.

Note 2: The following heading to subsection 31F(1) is inserted “*Scope*”.

Note 3: The following heading to subsection 31F(2) is inserted “*Registration of dealings*”.

Note 4: The following heading to subsection 31F(6) is inserted “*Partial assignment of statutory fishing rights options*”.

Note 5: The following heading to subsection 31F(7) is inserted “*Refusal to register dealings*”.

Note 6: The following heading to subsection 31F(8) is inserted “*Documentation of registration of dealings*”.

## 6 Subsection 31F(9)

Repeal the subsection.

## 7 After section 31F

Insert:

### **31FA Interests in statutory fishing rights options—priority between section 31F interests and PPSA security interests**

#### *Scope*

- (1) This section sets out the priority between the following interests in a statutory fishing rights option:
- (a) an interest (the *section 31F interest*) that is the subject of a dealing (the *section 31F dealing*), if the dealing has effect under section 31F (by registration);
  - (b) a PPSA security interest.

#### *Priority rules*

- (2) The priority is as set out in the following table:

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<b>Priority between PPSA security interests and section 31F interests</b>		
<b>Item</b>	<b>If ...</b>	<b>then ...</b>
1	the PPSA security interest is not perfected (whether by registration or otherwise) within the meaning of the	the section 31F interest has priority.

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**Priority between PPSA security interests and section 31F interests**


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<b>Item</b>	<b>If ...</b>	<b>then ...</b>
	<i>Personal Property Securities Act 2009</i>	
2	(a) the PPSA security interest is perfected (whether by registration or otherwise) within the meaning of the <i>Personal Property Securities Act 2009</i> ; and  (b) the section 31F dealing is registered under section 31F of this Act before the priority time for the PPSA security interest under section 55 of the <i>Personal Property Securities Act 2009</i>	the section 31F interest has priority.
3	(a) the PPSA security interest is perfected (whether by registration or otherwise) within the meaning of the <i>Personal Property Securities Act 2009</i> ; and  (b) the section 31F dealing is registered under section 31F of this Act at or after the priority time for the PPSA security interest under section 55 of the <i>Personal Property Securities Act 2009</i>	the PPSA security interest has priority.

(3) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to the section 31F interest.

Note 1: The effect of subsection (3) is that the priority between a section 31F interest and a PPSA security interest in a statutory fishing rights option is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.

Note 2: Subsection 73(2) of the *Personal Property Securities Act 2009* applies to section 31F interests that arise after the commencement of subsection (3) of this section (which commences at the registration commencement time within the meaning of the *Personal Property Securities Act 2009*).

## **8 Subsection 31J(1)**

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Omit “, subject only to any rights appearing in the Register to be vested in another person,”, substitute “, subject to this section,”.

## 9 After subsection 31J(1)

Insert:

- (1A) A dealing mentioned in subsection (1) is subject to:
- (a) any rights appearing in the Register to be vested in another person, other than any such rights that are PPSA security interests; and
  - (b) any rights or interests in the statutory fishing rights option that are PPSA security interests, to the extent provided by the *Personal Property Securities Act 2009*.

## 10 At the end of subsection 46(1)

Add “, other than an interest that is a PPSA security interest”.

Note 1: The heading to section 46 is altered by omitting “**Creation etc. of interests**” and substituting “**Registration of dealings**”.

Note 2: The following heading to subsection 46(1) is inserted “*Scope*”.

Note 3: The following heading to subsection 46(2) is inserted “*Registration of dealing*”.

Note 4: The following heading to subsection 46(5) is inserted “*Documentation of registration of dealings*”.

## 11 Subsection 46(6)

Repeal the subsection.

## 12 After section 46

Insert:

### 46A Interests in fishing rights—priority between section 46 interests and PPSA security interests

#### *Scope*

- (1) This section sets out the priority between the following interests in a fishing right:
- (a) an interest (the *section 46 interest*) that is the subject of a dealing (the *section 46 dealing*), if the dealing has effect under section 46 (by registration);
  - (b) a PPSA security interest.

*Priority rules*

(2) The priority is as set out in the following table:

<b>Priority between PPSA security interests and section 46 interests</b>		
<b>Item</b>	<b>If ...</b>	<b>then ...</b>
1	the PPSA security interest is not perfected (whether by registration or otherwise) within the meaning of the <i>Personal Property Securities Act 2009</i>	the section 46 interest has priority.
2	(a) the PPSA security interest is perfected (whether by registration or otherwise) within the meaning of the <i>Personal Property Securities Act 2009</i> ; and (b) the section 46 dealing is registered under section 46 of this Act before the priority time for the PPSA security interest under section 55 of the <i>Personal Property Securities Act 2009</i>	the section 46 interest has priority.
3	(a) the PPSA security interest is perfected (whether by registration or otherwise) within the meaning of the <i>Personal Property Securities Act 2009</i> ; and (b) the section 46 dealing is registered under section 46 of this Act at or after the priority time for the PPSA security interest under section 55 of the <i>Personal Property Securities Act 2009</i>	the PPSA security interest has priority.

(3) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to the section 46 interest.

Note 1: The effect of subsection (3) is that the priority between a section 46 interest and a PPSA security interest in a fishing right is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.

Note 2: Subsection 73(2) of the *Personal Property Securities Act 2009* applies to section 46 interests that arise after the commencement of subsection (3) of this section (which commences at the registration commencement time within the meaning of the *Personal Property Securities Act 2009*).

### **13 Subsection 48(1)**

Omit “, subject only to any rights appearing in the Register to be vested in another person and to section 49,”, substitute “, subject to this section,”.

### **14 After subsection 48(1)**

Insert:

(1A) A dealing mentioned in subsection (1) is subject to:

- (a) section 49; and
- (b) any rights appearing in the Register to be vested in another person, other than any such rights that are PPSA security interests; and
- (c) any rights or interests in the fishing right that are PPSA security interests, to the extent provided by the *Personal Property Securities Act 2009*.

### **15 Subsection 50(3)**

Repeal the subsection.

### **16 Subdivision F of Division 6 of Part 6**

Repeal the Subdivision, substitute:

#### **Subdivision F—Enforcement action under this Act prevails over other action**

#### **108A Seizure or forfeiture has effect despite other proceedings**

- (1) The seizure, detention or forfeiture of a boat or any other property (including fish) under this Act has effect despite:
  - (a) any or all of the following events (each of which is an *admiralty event*):
    - (i) the arrest of the boat under the *Admiralty Act 1988*;
    - (ii) the making of an order for the sale of the boat by a court in proceedings brought under the *Admiralty Act 1988*;

- (iii) the sale of the boat under an order made by a court in proceedings brought under the *Admiralty Act 1988*; or
- (b) any action (a **PPSA event**) taken in relation to the enforcement under Part 4.3 of the *Personal Property Securities Act 2009* of a PPSA security interest in the boat or other property.

- (2) Subsection (1) has effect regardless of whether the seizure, detention or forfeiture, or the event that was the basis for the seizure, detention or forfeiture, occurred before or after the admiralty event or the PPSA event.

## **17 Application of amendments of the *Fisheries Management Act 1991***

The requirements in sections 31F and 46 of the *Fisheries Management Act 1991* in relation to the registration of dealings in respect of interests that are PPSA security interests stop applying at the time item 5 of this Schedule commences.

Note: Item 5 commences at the registration commencement time within the meaning of section 306 of the *Personal Property Securities Act 2009*.

## **18 Transitional—item 15**

- (1) This item applies if:
  - (a) before the time that item 15 of this Schedule commenced, the Australian Fisheries Management Authority was required to give a person written notification under subsection 50(3) of the *Fisheries Management Act 1991* (as in force at that time); and
  - (b) at that time, the Australian Fisheries Management Authority had not complied with the requirement.

Note: Item 15 commences at the registration commencement time within the meaning of section 306 of the *Personal Property Securities Act 2009*.

- (2) The Australian Fisheries Management Authority must comply with the requirement as if the repeal of subsection 50(3) of the *Fisheries Management Act 1991* by item 15 of this Schedule had not happened.

## ***Torres Strait Fisheries Act 1984***

### **19 Subsection 3(1)**

Insert:

**PPSA security interest** (short for Personal Property Securities Act security interest) means:

- (a) a security interest within the meaning of the *Personal Property Securities Act 2009* and to which that Act applies (other than a transitional security interest within the meaning of that Act); or
- (b) a transitional security interest within the meaning of that Act, and to which Division 4 of Part 9.4 of that Act applies.

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

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

Note 2: For the meaning of **transitional security interest**, see section 308 of the *Personal Property Securities Act 2009*. Division 4 of Part 9.4 of that Act applies to transitional security interests in situations including the bankruptcy or insolvency of a secured party, grantor or debtor.

## 20 Section 52J

Repeal the section, substitute:

### 52J Seizure or forfeiture has effect despite other proceedings

- (1) The seizure, detention or forfeiture of a boat or any other property (including fish) under this Act has effect despite:
  - (a) any or all of the following events (each of which is an **admiralty event**):
    - (i) the arrest of the boat under the *Admiralty Act 1988*;
    - (ii) the making of an order for the sale of the boat by a court in proceedings brought under the *Admiralty Act 1988*;
    - (iii) the sale of the boat under an order made by a court in proceedings brought under the *Admiralty Act 1988*; or
  - (b) any action (a **PPSA event**) taken in relation to the enforcement under Part 4.3 of the *Personal Property Securities Act 2009* of a PPSA security interest in the boat or other property.
- (2) Subsection (1) has effect regardless of whether the seizure, detention or forfeiture, or the event that was the basis for the

seizure, detention or forfeiture, occurred before or after the admiralty event or the PPSA event.

## Schedule 2—Intellectual property legislation

### *Designs Act 2003*

#### 1 Section 5

Insert:

**PPSA security interest** (short for Personal Property Securities Act security interest) means:

- (a) a security interest within the meaning of the *Personal Property Securities Act 2009* and to which that Act applies (other than a transitional security interest within the meaning of that Act); or
- (b) a transitional security interest within the meaning of that Act, and to which Division 4 of Part 9.4 of that Act applies.

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

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

Note 2: For the meaning of **transitional security interest**, see section 308 of the *Personal Property Securities Act 2009*. Division 4 of Part 9.4 of that Act applies to transitional security interests in situations including the bankruptcy or insolvency of a secured party, grantor or debtor.

#### 2 After subsection 12(2)

Insert:

- (2A) Despite subsection (1), the recording in the Register of a right that is a PPSA security interest does not affect a dealing with an interest in a registered design.

#### 3 At the end of section 12

Add:

- (4) Subsection (3) does not apply in relation to an equity that is a PPSA security interest.

Note: The *Personal Property Securities Act 2009* deals with the rights of purchasers of personal property (including intellectual property such

as designs) that is subject to PPSA security interests. That Act also provides for the priority and enforcement of PPSA security interests. See the following provisions of that Act:

- (a) Part 2.5 (taking personal property free of security interests);
- (b) Part 2.6 (priority between security interests);
- (c) Chapter 4 (enforcement of security interests).

#### **4 After subsection 118(3)**

Insert:

- (3A) This section does not apply in relation to any particulars recorded in the Register in relation to a PPSA security interest.

Note: Certain particulars relating to registrations in respect of PPSA security interests under the *Personal Property Securities Act 2009* are admissible in evidence: see section 174 of that Act.

#### **5 Section 119**

Before “A document”, insert “(1)”.

#### **6 At the end of section 119**

Add:

- (2) However, subsection (1) does not restrict the admissibility in evidence in a court of a document or instrument in relation to a PPSA security interest.

Note: Certain particulars relating to registrations in respect of PPSA security interests under the *Personal Property Securities Act 2009* are admissible in evidence: see section 174 of that Act.

#### **7 Application of amendments of the *Designs Act 2003***

- (1) The amendment of the *Designs Act 2003* made by item 2 of this Schedule does not apply in relation to a dealing that starts before the time the item commences.
- (2) The amendment of the *Designs Act 2003* made by item 3 of this Schedule does not apply in relation to the enforcement of an equity if the equity starts to be enforced before the time the item commences.
- (3) The amendments of the *Designs Act 2003* made by items 4, 5 and 6 of this Schedule do not apply in relation to any proceedings in a court or tribunal in relation to designs (or interests in designs) that are commenced before the time the items commence.

Note: Items 2 to 6 commence at the registration commencement time within the meaning of section 306 of the *Personal Property Securities Act 2009*.

## ***Patents Act 1990***

### **8 Section 3 (list of definitions)**

Insert “PPSA security interest”.

### **9 After subsection 189(2)**

Insert:

- (2A) Despite subsection (1), the recording in the Register of a right that is a PPSA security interest does not affect a dealing with a patent.

### **10 At the end of section 189**

Add:

- (4) Subsection (3) does not apply in relation to an equity that is a PPSA security interest.

Note: The *Personal Property Securities Act 2009* deals with the rights of purchasers of personal property (including intellectual property such as patents) that is subject to PPSA security interests. That Act also provides for the priority and enforcement of PPSA security interests. See the following provisions of that Act:

- (a) Part 2.5 (taking personal property free of security interests);
- (b) Part 2.6 (priority between security interests);
- (c) Chapter 4 (enforcement of security interests).

### **11 At the end of section 195**

Add:

- (3) This section does not apply in relation to any particulars registered in the Register in relation to a PPSA security interest.

Note: Certain particulars relating to registrations in respect of PPSA security interests under the *Personal Property Securities Act 2009* are admissible in evidence: see section 174 of that Act.

### **12 Section 196**

Before “A document”, insert “(1)”.

### **13 At the end of section 196**

Add:

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- (2) However, subsection (1) does not restrict the admissibility in any proceedings of a document in relation to a PPSA security interest.

Note: Certain particulars relating to registrations in respect of PPSA security interests under the *Personal Property Securities Act 2009* are admissible in evidence: see section 174 of that Act.

## 14 Schedule 1 (Dictionary)

Insert:

***PPSA security interest*** (short for Personal Property Securities Act security interest) means:

- (a) a security interest within the meaning of the *Personal Property Securities Act 2009* and to which that Act applies (other than a transitional security interest within the meaning of that Act); or
- (b) a transitional security interest within the meaning of that Act, and to which Division 4 of Part 9.4 of that Act applies.

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

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

Note 2: For the meaning of ***transitional security interest***, see section 308 of the *Personal Property Securities Act 2009*. Division 4 of Part 9.4 of that Act applies to transitional security interests in situations including the bankruptcy or insolvency of a secured party, grantor or debtor.

## 15 Application of amendments of the *Patents Act 1990*

- (1) The amendment of the *Patents Act 1990* made by item 9 of this Schedule does not apply in relation to a dealing that starts before the time the item commences.
- (2) The amendment of the *Patents Act 1990* made by item 10 of this Schedule does not apply in relation to the enforcement of an equity if the equity starts to be enforced before the time the item commences.
- (3) The amendments of the *Patents Act 1990* made by items 11, 12 and 13 of this Schedule do not apply in relation to any proceedings in a court or tribunal in relation to patents (or interests in patents) that are commenced before the time the items commence.

Note: Items 9 to 13 commence at the registration commencement time within the meaning of section 306 of the *Personal Property Securities Act 2009*.

### ***Plant Breeder's Rights Act 1994***

#### **16 At the end of section 20**

Add:

- Note 1: The *Personal Property Securities Act 2009* applies to PBR, and any licence in PBR, as ***intellectual property*** (see paragraph (d) of the definition of that phrase in section 10 of that Act). That Act deals with security interests in personal property, including intellectual property and intellectual property licences.
- Note 2: Section 106 of the *Personal Property Securities Act 2009* corresponds to subsection 20(3) of this section. Section 106 of that Act provides for security agreements in relation to intellectual property licences (or sub-licences) to be binding on successors in title to the licences (or sub-licences).

#### **17 At the end of section 25**

Add:

- Note: The *Personal Property Securities Act 2009* deals with security interests in personal property, including a right to apply for PBR.

### ***Trade Marks Act 1995***

#### **18 Section 6**

Insert:

***PPSA security interest*** (short for Personal Property Securities Act security interest) means:

- (a) a security interest within the meaning of the *Personal Property Securities Act 2009* and to which that Act applies (other than a transitional security interest within the meaning of that Act); or
- (b) a transitional security interest within the meaning of that Act, and to which Division 4 of Part 9.4 of that Act applies.

- Note 1: The *Personal Property Securities Act 2009* applies to certain security interests in personal property. See the following provisions of that Act:
- (a) section 8 (interests to which the Act does not apply);
  - (b) section 12 (meaning of ***security interest***);
  - (c) Chapter 9 (transitional provisions).

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Note 2: For the meaning of *transitional security interest*, see section 308 of the *Personal Property Securities Act 2009*. Division 4 of Part 9.4 of that Act applies to transitional security interests in situations including the bankruptcy or insolvency of a secured party, grantor or debtor.

## **19 After subsection 22(2)**

Insert:

- (2A) Despite subsection (1), the recording in the Register of a right that is a PPSA security interest does not affect a dealing with a trade mark.

Note: For *PPSA security interest* see section 6.

## **20 At the end of section 22**

Add:

- (4) Subsection (3) does not apply in relation to an equity that is a PPSA security interest.

Note: The *Personal Property Securities Act 2009* deals with the rights of purchasers of personal property (including intellectual property such as trade marks) that is subject to PPSA security interests. That Act also provides for the priority and enforcement of PPSA security interests. See the following provisions of that Act:

- (a) Part 2.5 (taking personal property free of security interests);
- (b) Part 2.6 (priority between security interests);
- (c) Chapter 4 (enforcement of security interests).

## **21 Section 113**

Repeal the section, substitute:

### **113 Application for registration of interest or right in trade mark**

*Scope*

- (1) This section applies in relation to an interest in, or right in respect of, a registered trade mark, if the interest or right may not be recorded in the Register under Part 10.

*Application for registration of interest or right*

- (2) A person claiming the interest or right may apply to the Registrar to have particulars of the claim recorded in the Register.
- (3) The application must:

- (a) be in an approved form; and
- (b) be accompanied by proof to the reasonable satisfaction of the Registrar of the applicant's entitlement to the claimed interest or right; and
- (c) be filed in accordance with the regulations.

Note: For *registered trade mark, approved form* and *file* see section 6.

## 22 Section 117

Repeal the section, substitute:

### 117 Application for recording of interest or right in trade mark

#### *Scope*

- (1) This section applies in relation to an interest in, or right in respect of, a trade mark, if a person has applied for the registration of the trade mark.

#### *Application for recording of interest or right*

- (2) A person claiming the interest or right may apply to the Registrar for a record to be kept of the claim.
- (3) The application must:
  - (a) be in an approved form; and
  - (b) be accompanied by proof to the reasonable satisfaction of the Registrar of the applicant's entitlement to the claimed interest or right; and
  - (c) be filed in accordance with the regulations.

Note: For *registered trade mark, approved form* and *file* see section 6.

## 23 At the end of section 210

Add:

- (4) This section does not apply in relation to any particular or other matter entered in the Register in relation to a PPSA security interest.

Note 1: For *PPSA security interest* see section 6.

Note 2: Certain particulars relating to registrations in respect of PPSA security interests under the *Personal Property Securities Act 2009* are admissible in evidence: see section 174 of that Act.

## **24 Application of amendments of the *Trade Marks Act 1995***

- (1) The amendment of the *Trade Marks Act 1995* made by item 19 of this Schedule does not apply in relation to a dealing that starts before the time the item commences.
- (2) The amendment of the *Trade Marks Act 1995* made by item 20 of this Schedule does not apply in relation to the enforcement of an equity if the equity starts to be enforced before the time the item commences.
- (3) The amendments of the *Trade Marks Act 1995* made by items 21 and 22 of this Schedule do not apply in relation to applications to the Registrar made under section 113 or 117 of that Act before the time the items commence.
- (4) The amendment of the *Trade Marks Act 1995* made by item 23 of this Schedule does not apply in relation to any proceedings in a court or tribunal in relation to trade marks (or interests in trade marks) that are commenced before the time the item commences.

Note: Items 19 to 23 commence at the registration commencement time within the meaning of section 306 of the *Personal Property Securities Act 2009*.

## **Schedule 3—Maritime legislation**

### ***Admiralty Act 1988***

#### **1 Section 32**

After “59”, insert “or 59A”.

### ***Marine Navigation Levy Collection Act 1989***

#### **2 Section 10**

Before “Any”, insert “(1)”.

#### **3 At the end of section 10**

Add:

- (2) While a ship is detained under subsection (1), a person does not have the power of seizure provided for by section 123 of the *Personal Property Securities Act 2009* in relation to the ship.

### ***Marine Navigation (Regulatory Functions) Levy Collection Act 1991***

#### **4 Section 9**

Before “Any”, insert “(1)”.

#### **5 At the end of section 9**

Add:

- (2) While a ship is detained under subsection (1), a person does not have the power of seizure provided for by section 123 of the *Personal Property Securities Act 2009* in relation to the ship.

### ***Navigation Act 1912***

#### **6 Subsection 6(1)**

Insert:

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**PPSA security interest** (short for Personal Property Securities Act security interest) means:

- (a) a security interest within the meaning of the *Personal Property Securities Act 2009* and to which that Act applies (other than a transitional security interest within the meaning of that Act); or
- (b) a transitional security interest within the meaning of that Act, and to which Division 4 of Part 9.4 of that Act applies.

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

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

Note 2: For the meaning of **transitional security interest**, see section 308 of the *Personal Property Securities Act 2009*. Division 4 of Part 9.4 of that Act applies to transitional security interests in situations including the bankruptcy or insolvency of a secured party, grantor or debtor.

## **7 Subsection 83(2)**

Omit “shall have priority over all other liens.”, substitute:

has priority over:

- (a) all other liens; and
- (b) any PPSA security interest in the ship.

## **8 After subsection 83(2)**

Insert:

(2A) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to the lien for seamen’s wages.

Note 1: The effect of subsection (2A) is that the priority between a lien for seamen’s wages and a PPSA security interest is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.

Note 2: Subsection 73(2) of the *Personal Property Securities Act 2009* applies to liens for seamen’s wages that arise after the commencement of subsection (2A) of this section (which commences at the registration commencement time within the meaning of the *Personal Property Securities Act 2009*).

## **9 After subsection 128(2)**

Insert:

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(2A) A charge that arises under subsection (2) and that relates to expenses that are being recovered in the same court and manner as wages due to seamen has priority over a PPSA security interest in the ship.

(2B) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to a charge covered by subsection (2A).

Note 1: The effect of subsection (2B) is that the priority between a charge covered by subsection (2A) and a PPSA security interest is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.

Note 2: Subsection 73(2) of the *Personal Property Securities Act 2009* applies to charges that are covered by subsection (2A) that arise after the commencement of subsection (2B) of this section (which commences at the registration commencement time within the meaning of the *Personal Property Securities Act 2009*).

## 10 After subsection 298(2)

Insert:

(2A) A charge that arises under subsection (2) has priority over any PPSA security interest in the ship.

(2B) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to a charge that arises under subsection (2).

Note 1: The effect of subsection (2B) is that the priority between a charge that arises under subsection (2) and a PPSA security interest is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.

Note 2: Subsection 73(2) of the *Personal Property Securities Act 2009* applies to charges that arise under subsection (2) that arise after the commencement of subsection (2B) of this section (which commences at the registration commencement time within the meaning of the *Personal Property Securities Act 2009*).

## *Protection of the Sea (Civil Liability) Act 1981*

### 11 After subsection 22(1A)

Insert:

(1B) While a ship is detained under this section, a person does not have the power of seizure provided for by section 123 of the *Personal Property Securities Act 2009* in relation to the ship.

***Protection of the Sea (Harmful Anti-fouling Systems) Act  
2006***

**12 At the end of section 18**

Add:

- (6) While a ship is detained under subsection (1), a person does not have the power of seizure provided for by section 123 of the *Personal Property Securities Act 2009* in relation to the ship.

***Protection of the Sea (Prevention of Pollution from Ships)  
Act 1983***

**13 After subsection 27A(5A)**

Insert:

- (5B) While a foreign ship is detained under subsection (1), a person does not have the power of seizure provided for by section 123 of the *Personal Property Securities Act 2009* in relation to the ship.

***Protection of the Sea (Shipping Levy Collection) Act 1981***

**14 At the end of section 12**

Add:

- (4) While a ship is detained under subsection (1), a person does not have the power of seizure provided for by section 123 of the *Personal Property Securities Act 2009* in relation to the ship.

***Shipping Registration Act 1981***

**15 Subsection 3(1) (definition of *mortgage*)**

Repeal the definition.

**16 Subsection 3(1)**

Insert:

***PPSA security interest*** (short for Personal Property Securities Act security interest) means a security interest within the meaning of the *Personal Property Securities Act 2009* and to which that Act

applies (other than a transitional security interest within the meaning of that Act).

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

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

### **17 Part III (heading)**

Repeal the heading, substitute:

## **Part III—Transfers, transmissions, security interests and other dealings**

### **18 Sections 38 to 44A**

Repeal the sections.

### **19 Section 47**

Omit “41,”.

### **20 After subsection 47A(1)**

Insert:

- (1A) Subsection (1) does not apply to an interest in a ship, or in a share in a ship, that is a PPSA security interest.

### **21 Paragraphs 47B(1)(a) and (b)**

Omit “, or as a mortgagee,”.

### **22 Subsection 47D(3)**

Repeal the subsection, substitute:

- (3) A caveat does not prevent the Registrar from entering in the Register the transmission of a ship, or of a share in a ship, to a person if the person becomes entitled to the transmission by operation of law, except to the extent that the caveat specifies otherwise.

### **23 Subparagraph 58(1)(b)(i)**

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Omit “, other than particulars relating to a mortgage,”.

**24 Paragraph 58(3)(a)**

Omit “except so far as it relates to any unsatisfied mortgage of the ship”.

**25 After section 59**

Insert:

**59A Rectification of Personal Property Securities Register**

- (1) This section applies if:
  - (a) a financing statement describing a ship, or a share in a ship, has been registered in the PPS Register; and
  - (b) any of the following circumstances apply (whether or not by reason of a decision of the PPS Registrar):
    - (i) data in relation to the financing statement (including the entire registration) has been removed from the PPS Register;
    - (ii) the financing statement, or a financing change statement to amend the financing statement, was wrongly registered, or was registered without sufficient cause;
    - (iii) there is an error, omission or other defect in the financing statement.
- (2) A person aggrieved by the circumstance or the PPS Registrar may apply to the Supreme Court of a State or Territory for rectification of the PPS Register.
- (3) Notice of an application under subsection (2) by a person aggrieved must be served on the PPS Registrar, who:
  - (a) may appear and be heard; and
  - (b) must appear if so directed by the Court.
- (4) On an application under subsection (2), the Court may make such order as it thinks fit directing the rectification of the PPS Register.
- (5) A Court may, in proceedings on an application under subsection (2), decide any question that it is necessary or expedient to decide in connection with the rectification of the PPS Register.

- (6) An office copy of an order under subsection (4) must be served on the PPS Registrar, and the PPS Registrar must, upon receipt of the order, rectify the PPS Register accordingly.
- (7) If the PPS Register is rectified under this section, but could have been similarly rectified under a provision of the *Personal Property Securities Act 2009*, that Act applies as if the PPS Register had been rectified under that provision of the *Personal Property Securities Act 2009*.

Note: The *Personal Property Securities Act 2009* includes various rules about access to data in the PPS Register that has been the subject of rectification under that Act. Subsection (7) of this section ensures that those rules apply in relation to rectification under this Act as well.

- (8) In this section:

***financing change statement*** has the meaning given by the *Personal Property Securities Act 2009*.

***financing statement*** has the meaning given by the *Personal Property Securities Act 2009*.

***PPS Register*** means the Personal Property Securities Register established under section 147 of the *Personal Property Securities Act 2009*.

***PPS Registrar*** means the Registrar of Personal Property Securities appointed under section 194 of the *Personal Property Securities Act 2009*.

Note: The heading to section 59 is replaced by the heading “**Rectification of Australian Register of Ships**”.

## **26 Paragraph 66(3)(a)**

Omit “except so far as it relates to any unsatisfied mortgage of the ship”.

## **27 Subsections 66(4) to (9) and (11)**

Repeal the subsections.

## **28 Subsection 74(1)**

Omit “24(1), 26(3), 36(2), 37(1), 41(2), 42(2), 43(1) or 44(1)”, substitute “26(3), 36(2) or 37(1)”.

**29 Subsection 74(2)**

Omit “41(2), 42(2), 43(1) or 44(1), subsection”.

**30 Section 79**

Omit “, the registration of a mortgage, the transfer of a mortgage”.

**31 Section 81**

Omit “, 66”.

**32 Subsection 82(1)**

Omit “, 66”.

**33 Application—items 15, 17 to 19 and 22 to 24**

- (1) The amendments of the *Shipping Registration Act 1981* made by items 15, 17 to 19 and 22 to 24 of this Schedule apply in relation to an interest of a mortgagor in a mortgage of a ship, or of a share in a ship, regardless of when the interest arose.
- (2) However, interests that are mortgages registered under the *Shipping Registration Act 1981* before the time the items covered by subitem (1) commence have the priority between themselves that they would have had under that Act as in force immediately before that time, subject to Chapter 9 (Transitional provisions) of the *Personal Property Securities Act 2009*.

**34 Application—item 20**

The amendment of the *Shipping Registration Act 1981* made by item 20 of this Schedule does not affect the validity or effectiveness of a caveat lodged under section 47A of the *Shipping Registration Act 1981* before the time the item commences.

**35 Application—item 21**

The amendment of the *Shipping Registration Act 1981* made by item 21 of this Schedule does not apply to an interest in relation to which a caveat has been lodged under section 47A of that Act before the time the item commences.

**36 Application—item 25**

The amendment of the *Shipping Registration Act 1981* made by item 25 of this Schedule applies in relation to a registration under the *Personal Property Securities Act 2009* with respect to a security interest regardless of when the security interest arises.

**37 Application—item 27**

The requirement in subsection 66(4) of the *Shipping Registration Act 1981* (as in force immediately before the time item 27 of this Schedule commences) to give notice to a mortgagee stops applying at the time that item commences.

**38 Application—items 28 and 29**

The amendments of the *Shipping Registration Act 1981* made by items 28 and 29 of this Schedule do not apply in relation to a contravention of a provision mentioned in subsection 74(1) or (2) of that Act (as in force immediately before the time the items commence) if the contravention occurred before that time.

Note: The items in this Schedule commence at the registration commencement time within the meaning of section 306 of the *Personal Property Securities Act 2009*.

## **Schedule 4—Personal Property Securities Act 2009**

### **1 After subsection 6(1)**

Insert:

(1A) This Act applies to a security interest in an investment entitlement if:

- (a) the investment entitlement intermediary in relation to the investment entitlement is located in Australia; or
- (b) the grantor is an Australian entity.

Note: For when a person is located in a jurisdiction, see section 235.

### **2 Paragraph 6(2)(e)**

Repeal the paragraph, substitute:

- (e) the intangible property is created, arises or is provided for by either or both of the following:
  - (i) a law of the Commonwealth, a State or a Territory;
  - (ii) the general law (to the extent to which it applies in Australia, a State or a Territory).

### **3 At the end of paragraph 8(1)(d)**

Add “(within the ordinary meaning of the term “accounts”)”.

### **4 Subsection 8(2) (at the end of the table)**

Add:

- |   |  |   |
|---|--|---|
| 6 | a provision prescribed by regulations made for the purposes of this item | an interest mentioned in subsection (1) (including an interest prescribed by regulations made for the purposes of paragraph (1)(l)) that is prescribed by regulations made for the purposes of this item. |
|---|--|---|

### **5 Section 10 (definition of *ADI account*)**

Repeal the definition, substitute:

*ADI account* means an account, within the ordinary meaning of that term, kept by a person (whether alone or jointly with one or

more other persons) with an ADI that is payable on demand or at some time in the future (as agreed between the ADI and the person or persons).

Example: A savings account, or a term deposit, kept with an ADI.

**6 Section 10 (definition of *Australia*)**

Omit “subsection 7(4)”, substitute “section 7”.

**7 Section 10**

Insert:

*jurisdiction*, in which personal property, or an individual, is located, has a meaning affected by subsections 235(6) and (7).

**8 Section 10**

Insert:

*National Credit Code* means Schedule 1 to the *National Consumer Credit Protection Act 2009*, and includes regulations made under section 329 of that Act for the purposes of that Schedule.

**9 Section 10 (paragraph (b) of the definition of *registration*)**

Omit “paragraph 148(c);”, substitute “paragraph 148(c).”.

**10 After subsection 12(4)**

Insert:

(4A) An ADI may take a security interest in an ADI account that is kept with the ADI.

**11 After subsection 14(2)**

Insert:

(2A) Despite paragraph (2)(c), a *purchase money security interest* includes an interest if:

- (a) the interest is covered by subsection (1); and
- (b) the interest is in collateral that (at the time the interest attaches to the collateral) the grantor intends to use predominantly for personal, domestic or household purposes; and

(c) the collateral is of a kind that is required or permitted by the regulations to be described by serial number.

**12 Section 23**

Omit:

(a) goods in the possession of a common carrier;

Substitute:

(a) goods transported by a common carrier;

**13 Subsection 26(1)**

Omit “(1)”.

**14 Subparagraph 26(1)(b)(i)**

Omit “and”, substitute “or”.

**15 Subsection 26(2)**

Repeal the subsection.

**16 Subsection 32(2)**

After “investment instrument”, insert “or an investment entitlement”.

**17 Subsection 39(1)**

Omit all the words after “subsection (2)” (not including the note), substitute:

if, immediately before the collateral became located in Australia, and at the time it became so located:

- (a) the security interest was effective; and
- (b) the security agreement providing for the security interest was enforceable against third parties.

**18 Subsection 39(2)**

Repeal the subsection, substitute:

- (2) This subsection covers the period:
  - (a) starting at whichever of the following times is applicable:

- (i) if the law of the foreign jurisdiction provides for the perfection (and the effect of perfection or non-perfection) of the security interest—when the security interest last became perfected under that law;
  - (ii) if subparagraph (i) does not apply to the law of the foreign jurisdiction, but that law provides for the public registration or recording of the security interest, or of a notice relating to the security interest—when the security interest, or such a notice, was so registered or recorded (or was last so registered or recorded);
  - (iii) if neither subparagraph (i) nor (ii) applies to the law of the foreign jurisdiction—when the security interest last became enforceable against third parties under that law; and
- (b) ending when the property becomes located in Australia.
- (2A) However, a security interest in collateral is not taken to have been continuously perfected under subsection (1) if, immediately before the collateral became located in Australia:
- (a) in a case in which the law of the foreign jurisdiction provides for the perfection (and effect of perfection or non-perfection) of the security interest—the security interest was not perfected under that law; or
  - (b) in a case in which paragraph (a) does not apply to the law of the foreign jurisdiction, but that law provides for the public registration or recording of the security interest, or of a notice relating to the security interest—the security interest, or such a notice, was not so registered or recorded.

## 19 Subsections 40(1) and (2)

Repeal the subsections, substitute:

### *Continuous perfection prior to relocation event*

- (1) If the law of a foreign jurisdiction has governed a security interest in intangible property, or financial property, the security interest is taken to have been continuously perfected for the period covered by subsection (2) if:
- (a) either of the following events (the ***relocation event***) occurs:
    - (i) the grantor becomes located in Australia;

- (ii) the grantor transfers the collateral to a person who is located in Australia; and
- (b) immediately before the relocation event, and at the time of that event:
  - (i) the security interest was effective; and
  - (ii) the security agreement providing for the security interest was enforceable against third parties; and
- (c) as a result of the occurrence of the relocation event, the perfection (and the effect of perfection or non-perfection) of the security interest becomes governed by the law of Australia.

Note 1: For when bodies corporate, bodies politic or individuals are located in a jurisdiction, see section 235.

Note 2: For when laws of other jurisdictions govern a security interest, see Part 7.2.

- (2) This subsection covers the period:
  - (a) starting at whichever of the following times is applicable:
    - (i) if the law of the foreign jurisdiction provides for the perfection (and the effect of perfection or non-perfection) of the security interest—when the security interest last became perfected under that law;
    - (ii) if subparagraph (i) does not apply to the law of the foreign jurisdiction, but that law provides for the public registration or recording of the security interest, or of a notice relating to the security interest—when the security interest, or such a notice, was so registered or recorded (or was last so registered or recorded);
    - (iii) if neither subparagraph (i) nor (ii) applies to the law of the foreign jurisdiction—when the security interest last became enforceable against third parties under that law; and
  - (b) ending when the relocation event occurs.

- (2A) However, a security interest is not taken to have been continuously perfected under subsection (1) if, immediately before the relocation event:
  - (a) in a case in which the law of the foreign jurisdiction provides for the perfection (and effect of perfection or non-perfection) of the security interest—the security interest was not perfected under that law; or

- (b) in a case in which paragraph (a) does not apply to the law of the foreign jurisdiction, but that law provides for the public registration or recording of the security interest, or of a notice relating to the security interest—the security interest, or such a notice, was not so registered or recorded.

## 20 Paragraphs 41(b) to (j)

Repeal the paragraphs, substitute:

- |   |
|---|
| <p>(b) serial number defects;</p> <p>(c) motor vehicles;</p> <p>(d) taking in the ordinary course of business;</p> <p>(e) personal, domestic or household property;</p> <p>(f) currency;</p> <p>(g) taking investment instruments or investment entitlements in the ordinary course of trading;</p> <p>(h) investment instruments;</p> <p>(i) investment entitlements;</p> <p>(j) temporarily perfected security interests.</p> |
|---|

## 21 Subsection 43(1)

Omit “new value”, substitute “value”.

## 22 Subsection 44(1)

Omit “, for new value,”.

Note: The heading to section 49 is altered by omitting “**investment interest**” and substituting “**investment instrument**”.

## 23 Paragraph 44(3)(a)

After “leased”, insert “for new value”.

## 24 Subsection 51(2)

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Omit “an investment entitlement intermediary”, substitute “the investment entitlement intermediary”.

**25 Paragraph 55(5)(b)**

Omit “first takes possession”, substitute “first perfects the security interest by taking possession or control”.

**26 Section 55 (note)**

Omit “subsection 33(5)”, substitute “subsection 32(5)”.

**27 Subsection 61(2)**

Omit “An agreement to subordinate a security interest”, substitute “The subordination”.

**28 Paragraph 61(2)(b)**

Omit “the agreement”, substitute “the subordination”.

**29 Subparagraph 64(1)(b)(i)**

Repeal the subparagraph, substitute:

- (i) the secured party holding the priority interest gives a notice in accordance with subsection (2) to the secured party holding the purchase money security interest;

**30 At the end of section 73 (before the note)**

Add:

*Interests arising under the general law*

- (7) The priority between an interest in collateral (the **general law interest**) that arises by operation of the general law and a security interest in the same collateral is to be determined in accordance with an instrument made under subsection (8) if, and only if:
  - (a) no law of the Commonwealth (other than this Act and that instrument) provides for the priority between the general law interest and the security interest; and
  - (b) the instrument provides that this subsection applies to general law interests of that kind; and
  - (c) the general law interest arises after the instrument comes into effect.

(8) The Minister may make a legislative instrument for the purposes of subsection (7).

(9) Subsection (7) is subject to subsection (1).

**31 Subsection 77(1)**

Omit “or financial property”, substitute “, financial property or an investment entitlement”.

**32 Subsection 77(3)**

After “financial property” (first occurring), insert “or an investment entitlement”.

Note: The heading to subsection 77(3) is altered by adding at the end “*or investment entitlements*”.

**33 Subsection 77(3)**

After “financial property” (last occurring), insert “or investment entitlement”.

**34 Subsection 79(1)**

Omit “an agreement (whether or not a security agreement)”, substitute “a security agreement”.

**35 Subsection 80(7)**

Omit “collateral that is”.

**36 Subsections 119(1) and (2)**

Omit “Consumer Credit Code of a State or Territory”, substitute “National Credit Code”.

**37 Paragraph 128(2)(b)**

Repeal the paragraph, substitute:

(b) by lease, if the security agreement so provides; or

**38 Subsection 129(1)**

Omit “that is commercial property”.

**39 Subsection 151(1)**

Omit all the words from and including “the collateral secures” to and including “the secured party”, substitute “the person described in the statement as the secured party is, or will become, a secured party in relation to the collateral (otherwise than by virtue of the registration itself)”.

**40 Subsection 157(4)**

Omit “subsection (1)”, substitute “a requirement under subsection (1) to ensure that a notice is given to an individual”.

**41 After paragraph 171(1)(d)**

Insert:

- (da) a unique identifier allocated by the Registrar to a registered financing statement;

**42 Subsection 235(1)**

Omit “(whether the jurisdiction of Australia or a foreign jurisdiction)”.

**43 At the end of section 235**

Add:

*Location within Australia*

- (6) For the purposes of this Act, in the application of this section in relation to Australia:
  - (a) the *jurisdiction* in which personal property is located under subsection (1), or in which an individual is located under subsection (5), is the jurisdiction of the State or Territory in which the property, or the individual’s principal place of residence, is situated (as the case may be); and
  - (b) a reference to the law of that jurisdiction is a reference to the law of that State or Territory, and to the law of the Commonwealth as it applies in that State or Territory.

*Location within a foreign country that has a federal character*

- (7) For the purposes of this Act, in the application of this section in relation to a foreign country that is divided into territorial units that have their own rules of law about security interests (distinct from those that apply to the foreign country generally):

- (a) the *jurisdiction* in which personal property is located under subsection (1), or in which an individual is located under subsection (5), is the jurisdiction of the territorial unit in which the property, or the individual's principal place of residence, is situated; and
- (b) a reference to the law of that jurisdiction is a reference to the law of that territorial unit, and to the law of the foreign country as it applies in that territorial unit.

#### 44 Subsection 238(1)

Omit "A security interest", substitute "The validity of a security interest".

Note: The heading to subsection 238(1) is replaced by the heading "*Main rules*".

#### 45 Subsection 238(1)

Omit "property is located", substitute "goods are located".

#### 46 Subsection 238(2)

Repeal the subsection, substitute:

- (1A) At a particular time, the perfection, and the effect of perfection or non-perfection, of a security interest in goods is governed by the law of the jurisdiction (other than the law relating to the conflict of laws) in which the goods are located at that time.

##### *Goods that are moved*

- (2) Despite subsections (1) and (1A), the validity, perfection, and the effect of perfection or non-perfection, of a security interest in goods is governed by the law of a particular jurisdiction (the *destination jurisdiction*), other than the law relating to the conflict of laws, if:
  - (a) at the time (the *attachment time*) the security interest attaches, under that law, to the goods, it was reasonable to believe that the goods would be moved to the destination jurisdiction; and
  - (b) the goods are currently located in the destination jurisdiction.
- (2A) Subsection (2) applies from the attachment time.

#### 47 Subsection 238(3)

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Omit “Despite subsections (1) and (2),”, substitute “Despite subsections (1) to (2A), the validity, perfection, and the effect of perfection or non-perfection, of”.

**48 Paragraph 238(3)(b)**

Omit “commercial property”.

**49 At the end of subsection 238(3) (before the note)**

Add:

; and (c) the goods are not used predominantly for personal, domestic or household purposes.

**50 At the end of section 238 (after the note)**

Add:

*Goods entered on registers of ships*

- (4) Despite subsections (1A) to (3), at a particular time, the perfection, and the effect of perfection or non-perfection, of a security interest in goods is governed by the law of a country if:
- (a) the goods are entered in a register of ships maintained by the country containing the names and particulars of ships; and
  - (b) in proceedings in the country, the law of that country governs title to the goods.

**51 Subsection 239(5)**

Omit all the words after “ADI account”, substitute:

if:

- (a) the ADI consents in writing; and
- (b) applying the law of that other jurisdiction would not be manifestly contrary to public policy.

**52 Paragraph 265(e)**

After “proceedings”, insert “, and what constitutes knowledge”.

**53 Paragraph 267(1)(b)**

Repeal the paragraph, substitute:

- (b) a security interest granted by the body corporate, company or bankrupt is unperfected at whichever of the following times applies:
  - (i) in the case of a company or body corporate that is being wound up—when, on a day, the event occurs by virtue of which the winding up is taken to have begun or commenced on that day (whether under section 513A or 513B of the *Corporations Act 2001*, under either section as applied by force of a law of a State or Territory, or otherwise);
  - (ii) in the case of any other company or body corporate—when, on a day, the event occurs by virtue of which the day is the section 513C day for the company or body, within the meaning of the *Corporations Act 2001* (including that Act as it is applied by force of a law of a State or Territory, or otherwise);
  - (iii) in the case of a bankrupt—when a sequestration order is made against the bankrupt under the *Bankruptcy Act 1966*, or when he or she becomes a bankrupt by force of section 55, 56E or 57 of that Act.

**54 Subsection 267(2)**

Omit “, unless the security interest is unaffected by this section because of section 268”.

**55 At the end of subsection 267(2)**

Add:

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

**56 Subsection 268(1)**

Repeal the subsection, substitute:

*Security interests to which vesting rule does not apply*

- (1) Subsection 267(2) (security interests vested in grantor) does not apply to the following security interests:
  - (a) a security interest provided for by any of the following transactions, if the interest does not secure the payment or performance of an obligation:
    - (i) a transfer of an account or chattel paper;

- (ii) a PPS lease, if paragraph (e) (serial numbered goods) of the definition of **PPS lease** in subsection 13(1) applies to the lease, and none of paragraphs (a) to (d) of that definition applies to the lease;
- (iii) a commercial consignment;
- (b) a security interest covered by subsection (2) of this section.

Example: An example of a security interest mentioned in subparagraph (a)(ii) is a PPS lease of goods that does not secure the payment or performance of an obligation, if:

- (a) the goods leased may or must be described by serial number in accordance with the regulations; and
- (b) the lease is for a term of between 90 days and 1 year; and
- (c) paragraphs (c) and (d) of the definition of **PPS lease** in subsection 13(1) do not apply to the lease.

### **57 Subsection 268(3)**

Repeal the subsection.

### **58 Subsection 317(1)**

Omit “(when a non-constitutional security interest becomes a constitutional security interest)”, substitute “(personal property taken free of security interest when Act starts to operate)”.

### **59 Subsection 327(1)**

After “particular time”, insert “(the *applicable time*)”.

### **60 Subsection 327(2)**

Omit “(the *applicable time*)”, substitute “(also the *applicable time*)”.

### **61 Section 338**

Omit “this Act” (first occurring), substitute “laws of the Commonwealth”.

### **62 At the end of subsection 339(1)**

Add:

; and (c) the charge is a security interest to which this Act applies.

### **63 Subsection 340(5)**

Omit “section”, substitute “subsection”.

Note: The heading to subsection 340(5) is replaced by the heading “*Current assets*”.

**64 Section 342**

Repeal the section, substitute:

**342 Guide to this Part**

This Part provides for the review of the operation of the Act within 3 years after it starts to apply.

The Act starts to apply under Part 9.3 at the registration commencement time (26 months after the Act is given the Royal Assent, or an earlier time determined by the Minister).

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## Schedule 5—Other legislation

### *Air Services Act 1995*

#### **1 Paragraph 60(3)(a)**

Omit “floating charge”, substitute “security interest that has attached to the aircraft as a circulating asset, within the meaning of the *Personal Property Securities Act 2009*”.

#### **2 At the end of subsection 60(3)**

Add:

Note: Part 9.5 of the *Personal Property Securities Act 2009* deals with security interests that attach to circulating assets. These interests are also described as floating charges.

#### **3 After subsection 60(3)**

Insert:

(3A) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to a statutory lien.

Note 1: The effect of this subsection is that the priority between a statutory lien on an aircraft and a security interest in the aircraft to which the *Personal Property Securities Act 2009* applies is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.

Note 2: Subsection 73(2) of the *Personal Property Securities Act 2009* applies to statutory liens that arise after the commencement of subsection (3A) (which is the registration commencement time within the meaning of the *Personal Property Securities Act 2009*).

#### **4 Application of amendments of the *Air Services Act 1995***

The amendment of the *Air Services Act 1995* made by item 1 of this Schedule does not apply in relation to a floating charge if the floating charge was created before the time that item commences.

Note: Item 1 commences at the registration commencement time within the meaning of section 306 of the *Personal Property Securities Act 2009*.

## ***Bankruptcy Act 1966***

### **5 Subsection 5(1)**

Insert:

***PPSA grantor or debtor*** (short for Personal Property Securities Act grantor or debtor), in relation to a PPSA security interest, means a grantor or debtor within the meaning of the *Personal Property Securities Act 2009*.

### **6 Subsection 5(1)**

Insert:

***PPSA secured party*** (short for Personal Property Securities Act secured party), in relation to a PPSA security interest, means a secured party within the meaning of the *Personal Property Securities Act 2009*.

### **7 Subsection 5(1)**

Insert:

***PPSA security agreement*** (short for Personal Property Securities Act security agreement), in relation to a PPSA security interest, means a security agreement within the meaning of the *Personal Property Securities Act 2009*.

### **8 Subsection 5(1)**

Insert:

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

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

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

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

**9 Subsection 5(1) (definition of *secured creditor*)**

Repeal the definition, substitute:

*secured creditor*, in relation to a debtor, means:

- (a) in the case of a debt secured by a PPSA security interest—the PPSA secured party in relation to the interest, if the interest:
  - (i) arose as security for the debt; and
  - (ii) is perfected (within the meaning of the *Personal Property Securities Act 2009*); or
- (b) in the case of any other debt—a person holding a mortgage, charge or lien on property of the debtor as a security for a debt due to him or her from the debtor.

**10 Subsection 301(1)**

Omit “or in a licence”, substitute “, in a licence or in a PPSA security agreement”.

**11 Paragraphs 301(1)(a), (b) and (c)**

Repeal the paragraphs, substitute:

- (a) the contract, agreement, lease, hire-purchase agreement, licence or PPSA security agreement is to terminate, or may be terminated by the vendor, lessor, owner, licensor or PPSA secured party; or
- (b) the operation of the contract, agreement, lease, hire-purchase agreement, licence or PPSA security agreement is to be modified; or
- (c) property to which the contract, agreement, lease, hire-purchase agreement, licence or PPSA security agreement relates may be repossessed by or on behalf of the vendor, lessor, owner, licensor or PPSA secured party;

**12 Subsection 301(1)**

Omit “or licensee”, substitute “, licensee or PPSA grantor or debtor”.

**13 After subsection 301(2)**

Insert:

- (2A) This section extends to a PPSA security agreement entered into at or after the time this subsection commences.

Note: This subsection commenced at the registration commencement time within the meaning of section 306 of the *Personal Property Securities Act 2009*.

**14 Subsection 302(1)**

Omit “or charge” (first occurring), substitute “, charge or PPSA security agreement”.

**15 Paragraphs 302(1)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) enabling the grantee, mortgagee, person entitled to the benefit of the lien or charge or PPSA secured party to exercise any power or remedy; or
- (b) to the effect that the operation of the bill of sale, mortgage, lien, charge or PPSA security agreement is to be modified;

**16 Subsection 302(1)**

Omit “or person whose property is subject to the lien or charge”, substitute “, the person whose property is subject to the lien or charge or the PPSA grantor or debtor”.

**17 At the end of section 302**

Add:

- (3) This section extends to a PPSA security agreement entered into at or after the time this subsection commences.

Note: This subsection commenced at the registration commencement time within the meaning of section 306 of the *Personal Property Securities Act 2009*.

**18 Application of amendments of the *Bankruptcy Act 1966***

The amendment of the *Bankruptcy Act 1966* made by item 9 of this Schedule does not apply in relation to a bankruptcy if the date of the bankruptcy (within the meaning of that Act) is before the time the item commences.

Note: Item 9 commences at the registration commencement time within the meaning of section 306 of the *Personal Property Securities Act 2009*.

***Commonwealth Inscribed Stock Act 1911***

**19 Section 24B**

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Before “The regulations”, insert “(1)”.

**20 At the end of section 24B**

Add:

- (2) Subsection (1) does not apply in relation to the keeping of a record of the ownership of any equitable interest in the stock that is a security interest within the meaning of the *Personal Property Securities Act 2009*, and to which that Act applies.

Note 1: The *Personal Property Securities Act 2009* applies to certain security interests in personal property (including stock). See the following provisions of that Act:

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

Note 2: That Act provides for registration in respect of security interests in personal property, including stock (see Chapter 5 of that Act).

***Corporations (Aboriginal and Torres Strait Islander) Act 2006***

**21 After subsection 453-10(5)**

Insert:

- (5A) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to a charge created in accordance with paragraph (4)(b).

Note 1: The effect of this subsection is that the priority between a charge created in accordance with paragraph (4)(b) and a security interest to which the *Personal Property Securities Act 2009* applies is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.

Note 2: Subsection 73(2) of the *Personal Property Securities Act 2009* applies to charges that arise after the commencement of subsection (5A) (which is the registration commencement time within the meaning of the *Personal Property Securities Act 2009*).

**22 After subsection 511-1(5)**

Insert:

- (5A) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to a charge created in accordance with paragraph (4)(b).

Note 1: The effect of this subsection is that the priority between a charge created in accordance with paragraph (4)(b) and a security interest to which the *Personal Property Securities Act 2009* applies is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.

Note 2: Subsection 73(2) of the *Personal Property Securities Act 2009* applies to charges that arise after the commencement of subsection (5A) (which is the registration commencement time within the meaning of the *Personal Property Securities Act 2009*).

## ***Health Insurance Act 1973***

### **23 After section 20A**

Insert:

#### **20AA Security interest must not be created in medicare benefit**

(1) This section applies to a medicare benefit (an ***assigned benefit***) if an assignment has been made, or an agreement has been entered into, in accordance with section 20A, in relation to the medicare benefit.

(2) A person must not enter into a security agreement (within the meaning of the *Personal Property Securities Act 2009*), to the extent that the agreement purports to provide for a PPSA security interest in an assigned benefit.

Note: For the meaning of ***security agreement***, see section 10 of the *Personal Property Securities Act 2009*.

(3) A security interest that is purported to be provided for by a security agreement entered into in contravention of subsection (2) is void and is taken never to have had effect.

(4) This section applies despite anything in the *Personal Property Securities Act 2009*.

(5) This section does not affect the operation of subsection 20A(5).

(6) In this section:

***PPSA security interest*** means a security interest within the meaning of the *Personal Property Securities Act 2009* and to which that Act applies, other than a transitional security interest within the meaning of that Act.

- 
- Note 1: The *Personal Property Securities Act 2009* applies to certain security interests in personal property. See the following provisions of that Act:
- (a) section 8 (interests to which the Act does not apply);
  - (b) section 12 (meaning of *security interest*);
  - (c) Chapter 9 (transitional provisions).
- Note 2: For the meaning of *transitional security interest*, see section 308 of the *Personal Property Securities Act 2009*.

## ***Insurance Act 1973***

### **24 At the end of section 62S**

Add:

- (3) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to a charge created in accordance with subsection (2).

- Note 1: The effect of this subsection is that the priority between a charge and a security interest to which the *Personal Property Securities Act 2009* applies is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.
- Note 2: Subsection 73(2) of the *Personal Property Securities Act 2009* applies to statutory interests that arise after the commencement of subsection (3) (which is the registration commencement time within the meaning of the *Personal Property Securities Act 2009*).

## ***Privacy Act 1988***

### **25 At the end of paragraphs 13(a) to (bb)**

Add “or”.

### **26 At the end of section 13**

Add:

- Note: For the purposes of this section, each of the following is an interference with the privacy of an individual:
- (a) a contravention of the requirement to ensure that notice is given in accordance with section 157 of the *Personal Property Securities Act 2009* (see subsection 157(4) of that Act);
  - (b) a search of the Personal Property Securities Register that is unauthorised under subsection 173(3) or (4) of that Act (see subsection 173(2) of that Act).

### **27 Subsection 28(1)**

Omit “and 28A”, substitute “, 28A and 28B”.

**28 Subsection 28A(1)**

Omit “and 28”, substitute “, 28 and 28B”.

**29 After section 28A**

Insert:

**28B Functions of Commissioner in relation to personal property securities**

- (1) In addition to the functions under sections 27, 28 and 28A, the Commissioner has the following functions in relation to personal property securities:
  - (a) to investigate an act or practice that may be an interference with the privacy of an individual under subsection 157(4) or 173(2) of the *Personal Property Securities Act 2009* and, if the Commissioner considers it appropriate to do so, to attempt by conciliation, to effect a settlement of the matters that gave rise to the investigation;
  - (b) to do anything incidental or conducive to the performance of that function.
- (2) The Commissioner has power to do all things that are necessary or convenient to be done for or in connection with the performance of his or her functions under subsection (1).

**30 After section 49**

Insert:

**49A Investigation under section 40 to cease if civil penalty provision under *Personal Property Securities Act 2009* may have been contravened**

- (1) If, in the course of an investigation under section 40, the Commissioner forms the opinion that subsection 172(3) of the *Personal Property Securities Act 2009* (civil penalty for searching otherwise than for authorised purposes) may have been contravened, the Commissioner must:
  - (a) inform the Registrar of Personal Property Securities under the *Personal Property Securities Act 2009* of that opinion; and

- 
- (b) in the case of an investigation under subsection 40(1), give a copy of the complaint to the Registrar of Personal Property Securities; and
  - (c) discontinue the investigation except to the extent that it concerns matters unconnected with the contravention that the Commissioner believes may have taken place.
- (2) The Registrar of Personal Property Securities must notify the Commissioner in writing if, after having been informed of the Commissioner's opinion under paragraph (1)(a), the Registrar decides:
- (a) not to apply for an order under section 222 of the *Personal Property Securities Act 2009*; or
  - (b) to discontinue a proceeding that is an application for an order under section 222 of that Act.
- (3) Upon receiving a notice under subsection (2), the Commissioner may continue an investigation discontinued under paragraph (1)(c).

## ***Quarantine Act 1908***

### **31 Subsection 5(1)**

Insert:

***PPSA security interest*** means a security interest within the meaning of the *Personal Property Securities Act 2009* and to which that Act applies, other than a transitional security interest within the meaning of that Act.

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

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

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

### **32 Section 65**

Before "Any", insert "(1)".

### **33 At the end of section 65**

Add:

- (2) While a vessel is detained under subsection (1), a person does not have the power of seizure provided for by section 123 of the *Personal Property Securities Act 2009* in relation to the vessel.

**34 Subsection 69A(14)**

After “In this section”, insert “and subject to subsection (14A)”.

**35 Subsection 69A(14)**

After “in respect of the goods or premises”, insert “(other than a PPSA security interest)”.

**36 After subsection 69A(14)**

Insert:

- (14A) For the purposes of the definition of *owner* in subsection (14), a person who, or a partnership which, had an interest in the goods or premises at the time of their destruction does not include a person or partnership if the person or partnership:
- (a) holds a PPSA security interest in the goods or premises; but
  - (b) is not in possession or control of the goods or premises at that time.

***Wool International Act 1993***

**37 Subsection 22J(1)**

Omit “(1)”.

**38 Subsection 22J(1)**

Omit “Subject to this section, a”, substitute “A”.

**39 At the end of subsection 22J(1)**

Add:

- Note 1: A charge over (or another security interest in) a unit of equity in WoolStock Australia Limited may be the subject of a registration in the Personal Property Securities Register under the *Personal Property Securities Act 2009*.
- Note 2: The priority of charges over (or other securities interests in) units of equity is determined in accordance with the *Personal Property Securities Act 2009*.

**40 Subsections 22J(2) to (7)**

Repeal the subsections.

**41 Section 22K**

Repeal the section.

**42 Paragraph 22L(b)**

Repeal the paragraph.

**43 Subsection 22R(2) (note)**

Repeal the note.

**44 Subsection 22R(3)**

Omit “Subject to subsection (4), a”, substitute “A”.

**45 Subsection 22R(4)**

Repeal the subsection.

**46 Subsection 22S(1)**

Omit “(1)”.

**47 Paragraph 22S(1)(b)**

Omit “distribution;”, substitute “distribution.”.

**48 Paragraph 22S(1)(c)**

Repeal the paragraph.

**49 Subsection 22S(2)**

Repeal the subsection.

**50 Application of amendments of the *Wool International Act 1993***

- (1) This item applies if immediately before the time item 42 of this Schedule commences, WoolStock Australia Limited had not complied with a request made by a person under paragraph 22L(b) of the *Wool International Act 1993*.

Note: Item 42 commences at the registration commencement time within the meaning of section 306 of the *Personal Property Securities Act 2009*.

**Schedule 5** Other legislation

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- (2) The requirement to comply with the request stops applying after the time item 42 of this Schedule commences.
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*[Minister's second reading speech made in—  
House of Representatives on 21 October 2009  
Senate on 23 November 2009]*

(207/09)

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