





# **Personal Property Securities (Corporations and Other Amendments) Act 2010**

**No. 96, 2010**

**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**

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



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# **Personal Property Securities (Corporations and Other Amendments) Act 2010**

**No. 96, 2010**

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**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**

[Assented to 6 July 2010]

The Parliament of Australia enacts:

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## 1 Short title

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

## 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.

| Commencement information  |   |              |
|---|---|--------------|
| Column 1  | Column 2  | Column 3     |
| Provision(s)  | Commencement  | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent.   | 6 July 2010  |
| 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.   | 6 July 2010  |
| 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 July 2010  |
| 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.   | 6 July 2010  |
| 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,  | Immediately after the commencement of   |              |

| <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> |
| item 2                          | 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, items 6 to 15   | The registration commencement time within 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> .<br>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> .  |                     |

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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> |
| 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> . |                     |

Note 1: 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.

Note 2: The **registration commencement time**, within the meaning of section 306 of the *Personal Property Securities Act 2009*, is the start of 1 February 2012 (the first day of the month that is 26 months after that Act was given the Royal Assent), or an earlier time determined by the Minister administering that Act, by legislative instrument.

- (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.

## **Schedule 1—Corporations Act 2001**

### **Part 1—New concepts**

#### **1 Section 9**

Insert:

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

#### **2 Section 9**

Insert:

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

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

#### **3 Section 9**

Insert:

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

#### **4 Section 9**

Insert:

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

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

Add:

, and:

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

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

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

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

Repeal the definition, substitute:

***retention of title clause***: property is subject to a ***retention of title clause*** under a contract for the sale of property:

- (a) if the contract contains a provision the effect of which is that the seller retains title in the property until the purchase price, or another amount, has been paid in full; and
- (b) if the purchase price, or the other amount, as the case may be, has not been paid in full; and
- (c) to the extent that the contract does not give rise to a PPSA security interest in the property.

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

## 7 Section 9

Insert:

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

## **8 Section 9**

Insert:

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

## **9 Section 9**

Insert:

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

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

Insert:

### **Division 6A—Security interests**

#### **51 Meaning of PPSA security interest**

In this Act:

*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*.

#### **51A Meaning of security interest**

In this Act:

*security interest* means:

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

### 51B Meaning of *secured party*

In this Act:

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

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

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

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

In this Act:

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

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

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

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

In this Act:

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

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

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

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## **51E Meaning of secured creditor**

In this Act:

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

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

### *Definition*

- (1) Property is *PPSA retention of title property* (short for Personal Property Securities Act retention of title property) of a corporation if:
- (a) the property is personal property; and
  - (b) the property is used or occupied by, or is in the possession of, the corporation; and
  - (c) the corporation does not have title to the property; and
  - (d) a PPSA security interest is attached to the property, within the meaning of the *Personal Property Securities Act 2009*; and
  - (e) the corporation is the grantor in relation to the PPSA security interest, within the meaning of that Act.

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

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

### *References to property of a corporation*

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

**Schedule 1** Corporations Act 2001

**Part 1** New concepts

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corporation, unless provided otherwise expressly or by necessary implication.

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

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

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

Repeal the paragraphs.

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

Omit “and a register of charges”.

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

Omit “—1302”, substitute “, 1301”.

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

Repeal the paragraph.

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

Omit “, 1302”.

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

Repeal the item.

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

Repeal the note.

### **18 Chapter 2K**

Repeal the Chapter.

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

Repeal the paragraph.

### **20 Section 553E**

Omit “and to section 279”.

**21 Paragraph 601BC(6)(c)**

Repeal the paragraph.

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

Repeal the note.

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

Repeal the paragraphs, substitute:

- (a) set up the register required by section 168; and
- (b) include in the register the information that is required to be included in the register and that is available to the company on registration; and

**24 Subsection 601BM(2)**

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

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

Repeal the paragraphs.

**26 Section 1302**

Repeal the section.

**27 Section 1446**

Repeal the section.

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

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

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

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

Repeal the heading, substitute:

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

### **Subdivision A—General**

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

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

### **36 Section 441A**

Repeal the section, substitute:

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

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

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

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

##### *Scope*

(1) This section applies if:

- (a) the whole, or substantially the whole, of the property of a company under administration is subject to a security interest; and
  - (b) before or during the decision period, the secured party enforced the security interest in relation to all property (including any PPSA retention of title property) of the company subject to the security interest, whether or not the security interest was enforced in the same way in relation to all that property.
- (2) This section also applies if:
- (a) a company is under administration; and
  - (b) the same person is the secured party in relation to each of 2 or more security interests in property (including PPSA retention of title property) of the company; and
  - (c) the property of the company (the *secured property*) subject to the respective security interests together constitutes the whole, or substantially the whole, of the company's property; and
  - (d) before or during the decision period, the secured party enforced the security interests in relation to all the secured property:
    - (i) whether or not the security interests were enforced in the same way in relation to all the secured property; and
    - (ii) whether or not any of the security interests was enforced in the same way in relation to all the property of the company subject to that security interest; and
    - (iii) in so far as the security interests were enforced in relation to property of the company by a receiver or controller appointed for the purposes of Part 5.2 (whether under an instrument relating to the security interest or a court order)—whether or not the same person was appointed in respect of all of the last-mentioned property.

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

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

- (b) a receiver or controller appointed for the purposes of Part 5.2 (whether under an instrument relating to the security interest or a court order, and even if appointed after the decision period).
- (4) Section 437D does not apply in relation to a transaction or dealing that affects property of the company and is entered into by:
  - (a) the secured party in the performance or exercise of a function or power as secured party; or
  - (b) a receiver or controller mentioned in paragraph (3)(b) of this section, in the performance or exercise of a function or power as such a receiver or controller.

### **37 Section 441C**

Repeal the section, substitute:

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

##### *Scope*

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

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

- (2) Nothing in section 437C or 440B prevents any of the following from enforcing the security interest, so far as it is a security interest in perishable property:
    - (a) the secured party;
    - (b) a receiver or controller appointed for the purposes of Part 5.2 (whether under an instrument relating to the security interest or a court order, and even if appointed after the decision period).
  - (3) Section 437D does not apply in relation to a transaction or dealing that affects perishable property of the company and is entered into by:
    - (a) the secured party in the performance or exercise of a function or power as secured party; or
    - (b) a receiver or controller mentioned in paragraph (2)(b) of this section, in the performance or exercise of a function or power as such a receiver or controller.
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### **38 Subsection 441D(3)**

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

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

### **39 Section 441E**

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

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

### **40 After section 441E**

Insert:

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

##### *Scope*

- (1) This section applies if:
- (a) a company is under administration; and
  - (b) property of the company is subject to a possessory security interest; and
  - (c) the property is in the possession of the secured party; and
  - (d) the secured party sells the property.

##### *Distribution of proceeds of sale*

- (2) The secured party is entitled to retain proceeds of the sale as follows:
- (a) if the net proceeds of sale equals the debt secured by the possessory security interest—the secured party is entitled to retain the net proceeds;
  - (b) if the net proceeds of sale exceeds the debt secured by the possessory security interest—the secured party is entitled to retain so much of the net proceeds as equals the amount of the debt secured by the security interest, but must pay the excess to the administrator on behalf of the company;
  - (c) if the net proceeds of sale fall short of the debt secured by the possessory security interest—the secured party is entitled to retain the net proceeds.

## Subdivision C—Property not subject to security interests

### 441EB Scope of Subdivision

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

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

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

### 41 Sections 441JA and 441K

Repeal the sections.

### 42 Paragraphs 442D(1)(a) and (b) and (2)(a) and (b)

Repeal the paragraphs, substitute:

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

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

### 43 Subsection 442D(3)

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

### 44 Paragraphs 443B(7)(b) and (c)

Repeal the paragraphs, substitute:

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

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

**45 Subsection 477(2B)**

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

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

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

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

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

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

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

**Division 2—Bulk amendments**

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

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

- (a) omitting “charge on” (wherever occurring) and substituting “security interest in”; and
- (b) omitting “charge” (wherever occurring otherwise than as mentioned in paragraph (a)) and substituting “security interest”; and
- (c) omitting “charges on” (wherever occurring) and substituting “security interests in”; and
- (d) omitting “charges” (wherever occurring otherwise than as mentioned in paragraph (c)) and substituting “security interests”; and
- (e) omitting “chargee” (wherever occurring) and substituting “secured party”; and
- (f) omitting “charged” (wherever occurring) and substituting “secured”.

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

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

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

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

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

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

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

**56 Section 283BE**

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

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

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

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

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

**61 Section 283CC**

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

**62 Subsection 413(2)**

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

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

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

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

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**67 Subsection 420B(4)**

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

**69 Subsection 427(1A)**

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

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

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

**73 Subsection 434C(1)**

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

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

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

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

**77 Subsection 441D(2)**

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

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

**80 Subsection 534(3)**

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

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

**83 Subsection 593(7)**

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

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

## Part 4—Floating charges

### 86 Paragraph 124(1)(f)

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

### 87 Paragraph 433(2)(a)

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

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

### 88 Section 442B

Repeal the section, substitute:

#### 442B Dealing with property subject to circulating security interests

##### *Scope*

- (1) This section applies if a security interest in property (the *secured property*) of a company under administration was a circulating security interest when the interest arose, but has stopped being a circulating security interest because:
  - (a) in the case of a PPSA security interest—the property has stopped being a circulating asset (within the meaning of the *Personal Property Securities Act 2009*); or
  - (b) in the case of a security interest that was a floating charge when it arose—the floating charge has since become a fixed or specific charge.

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

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

##### *Security interest in circulating asset*

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

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

*Floating charge*

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

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

## **89 Section 443E**

Repeal the section, substitute:

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

*General rule*

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

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

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

a circulating security interest in property of the company, except so far as the secured party agrees, if:

- (a) before the beginning of the administration, the secured party:
  - (i) appointed a receiver of property of the company under a power contained in an instrument relating to the security interest; or
  - (ii) obtained an order for the appointment of a receiver of property of the company for the purpose of enforcing the security interest; or
  - (iii) entered into possession, or assumed control, of property of the company for that purpose; or
  - (iv) appointed a person so to enter into possession or assume control (whether as agent for the secured party or for the company); and
- (b) the receiver or person is still in office, or the secured party is still in possession or control of the property.

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

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

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

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

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

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

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

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

Omit “charge”, substitute “security interest”.

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

Omit “chargee”, substitute “secured party”.

**93 Section 561**

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

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

**94 Section 561**

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

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

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

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

**96 Subsection 588FJ(2)**

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

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

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

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

Omit “chargee”, substitute “secured party”.

**99 Subsection 588FJ(6)**

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

**100 Subsection 588FJ(6)**

Omit “chargee”, substitute “secured party”.

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

Omit “charge”, substitute “security interest”.

## **Part 5—Security**

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

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

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

Repeal the paragraph, substitute:

(e) grant a security interest in uncalled capital;

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

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

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

Omit “security”, substitute “security interest”.

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

Omit “security”, substitute “security interest”.

### **107 Section 471C**

Omit “security”, substitute “security interest”.

### **108 Subsection 510(2)**

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

### **109 Subsection 510(3)**

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

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

Omit “security”, substitute “security interest”.

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

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

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

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

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Omit “security”, substitute “security interest”.

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

Omit “security”, substitute “security interest”.

**114 Section 554J**

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

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

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

Omit “security”, substitute “security interest”.

## **Part 6—Mortgages and mortgagees**

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

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

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

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

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

Repeal the paragraph, substitute:

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

### **119 Subsection 505(2)**

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

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

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

### **121 Subsection 609(1)**

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

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

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

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

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

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

Omit “security”, substitute “security interest”.

## Part 7—Liens and pledges

### 125 Paragraph 440JA(c)

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

### 126 Paragraph 440JA(d)

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

### 127 Paragraph 442C(1)(a)

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

### 128 Paragraph 442C(2)(b)

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

### 129 Subsection 442C(3)

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

### 130 Paragraph 442C(5)(a)

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

### 131 Paragraph 442C(7)

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

### 132 Paragraph 442CA(1)(b)

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

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

### 133 Subsection 442CA(1)

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

### 134 Paragraph 442CA(2)(b)

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

### 135 Subsection 442CB(1)

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Repeal the subsection, substitute:

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

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

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

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

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

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

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

Repeal the subparagraphs, substitute:

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

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

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

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

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

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

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

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)”.

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

Omit “chargee”, substitute “secured party”.

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

Repeal the paragraph, substitute:

- (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:
  - (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.

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

Repeal the paragraph, substitute:

- (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

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

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

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

Repeal the subparagraph, substitute:

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

#### **146 Section 283BG**

Repeal the section, substitute:

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

Section 283BF does not apply in respect of:

- (a) a borrower, while:
  - (i) it is under external administration; or
  - (ii) a receiver, or a receiver and manager, of property of the borrower has been appointed and has not ceased to act under that appointment; or
- (b) a security interest in PPSA retention of title property.

#### **147 Section 283CD**

Repeal the section, substitute:

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

Section 283CC does not apply in respect of:

- (a) the guarantor, while:
  - (i) it is under external administration; or
  - (ii) a receiver, or a receiver and manager, of property of the guarantor has been appointed and has not ceased to act under that appointment; or
- (b) a security interest in PPSA retention of title property.

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

Repeal the paragraph, substitute:

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

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

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

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

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

**151 Subsection 419(1)**

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

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

Add:

; and (c) the third party property is not PPSA retention of title property of the corporation.

**153 At the end of section 420**

Add:

(5) In this section:

*lease* includes a lease of goods that gives rise to a PPSA security interest in the goods.

**154 Section 435B**

Insert:

*property* of a company includes any PPSA retention of title property of the company.

Note: See sections 9 (definition of *property*) and 51F (PPSA retention of title property). An extended definition of *property* applies in subsection 444E(3) (see subsection 444E(4)).

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

Add:

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

**156 Sections 440B to 440C**

Repeal the sections, substitute:

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

*General rule*

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

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

*Exception—consent of administrator or leave of court*

- (2) The restrictions set out in the table at the end of this section do not apply in relation to the exercise of a third party’s rights in property if the rights are exercised:
- (a) with the administrator’s written consent; or
  - (b) with the leave of the Court.

*Possessory security interests—continued possession*

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

**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:<br>(a) distress for rent must not be carried out against the property;<br>(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:<br>(a) the third party cannot take possession of the property or otherwise recover it;<br>(b) if the third party is a PPSA secured party—the third party cannot otherwise enforce the security interest. |

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

Omit “440C”, substitute “440B”.

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

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

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

Add:

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

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

Repeal the paragraph, substitute:

- (c) either:
- (i) the property is PPSA retention of title property; or
  - (ii) the property is subject to a retention of title clause under a contract; and

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

Insert:

*PPSA retention of title property*

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

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

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

Add:

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

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

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

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

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

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

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

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

Insert:

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

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

**166 Section 443D**

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

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

Insert:

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

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

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

Repeal the definition, substitute:

*property* of a company includes:

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

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

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

Insert:

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

**170 Subsection 446C(8)**

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

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

Insert:

## **Division 1A—Preliminary**

### **465 Definitions**

In this Part:

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

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

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

### **172 Subsection 474(1)**

Repeal the subsection, substitute:

- (1) If a company is being wound up in insolvency or by the Court, or a provisional liquidator of a company has been appointed:
  - (a) in a case in which a liquidator or provisional liquidator has been appointed—the liquidator or provisional liquidator must take into his or her custody, or under his or her control, all the property which is, or which appears to be, property of the company; or
  - (b) in a case in which there is no liquidator—all the property of the company is to be in the custody of the Court.

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

### **173 Subsection 483(1)**

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

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

Insert:

## Division 1A—Preliminary

### 489F Definitions

In this Part:

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

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

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

### 175 Subsection 500(3)

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

### 176 At the end of Division 1 of Part 5.6

Add:

### 513AA Definitions

In this Part:

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

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

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

### 177 Subsection 568(1AA)

Repeal the subsection, substitute:

(1AA) This section does not apply to:

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

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

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

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

Add:

- (5) In this section:

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

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

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

### **179 Before section 588D**

Insert:

### **588C Definitions**

In this Part:

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

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

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

### **180 Subsection 589(5)**

Insert:

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*property* of a company includes any PPSA retention of title property of the company.

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

## **181 Before section 601AA**

Insert:

### **601 Definitions**

In this Part:

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

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

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

## **182 Before Division 1 of Part 5B.2**

Insert:

### **Division 1A—Preliminary**

#### **601C Definitions**

In this Part:

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

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

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

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

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

Insert:

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

#### **588FK Interpretation and application**

- (1) A word or expression used in this Division has the same meaning as in the *Personal Property Securities Act 2009*.
- (2) Subsection (1) applies despite any other provision of this Act (subject to subsection (4)).
- (3) For the purposes of this Division, whether or not a person has acquired actual or constructive knowledge of a circumstance is to be determined in accordance with sections 297 to 300 of the *Personal Property Securities Act 2009*.
- (4) In this Division:

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

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

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

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

*Scope*

- (1) This section applies if:
  - (a) any of the following events occurs:

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

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

*Australian law governs security interest*

- (2) This subsection covers a PPSA security interest if:
- (a) at the critical time, or, if the security interest arises after the critical time, when the security interest arises:
    - (i) the security interest is enforceable against third parties under the law of Australia; and
    - (ii) the security interest is perfected by registration, and by no other means; and
  - (b) the registration time for the collateral is after the latest of the following times:
    - (i) 6 months before the critical time;
    - (ii) the time that is the end of 20 business days after the security agreement that gave rise to the security interest came into force, or the time that is the critical time, whichever time is earlier;
    - (iii) if the security agreement giving rise to the security interest came into force under the law of a foreign jurisdiction, but the security interest first became enforceable against third parties under the law of Australia after the time that is 6 months before the critical time—the time that is the end of 56 days after the security interest became so enforceable, or the time that is the critical time, whichever time is earlier;
    - (iv) a later time ordered by the Court under section 588FM.

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

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

*Foreign law governs security interest*

- (3) This subsection covers a PPSA security interest if:
- (a) at the critical time, or, if the security interest arises after the critical time, when the security interest arises, the security interest is enforceable against third parties under the law of a foreign jurisdiction (the *relevant foreign law*); and
  - (b) the relevant foreign law provides for the public registration or recording of the security interest, or of a notice relating to the security interest; and
  - (c) the security interest or notice has not been so registered or recorded, in accordance with the relevant foreign law, before the latest of the following times:
    - (i) 6 months before the critical time;
    - (ii) the time that is the end of 20 business days after the security agreement that gave rise to the security interest came into force, or the time that is the critical time, whichever time is earlier;
    - (iii) if the security agreement giving rise to the security interest came into force under the law of a jurisdiction other than the relevant foreign law, but the security interest first became enforceable against third parties under the relevant foreign law after the time that is 6 months before the critical time—the time that is the end of 56 days after the security interest became so enforceable, or the time that is the critical time, whichever time is earlier;
    - (iv) a later time ordered by the Court under section 588FM.

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

*Vesting of security interest in company*

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

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

*Property acquired for new value without knowledge*

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

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

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

(7) In this section:

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

- (a) if the company 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 under section 513A or 513B; or
- (b) in any other case—when, on a day, the event occurs by virtue of which the day is the section 513C day for the company.

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

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

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

- (2) On an application under this section, the Court may make the order sought if it is satisfied that:
  - (a) the failure to register the collateral earlier:
    - (i) was accidental or due to inadvertence or some other sufficient cause; or
    - (ii) is not of such a nature as to prejudice the position of creditors or shareholders; or
  - (b) on other grounds, it is just and equitable to grant relief.
- (3) The Court may make the order sought on any terms and conditions that seem just and expedient to the Court.

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

*PPSA security interests arising under certain transactions*

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

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

Example: An example of a PPSA security interest mentioned in paragraph (b) 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 regulations made for the purposes of the *Personal Property Securities Act 2009*; 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) of the *Personal Property Securities Act 2009* do not apply to the lease.

*PPSA security interests and subordinated debts*

- (2) Subsection 588FL(4) (vesting of security interests in company) does not apply to a PPSA security interest in an account if all of the following conditions are satisfied:
  - (a) a person (the *obligor*) owes money to another person (the *senior creditor*);
  - (b) the obligor also owes money to a third person (the *junior creditor*);
  - (c) an agreement between the senior creditor and the junior creditor provides (in substance):
    - (i) for the postponement or subordination of the obligor's debt to the junior creditor, to the obligor's debt to the senior creditor; and
    - (ii) in the event of the obligor's debt to the junior creditor being discharged (whether wholly or partly) by the obligor transferring personal property to the junior creditor—for the junior creditor to transfer the property, or proceeds of the property, to the senior creditor to the value of the amount owed by the obligor to the senior creditor; and
    - (iii) in the event that the property or proceeds are not transferred—for the junior creditor to hold the property or proceeds on trust for the senior creditor to that value; and

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

*Transfer of collateral subject to PPSA security interests*

- (3) Subsection 588FL(4) (vesting of security interests in company) does not apply to a PPSA security interest covered by subsection 588FL(2) (Australian law governs security interest) if:
  - (a) before the critical time that applies under section 588FL, the company acquired, by transfer, the collateral in which the PPSA security interest is granted; and
  - (b) the company did not acquire the collateral free of the security interest; and
  - (c) the security interest became perfected before the critical time; and
  - (d) the security interest was continuously perfected by registration during a period covered by subsection (4) that begins before the critical time.
- (4) The period covered by this subsection:
  - (a) begins at whichever of the following times is applicable:
    - (i) in a case in which the secured party consented to the transfer—the end of 5 business days after the day of the transfer;
    - (ii) in a case in which the secured party otherwise acquires the actual or constructive knowledge required to perfect the secured party's interest by registration (or to re-perfect the interest by an amendment of a registration)—the end of 5 business days after the day the secured party acquires the knowledge; and
  - (b) ends no earlier than at the critical time that applies under section 588FL.

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

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

#### *Scope*

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

#### *Entitlement to damages and compensation*

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

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

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

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

#### *General rule*

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

- (b) a person covered by subsection (2) is a secured party; and
  - (c) the secured party purports to take a step to enforce the security interest, within 6 months after the time (the *relevant time*) the instrument is made, without the leave of the Court under subsection (4).
- (2) This subsection covers the following persons:
- (a) a person who is an officer (including a local agent of a foreign company) of the company at the relevant time;
  - (b) a person who has been such an officer of the company at any time within the period of 6 months ending at the relevant time;
  - (c) a person associated, in relation to the creation of the security interest, with a person of a kind mentioned in paragraph (a) or (b).
- (3) Without limiting paragraph (1)(c), a secured party takes a step to enforce a security interest if:
- (a) the secured party appoints a receiver, or a receiver and manager, under powers conferred by an instrument creating or evidencing the security interest; or
  - (b) whether directly or by an agent, the secured party enters into possession or assumes control of property of a company for the purposes of enforcing the security interest; or
  - (c) the secured party seizes the property under section 123 of the *Personal Property Securities Act 2009* for the purposes of enforcing the security interest.

*Extension of time on application to the Court*

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

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

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

*Effect on debts, liabilities, obligations and title*

- (6) A debt, liability or obligation is not affected by the fact that the security interest securing the debt, liability or obligation is void under subsection (1).
- (7) Subsection (1) does not affect the title of a person to property if:
- (a) the person acquires the property for new value (within the meaning of the *Personal Property Securities Act 2009*) from any of the following persons (the *seller*):
    - (i) a person covered by subsection (2);
    - (ii) another person on behalf of a person covered by subsection (2);
    - (iii) a receiver, or receiver and manager, appointed under powers conferred by an instrument creating or evidencing the security interest; and
  - (b) at the time the person acquires the property, the person has no actual or constructive knowledge that the seller is a secured party or acting on behalf of a secured party.
- (8) Sections 297 to 300 of the *Personal Property Securities Act 2009* apply in relation to the determination of whether or not a person has actual or constructive knowledge as mentioned in paragraph (7)(b) of this section.

*Onus of proof*

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

## **Part 10—Transitional provisions**

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

Add:

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

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

Add:

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

### **186 After Part 10.12**

Insert:

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

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

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

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

### **187 Section 1498A**

Repeal the section, substitute:

## 1499 Definitions

In this Part:

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

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

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

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

## 1500 Charges, liens and pledges—continuation of restriction of references

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

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

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

## 1501 References to security interests etc.

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

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

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

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

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

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

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

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

#### *Scope*

- (1) This section applies if, immediately before the commencement time, a document (however described) or notice is required to be lodged or given by a company or other person under one of the following provisions:
  - (a) paragraph 263(1)(a), (b) or (c);
  - (b) paragraph 263(2)(b);
  - (c) subsection 263(3);
  - (d) paragraph 264(1)(a) or (b);
  - (e) paragraph 265(6)(b);
  - (f) paragraph 268(1)(a) or (b);
  - (g) subsection 268(2);
  - (h) subsection 269(1) or (2);
  - (i) subsection 270(4).

#### *Requirements that stop applying*

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

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

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

- (1) Subject to this section, section 266 stops applying at the commencement time in relation to registrable charges.
- (2) However, if a registrable charge is void under section 266 immediately before the commencement time, that section continues to apply in relation to the charge, subject to subsection (3) of this section.
- (3) The Court may, on such terms and conditions as seem to the Court just and expedient, by order, declare a registrable charge not to be, and never to have been, void under subsection 266(1) or (3), if:
  - (a) before the commencement time, the charge is void under subsection 266(1) or (3) (as the case requires); and
  - (b) either:
    - (i) an application is made to the Court under subsection 266(4) before the commencement time for an extension of the relevant period, and as at the commencement time, the Court had not made a decision in relation to the application; or
    - (ii) an application is made to the Court at or after the commencement time for an order under this subsection; and
  - (c) the Court is satisfied of the matters set out in subsection 266(4).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **3 Section 3**

Omit:

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.

Substitute:

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.

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.

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

Repeal the paragraph, substitute:

- (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:
  - (i) the transferor is an Australian entity; or
  - (ii) the account or chattel paper is payable in Australia; or

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

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)”.

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

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

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

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

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

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

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

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

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

Repeal the subparagraph, substitute:

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

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

Add:

Note: See also subsection (5).

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

Insert:

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

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

### **13 Subsection 8(4)**

Omit “or assignment”.

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

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

Add:

#### *Water rights*

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

#### *Pawnbroker security interests*

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

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

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

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

Repeal the paragraph, substitute:

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

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

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

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

Repeal the definition, substitute:

***financial product:***

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

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

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

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

Add:

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

**19 Section 10**

Insert:

*intermediary* has the meaning given by section 15.

**20 Section 10**

Insert:

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

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

Repeal the definition.

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

Repeal the definition.

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

Repeal the definition.

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

Add:

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

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

Repeal the paragraph, substitute:

- (d) any other writing that evidences a right to payment of currency, if:
  - (i) the writing is of a kind that, in the ordinary course of business, is transferred by delivery with any necessary endorsement or assignment; or
  - (ii) the writing satisfies the requirements for negotiability under the law governing negotiable instruments (including, but not limited to, instruments that are negotiable instruments within the meaning of this definition); or

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

Add “owed to the person providing the value”.

**27 Section 10**

Insert:

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

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

Insert:

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

**29 Section 10**

Insert:

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

**30 Section 10**

Insert:

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

**31 Section 10**

Insert:

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

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

Repeal the subsections, substitute:

- (3A) A person who owes payment or performance of an obligation to another person may take a security interest in the other person's right to require the payment or the performance of the obligation.
- (4) Without limiting subsection (3A):
  - (a) an account debtor, in relation to an account or chattel paper, may take a security interest in the account or chattel paper; and
  - (b) an ADI may take a security interest in an ADI account that is kept with the ADI.

### **33 Subsection 13(3)**

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

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

### **34 Section 15**

Repeal the section, substitute:

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

### *Meaning of intermediated security*

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

### *Meaning of intermediary*

- (2) An *intermediary* is:
  - (a) a person (including a central securities depository) who holds an Australian financial services licence (within the meaning of the *Corporations Act 2001*) permitting the person, in the course of business or other regular activity, to maintain securities accounts:
    - (i) on behalf of others; or
    - (ii) on behalf of others as well as on the person's own behalf; or

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

*Meaning of securities account*

- (7) In this Act:

*securities account* means an account to which interests in financial products may be credited or debited.

### 35 Subsection 19(5)

After "leased", insert "or bailed".

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

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

Add:

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

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

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

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

Repeal the paragraph, substitute:

- (b) all of the following apply:
- (i) the security interest is attached to the collateral;
  - (ii) the security interest is enforceable against a third party;
  - (iii) subsection (2) applies.

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

Repeal the subparagraph, substitute:

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

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

Omit “assignee”, substitute “transferee”.

### **41 Section 26**

Repeal the section, substitute:

## **26 Control of intermediated securities**

### *Main rule*

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

### *Control by agreement*

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

- (a) one of the following conditions is satisfied:
    - (i) there is an agreement in force between the grantor, the secured party and the intermediary who maintains the securities account;
    - (ii) there is an agreement in force between the grantor and the intermediary;
    - (iii) there is an agreement in force between the grantor and the secured party, and notice of the agreement is given to the intermediary; and
  - (b) the agreement has the effect that:
    - (i) the intermediary must not comply with instructions given by the grantor in relation to the intermediated security without seeking the consent of the secured party (or a person who has agreed to act on the instructions of the secured party); or
    - (ii) the intermediary must comply, or must comply in one or more specified circumstances, with instructions (including instructions to debit the account) given by the secured party in relation to the intermediated security without seeking the consent of the grantor (or any person who has agreed to act on the instructions of the grantor).
- (3) If the intermediary who maintains the securities account is an intermediary because of paragraph 15(2)(b), a reference to the intermediary in subparagraphs (2)(a)(i) to (iii) of this section includes a reference to a person prescribed by regulations made for the purposes of this subsection.

Note 1: Under paragraph 15(2)(b), a person is an *intermediary* if the person operates a clearing and settlement facility under an Australian CS facilities licence (within the meaning of the *Corporations Act 2001*), other than such a person prescribed by regulations made for the purposes of that paragraph.

Note 2: The regulations may prescribe a person by reference to a class or classes of persons (see subsection 33(3A) of the *Acts Interpretation Act 1901*).

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

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

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

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

Repeal the paragraph, substitute:

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

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

Repeal the paragraph, substitute:

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

#### **44 Subsection 44(3)**

Repeal the subsection.

#### **45 Subsection 51(2)**

Repeal the subsection, substitute:

*Exception*

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

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

#### **46 Subsection 52(1)**

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

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

Repeal the note, substitute:

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

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

Insert:

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

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

Repeal the paragraph, substitute:

Division 6 deals with priorities in relation to the following:

- (a) interests that arise under law;
- (b) interests of execution creditors;
- (c) security interests in returned goods;
- (d) security interests in accounts, financial property or intermediated securities if a foreign law governs their perfection but does not provide for public registration.

**50 After subsection 57(2)**

Insert:

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

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

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

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

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

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

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

Add:

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

**54 At the end of section 64**

Add:

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

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

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

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

Omit:

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

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

Substitute:

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

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

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

Omit "assignment", substitute "transfer".

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

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

**59 Subsection 77(3)**

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

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

**60 Subsection 77(3)**

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

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

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

**62 Subsection 77(4)**

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

**63 Part 2.7 (heading)**

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Repeal the heading, substitute:

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

### **64 Section 78**

Omit:

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

Substitute:

This Part deals with the transfer of interests in collateral.

### **65 Section 83**

Repeal the section, substitute:

### **83 Guide to this Part**

This Part includes rules on 3 topics:

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

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

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

## 66 After section 84

Insert:

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

*Security interest in crops while they are growing*

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

*Security interest in the products of livestock*

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

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

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

## 67 Section 85

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

## 68 Section 86

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

## 69 At the end of section 108

Add:

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

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

Insert:

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

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

Insert:

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

**72 Subsection 115(4)**

Repeal the subsection.

**73 At the end of section 116**

Add:

- (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.

**74 Section 122**

Omit:

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.

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).

Substitute:

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. A notice of disposal may be given in the approved form, while a notice of retention must be given in the approved form.

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

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

### 75 At the end of subsection 126(1)

Add:

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

### 76 Subsection 135(4)

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

### 77 At the end of section 136

Add:

*Extinguishment of obligation owed to the secured party*

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

### 78 At the end of Part 4.3

Add:

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

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

In this Act:

***take*** fish includes:

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

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

***water source*** means:

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

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

- (1) Without limiting section 123 (secured party may seize collateral), for the purposes of seizing collateral under that section that is crops, or the proceeds of crops, the secured party may:
    - (a) take possession of the crops or the proceeds; or
    - (b) cut, gather or harvest the crops or the proceeds.
  - (2) The secured party may dispose of, or retain, collateral that is crops, or the proceeds of crops, after they have been taken, cut, gathered or harvested, subject to Divisions 2, 3, 4 and 5 (seizure, disposal or retention of collateral and objections).
  - (3) For the purposes of exercising a power under subsection (1) or (2), or performing any related function under Division 2, 3 or 4, the secured party may enter the land on which, or the water source in which, the crops are, or were, growing.
  - (4) However, the secured party may exercise the power to enter land or a water source under subsection (3) for a purpose mentioned in subsection (1) or (2) only to the same extent as the grantor would be entitled to enter the land or water source for the same purpose.
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**138C Seizure and disposal or retention of livestock**

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

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

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

**79 At the end of section 139**

Add:

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

**80 After subsection 140(1)**

Insert:

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

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

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

### **81 Section 141**

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

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

Add:

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

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

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

Repeal the paragraph, substitute:

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

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

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

collateral that:

- (a) at the time the security interest attached to the collateral, the grantor intended to use predominantly for personal, domestic or household purposes; or
- (b) the grantor is using predominantly for personal, domestic or household purposes.

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

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

### **86 Subsection 239(3)**

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

- (3) In relation to a security interest in intellectual property or an intellectual property licence:
- (a) subject to paragraph (c), the validity of the security interest is governed by the law of the jurisdiction (other than the law relating to conflict of laws) in which the grantor is located when the security interest attaches, under that law, to the property or licence; and
  - (b) subject to paragraph (c), at a particular time, the perfection, and the effect of perfection or non-perfection, of the security interest is governed by the law of the jurisdiction (other than the law relating to conflict of laws) in which the grantor is located at that time; and
  - (c) the following matters are governed by the law of the jurisdiction (other than the law relating to conflict of laws) by or under which the property or licence is granted, if that law provides for the public registration or recording of the security interest, or of a notice relating to the security interest:
    - (i) whether a successor in title to the grantor’s interest in the property or licence takes it free of a security interest;
    - (ii) the validity of the security interest against a transferee of the property or licence.

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

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

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

Add:

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

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

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

**89 Before section 242**

Insert:

**Division 1—Introduction**

**90 Section 242**

Omit:

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

Substitute:

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

**91 After section 242**

Insert:

**Division 2—Constitutional basis**

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

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

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

Repeal the note.

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

Omit “Note 2”, substitute “Note”.

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

Repeal the subsections, substitute:

*General meaning*

- (1) A State is a **referring State** if, for the purposes of paragraph 51(xxxvii) of the Constitution, the Parliament of the State has, before the registration commencement time:
- (a) referred the matters covered by subsections (3) and (4) to the Commonwealth Parliament; or
  - (b) both:
    - (i) adopted the relevant version of this Act; and
    - (ii) referred the matters covered by subsection (4) to the Commonwealth Parliament.

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

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

- (2) A State is a **referring State** even if the State’s referral law provides that:
- (a) the reference to the Commonwealth of a matter covered by subsection (3) or (4) is to terminate in particular circumstances; or
  - (b) the adoption of the relevant version of this Act is to terminate in particular circumstances; or
  - (c) any or all of the State’s amendment references have not commenced in relation to a particular kind (or kinds) of personal property (or so commence at or after the registration commencement time); or
  - (d) the reference to the Commonwealth Parliament of a matter covered by subsection (3) or (4) has effect only:
    - (i) if, and to the extent that, the matter is not otherwise included in the legislative powers of the Commonwealth

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

**96 Subsection 244(3)**

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

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

**97 Subsection 244(5)**

Repeal the subsection, substitute:

- (5) A State stops being a *referring State* if:
- (a) in the case where the Parliament of the State has referred to the Commonwealth Parliament the matters covered by subsection (3)—that reference terminates; or
- (b) in the case where the Parliament of the State has adopted the relevant version of this Act—the adoption terminates.

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

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

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

Repeal the definition.

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

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

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

Repeal the definition.

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

Omit “referral”, substitute “relevant”.

**103 Subsection 244(8)**

Insert:

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*relevant version of this Act* means:

- (a) if, at the time the State's referral law was enacted, this Act had not been enacted—this Act as originally enacted; or
- (b) otherwise—this Act as originally enacted, and as amended by the *Personal Property Securities (Consequential Amendments) Act 2009* and the *Personal Property Securities (Corporations and Other Amendments) Act 2010*.

#### **104 At the end of Part 7.3**

Add:

### **Division 3—Constitutional guarantees**

#### **252A No constitutional preference to one State over another**

A provision of this Act does not apply to the extent that the operation of the provision would give, or result in the giving of, preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

#### **252B No unjust acquisition of property**

- (1) A provision of this Act does not apply to the extent that the operation of the provision would result in an acquisition of property from a person otherwise than on just terms.
- (2) In subsection (1):

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

#### **105 Paragraph 254(2)(h) (after paragraph (c) of the note)**

Insert:

(ca) section 140 (distribution of proceeds received by secured party);

#### **106 Section 260**

Repeal the section.

Note: This section is reproduced in a different form at section 252A, inserted by item 104 of this Schedule.

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

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

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

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

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

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

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

Add “under this subsection”.

**110 After section 267**

Insert:

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

*Vesting of security interest*

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

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

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

*Property acquired for new value without knowledge*

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

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

**111 Subsection 268(1)**

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

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

Insert:

- (aa) a security interest for which perfection, and the effect of perfection or non-perfection, is governed by the law of a
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foreign jurisdiction at the time mentioned in paragraph 267(1)(b);

**113 Subsection 269(1)**

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

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

Repeal the paragraph, substitute:

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

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

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

**116 Section 304**

Omit:

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

Substitute:

Part 9.3 deals with the initial application of this Act. Generally speaking, the Act starts to apply 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.

**117 Section 304**

Omit:

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

Substitute:

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

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

Repeal the definition (including the note), substitute:

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

**119 Section 311**

Repeal the section, substitute:

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

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

**120 Section 313**

Repeal the section, substitute:

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

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

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

Repeal the Divisions, substitute:

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## **Division 1—Introduction**

### **319 Guide to this Part**

This Part deals with the transitional application of this Act.

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

The registration commencement time 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.

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

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

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

Division 7 provides for preparatory registration with respect to transitional security interests in anticipation of the commencement of the Personal Property Securities Register. Other data may also be registered under this Division before the registration commencement time.

Transitional security interests that are registered in this way are perfected under Division 2 from immediately before the registration commencement time.

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.

## Division 2—Attachment, perfection and priority of transitional security interests

### 320 Guide to priority rules for transitional security interests

- (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).                 |

- (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;

- (c) for the priority between 2 security interests, one or both of which is a transitional security interest, if the priority comes to be determined after the end of the month that is 24 months after the registration commencement time in circumstances involving insolvency or bankruptcy, see section 324.
- (3) In this section, a reference to a perfected transitional security interest is taken to be a reference to a transitional security interest that has been continuously perfected, at the time the priority comes to be determined, since immediately before the registration commencement time.

### **321 Attachment rule**

For the purposes of subparagraph 21(1)(b)(i) and section 55, a transitional security interest in collateral is taken to have attached to the collateral immediately before the registration commencement time, whether the security interest arises before, at or after the registration commencement time.

Note 1: Subparagraph 21(1)(b)(i) provides that unless a security interest in collateral is perfected by force of this Act, the security interest must have attached to the collateral in order to be perfected.

Note 2: Section 55 provides for the default rules for determining priority between security interests in the same collateral. In some cases, these rules depend on when a security interest attaches. For example, the priority between 2 unperfected security interests is generally determined by their order of attachment (see subsection 55(2)).

However, 2 unperfected transitional security interests have the priority they would have had between themselves if this Act had not been enacted (see section 323).

Note 3: See section 320 for a general summary of priority rules as they affect transitional security interests.

### **322 Perfection rule**

#### *Main rule*

- (1) A transitional security interest in collateral is perfected from immediately before the registration commencement time, whether the security interest arises before, at or after the registration commencement time (including a transitional security interest that arises after the end of the month that is 24 months after the registration commencement time).

Note 1: As a result of this subsection, the priority time for a transitional security interest under subsection 55(4) will be immediately before the registration commencement time, as long as the security interest remains continuously perfected.

Note 2: See section 320 for a general summary of priority rules as they affect transitional security interests.

- (2) However, the transitional security interest stops being perfected under subsection (1) at the earliest of the following times:
- (a) when the security interest is perfected by registration under Division 6 (migration of personal property interests);
  - (b) when the security interest is perfected by preparatory registration under Division 7;
  - (c) when a registration under Division 6 or 7 is amended so that the registration perfects the security interest;
  - (d) when the security interest is otherwise perfected by registration, or is perfected by possession or control;
  - (e) when the security interest is otherwise perfected (but not temporarily perfected) by this Act, other than under this section;
  - (f) the end of the month that is 24 months after the registration commencement time.

Note: In the case of a transitional security interest in collateral that does not arise until after the end of the month that is 24 months after the registration commencement time, this section has the same effect as for other transitional security interests. In particular:

- (a) if a financing statement describing the collateral is registered before the end of that month, by the operation of sections 21, 55, 321 and this section, the security interest is continuously perfected from the registration time for the collateral until the registration stops being effective; and
- (b) if the security interest is not perfected (otherwise than under this section) at the end of the month that is 24 months after the registration commencement time, the security interest will become unperfected at that time.

*Exception*

- (3) Subsections (1) and (2) do not apply to a transitional security interest in collateral if the interest is of a class prescribed by regulations made for the purposes of this subsection.

### **323 Priority rule—priority otherwise undetermined**

If the priority between 2 transitional security interests is not otherwise able to be determined under this Act, they have the priority between themselves that they would have had under the law that applied to such priority immediately before the registration commencement time, and as if this Act had not been enacted.

Note: The priority between the following transitional security interests is not otherwise able to be determined under this Act:

- (a) 2 unperfected transitional security interests (because of section 321, the order of attachment between these interests cannot be determined for the purposes of subsection 55(2));
- (b) 2 transitional security interests that have been continuously perfected since immediately before the registration commencement time (because of sections 321 and 322, the order of the priority times for these interests cannot be determined for the purposes of subsection 55(4)).

### **324 Priority rule—certain security interests upon insolvency or bankruptcy**

- (1) The priority between 2 security interests in the same collateral is to be determined under this Act, as if section 322 had not been enacted, if:
  - (a) the priority between the security interests comes to be determined after the end of the month that is 24 months after the registration commencement time; and
  - (b) either (or each) of the interests is a transitional security interest that has not been perfected, apart from under section 322; and
  - (c) the grantor or secured party in relation to either (or each) of the security interests is insolvent or bankrupt.
- (2) Subsection (1) is in addition to, and does not derogate from, any other provision of this Division.

### **122 Paragraph 333(3)(a)**

Repeal the paragraph, substitute:

- (a) either:
    - (i) if subsection (4) applies—state the transitional registration end time as the end time for the effective registration in respect of the personal property; or
-

- (ii) if subsection (4) does not apply—not state an end time for the effective registration in respect of the personal property; and

### 123 Subsection 333(4)

Repeal the subsection, substitute:

- (4) This subsection applies if, in the Registrar’s opinion, the registration of the interest in the personal property in the transitional register would have ended at a particular time (the *transitional registration end time*) in accordance with the law under which the transitional register was maintained (as in force immediately before the migration time).

*Registration time*

- (5) The *registration time* for the personal property is the registration commencement time.

Note: However, the migrated security interest in the personal property is perfected from immediately before the registration commencement time (see section 322).

### 124 Section 336

Repeal the section, substitute:

### 336 Preparatory registration—transitional security interests

*Application for preparatory registration*

- (1) At or after the migration time, and before the registration commencement time, a person may apply to the Registrar, in the approved form, for the registration of any of the following:
  - (a) a financing statement that describes collateral with respect to a transitional security interest;
  - (b) a financing statement with respect to personal property prescribed by regulations made for the purposes of paragraph 148(c);
  - (c) a financing change statement to amend a financing statement mentioned in paragraph (a) or (b) that is registered under this section.

- (2) The Registrar may accept an application made under subsection (1), but only if:
- (a) in the case of a financing statement, or a financing change statement, with respect to a transitional security interest—the Registrar is satisfied on reasonable grounds that a transitional security interest will (whether before, at or after the registration commencement time) be:
    - (i) attached to the collateral; and
    - (ii) held by the applicant; and
  - (b) in any case—in the Registrar’s opinion, it is operationally practicable for the Registrar to register the financing statement, or financing change statement, before the registration commencement time.

*Registration*

- (3) If the Registrar accepts the application for registration, the Registrar may register the financing statement (or financing change statement), in accordance with the application, before the registration commencement time.

Note: The Registrar must give a verification statement to a secured party affected by the registration.

- (4) A registration under this section with respect to a transitional security interest must disclose that the collateral is covered by a transitional security agreement.
- (5) In the case of a registration with respect to a transitional security interest, the **registration time** for the collateral is the registration commencement time.

Note: However, a transitional security interest in the personal property arising under the agreement is perfected from immediately before the registration commencement time, no matter whether the security interest arises before, at or after that time (see section 322).

- (6) Chapter 5 (registration) applies in relation to an application for registration under this section, and to such a registration, subject to this section.

**125 Section 337**

Repeal the section, substitute:

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### 337 Registration effective despite certain defects

#### *Scope*

- (1) This section applies if:
  - (a) a registration describes collateral covered by a transitional security agreement; and
  - (b) the transitional security agreement has given rise to a transitional security interest; and
  - (c) the registration would not, apart from this section, be effective in respect of the collateral because of a defect in the registered data (including the omission of data); and
  - (d) the Registrar has made a determination under subsection (2) in relation to defects of that type; and
  - (e) the determination applies to the registration.

Note: Sections 164 and 165 provide that serious or misleading defects in a registration, and certain particular types of defect, make a registration ineffective.

- (2) For the purposes of paragraph (1)(d), the Registrar may, by legislative instrument, determine that registrations in a stated class are effective despite stated types of defect.
- (3) A determination under subsection (2) may provide that the determination does not apply in relation to a stated type of defect unless the registration includes particular data in relation to the defect (or in substitution for omitted data).

#### *Registration temporarily unaffected by the defect*

- (4) Despite sections 164 and 165, the defect does not make the registration ineffective for the period starting at the registration time for the collateral and ending at the following time:
  - (a) if the financing statement, as initially registered, states an end time—that end time (or an earlier end time, if the registration is amended to state an earlier end time);
  - (b) if the financing statement, as initially registered, does not state an end time—the end of the month that is 60 months after the registration commencement time (or an earlier end time, if the registration is amended to state an end time).

*Registration becomes ineffective*

- (5) However, the registration becomes ineffective under section 164 because of the defect immediately after the end of the period mentioned in subsection (4), unless, at or before that time, the registration is amended to correct the defect.

**337A Registration defective if collateral is not covered by transitional security agreement**

Without limiting section 164 (defects in registration), a registration that discloses that collateral is covered by a transitional security agreement is ineffective to the extent that it describes collateral that is not covered by a transitional security agreement.

**126 Subsection 340(2) (note)**

Repeal the note, substitute:

Note: For the meaning of *control* in this subsection, see section 341.

**127 At the end of subsection 340(5)**

Add:

Note: For the meaning of *inventory* in this subsection, see section 341.

**128 Before subsection 341(1)**

Insert:

*General rules*

- (1A) For the purposes of subsection 340(2), a secured party has *control* of personal property if:
- (a) the secured party has control of the property within the ordinary meaning of the term “control”; or
  - (b) the secured party has control of the property within the meaning of Part 2.3 (possession and control of personal property); or
  - (c) in a case in which the personal property is inventory or an account—the secured party has control of the inventory or account because of:
    - (i) paragraph (a) or (b); or
    - (ii) subsection (1), (2), (3) or (4).

(1B) For the purposes of subsection 340(5) and this section:

(a) *inventory* has its ordinary meaning; and

(b) the definition of *inventory* in section 10 does not apply.

Note: The heading to section 341 is replaced by the heading “**Meaning of control and inventory**”.

**129 Subsection 341(1)**

Omit “For the purposes of determining whether inventory is a circulating asset under section 340, a secured party has *control* of the inventory if”, substitute “For the purposes of subsection 340(2), a secured party has *control* of inventory if”.

**130 Subsection 341(2)**

Omit “For the purposes of determining whether an account is a circulating asset under section 340”, substitute “For the purposes of subsection 340(2)”.

**131 Subsection 341(2)**

After “subsections (3) and (4)”, insert “of this section”.

**132 Subsection 341(5)**

Repeal the subsection.

## **Part 2—Bulk amendments**

### **133 Amendments to change references to investment entitlements etc. to references to intermediated securities etc.**

The specified provisions of the *Personal Property Securities Act 2009* listed in items 134 to 153 of this Schedule are amended by:

- (a) omitting “investment entitlement intermediary” (wherever occurring) and substituting “intermediary”; and
- (b) omitting “investment entitlement account” (wherever occurring) and substituting “securities account”; and
- (c) omitting “investment entitlement” (wherever occurring otherwise than as mentioned in paragraph (a) or (b)) and substituting “intermediated security”; and
- (d) omitting “entitlement” (wherever occurring otherwise than as mentioned in paragraphs (a), (b) and (c)) and substituting “intermediated security”; and
- (e) omitting “investment entitlements” (wherever occurring) and substituting “intermediated securities”.

### **134 Subsection 6(1A)**

### **135 Section 10 (paragraph (e) of the definition of *account*)**

### **136 Section 10 (paragraph (d) of the definition of *chattel paper*)**

### **137 Section 10 (definition of *goods*)**

### **138 Section 10 (paragraph (c) of the definition of *intangible property*)**

### **139 Section 10 (paragraph (m) of the definition of *investment instrument*)**

### **140 Section 10 (paragraph (h) of the definition of *negotiable instrument*)**

**141 Paragraph 14(2)(b)**

**142 Subparagraph 21(2)(c)(ii)**

**143 Section 23**

**144 Section 30**

**145 Subsection 31(1) (subparagraph (c)(iv) of the definition of  
*proceeds*)**

**146 Subsection 31(1) (paragraph (e) of the definition of  
*proceeds*)**

**147 Subsection 32(2)**

**148 Paragraphs 41(g) and (i)**

**149 Paragraph 42(b)**

**150 Section 49**

Note: The heading to section 49 is altered by omitting “**entitlement**” and substituting “**intermediated security**”.

**151 Subsection 51(1)**

**152 Subsection 77(1)**

**153 Paragraph 109(3)(b)**

Note: The heading to subsection 109(3) is altered by omitting “*investment entitlements*” and substituting “*intermediated securities*”.

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## Schedule 3—Amendment of other Acts

### *Designs Act 2003*

#### **1 Section 5 (definition of *PPSA security interest*)**

Repeal the definition, substitute:

***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*.

Note: This amendment replaces the definition inserted by item 1 of Schedule 2 to the *Personal Property Securities (Consequential Amendments) Act 2009*.

### *Fisheries Management Act 1991*

#### **2 Subsection 4(1) (definition of *PPSA security interest*)**

Repeal the definition, substitute:

***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*.

Note: This amendment replaces the definition inserted by item 1 of Schedule 1 to the *Personal Property Securities (Consequential Amendments) Act 2009*.

## ***Mutual Assistance in Criminal Matters Act 1987***

### **3 At the end of section 35J**

Add:

- (4) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to the charge (to the extent, if any, to which that Act applies in relation to the property charged).

Note 1: The effect of this subsection is that the priority between the charge and a security interest in the property 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 created by this section after the commencement of subsection (4) (which is at the registration commencement time within the meaning of the *Personal Property Securities Act 2009*).

### **4 Subsection 35L(4) (definition of *registration authority*)**

Repeal the definition, substitute:

***registration authority***, in relation to property of a particular kind, means:

- (a) an authority responsible for administering a law of the Commonwealth, a State or a Territory providing for registration of title to, or charges over, property of that kind; or
- (b) the Registrar of Personal Property Securities, if the *Personal Property Securities Act 2009* provides for the registration of data in relation to that kind of personal property for the purposes of paragraph 148(c) of that Act.

Note: The *Personal Property Securities Act 2009* provides for the registration of such data if regulations are made for the purposes of paragraph 148(c) of that Act.

## ***Navigation Act 1912***

### **5 Subsection 6(1) (definition of *PPSA security interest*)**

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Repeal the definition, substitute:

***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*.

Note: This amendment replaces the definition inserted by item 6 of Schedule 3 to the *Personal Property Securities (Consequential Amendments) Act 2009*.

## ***Offshore Petroleum and Greenhouse Gas Storage Act 2006***

### **6 Section 7 (definition of *charge*)**

Repeal the definition.

### **7 Section 7 (definition of *debenture*)**

Repeal the definition.

### **8 Subsections 489(5) and (6)**

Repeal the subsections.

### **9 Paragraph 490(2)(c)**

Omit “instrument;”, substitute “instrument.”.

### **10 Paragraph 490(2)(d)**

Repeal the paragraph.

### **11 Subsections 499(5) and (6)**

Repeal the subsections.

### **12 Paragraph 500(2)(c)**

Omit “instrument;”, substitute “instrument.”.

**13 Paragraph 500(2)(d)**

Repeal the paragraph.

**14 Subsections 540(5) and 549(5)**

Repeal the subsections.

**15 Transitional—repeal of definition of *debenture***

The amendment made by item 7 applies in relation to dealings taking place after the time that item commences.

Note 1: Sections 468 and 520 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* are about dealings in series of debentures.

Note 2: Item 7 of this Schedule commences at the registration commencement time within the meaning of section 306 of the *Personal Property Securities Act 2009* (as provided by section 2 of this Act).

***Patents Act 1990***

**16 Schedule 1 (Dictionary) (definition of *PPSA security interest*)**

Repeal the definition, substitute:

***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*.

Note: This amendment replaces the definition inserted by item 14 of Schedule 2 to the *Personal Property Securities (Consequential Amendments) Act 2009*.

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

**17 Item 17 of Schedule 1**

Repeal the item.

Note: The repealed item is redundant because of the amendment in item 2 of this Schedule.

***Proceeds of Crime Act 2002***

**18 At the end of section 142**

Add:

- (4) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to the charge (to the extent, if any, to which that Act applies in relation to the property charged).

Note 1: The effect of this subsection is that the priority between the charge and a security interest in the property 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 created by this section after the commencement of subsection (4) (which is at the registration commencement time within the meaning of the *Personal Property Securities Act 2009*).

**19 At the end of section 143**

Add:

- (3) In this section:

**registration** of a charge on a particular kind of personal property within the meaning of the *Personal Property Securities Act 2009* includes the registration of data in relation to that kind of property for the purposes of paragraph 148(c) of that Act.

Note: The *Personal Property Securities Act 2009* provides for the registration of such data only if regulations are made for the purposes of paragraph 148(c) of that Act.

**20 At the end of section 169**

Add:

- (4) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to the charge (to the extent, if any, to which that Act applies in relation to the property charged).

Note 1: The effect of this subsection is that the priority between the charge and a security interest in the property 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 created by this section after the commencement of subsection (4) (which is at the registration commencement time within the meaning of the *Personal Property Securities Act 2009*).

## 21 At the end of section 170

Add:

- (3) In this section:

**registration** of a charge on a particular kind of personal property within the meaning of the *Personal Property Securities Act 2009* includes the registration of data in relation to that kind of property for the purposes of paragraph 148(c) of that Act.

Note: The *Personal Property Securities Act 2009* provides for the registration of such data only if regulations are made for the purposes of paragraph 148(c) of that Act.

## 22 Section 302

Before “If a charge”, insert “(1)”.

## 23 At the end of section 302

Add:

- (2) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to the commission’s charge (to the extent, if any, to which that Act applies in relation to the property charged).

Note 1: The effect of this subsection is that the priority between the commission’s charge and a security interest in the property 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 commission charges created by section 300 after the commencement of subsection (2) (which is at the registration commencement time within the meaning of the *Personal Property Securities Act 2009*).

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**24 Section 302C**

Before “If a charge”, insert “(1)”.

**25 At the end of section 302C**

Add:

- (2) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to the Commonwealth’s charge (to the extent, if any, to which that Act applies in relation to the property charged).

Note 1: The effect of this subsection is that the priority between the Commonwealth’s charge and a security interest in the property 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 Commonwealth charges created by section 302A after the commencement of subsection (2) (which is at the registration commencement time within the meaning of the *Personal Property Securities Act 2009*).

**26 After subsection 307(3)**

Insert:

- (3A) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to a charge created by subsection (1) (to the extent, if any, to which that Act applies in relation to the property charged).

Note 1: The effect of this subsection is that the priority between the charge and a security interest in the property 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 created by subsection (1) after the commencement of subsection (3A) (which is at the registration commencement time within the meaning of the *Personal Property Securities Act 2009*).

**27 At the end of section 307**

Add:

- (5) In this section:

**registration** of a charge on a particular kind of personal property within the meaning of the *Personal Property Securities Act 2009* includes the registration of data in relation to that kind of property for the purposes of paragraph 148(c) of that Act.

Note: The *Personal Property Securities Act 2009* provides for the registration of such data if regulations are made for the purposes of paragraph 148(c) of that Act.

## 28 Section 338 (definition of *registration authority*)

Repeal the definition, substitute:

***registration authority***, in relation to property of a particular kind, means:

- (a) an authority responsible for administering a law of the Commonwealth, a State or a Territory providing for registration of title to, or charges over, property of that kind; or
- (b) the Registrar of Personal Property Securities, if the *Personal Property Securities Act 2009* provides for the registration of data in relation to that kind of personal property for the purposes of paragraph 148(c) of that Act.

Note: The *Personal Property Securities Act 2009* provides for the registration of such data if regulations are made for the purposes of paragraph 148(c) of that Act.

## *Torres Strait Fisheries Act 1984*

### 29 Subsection 3(1) (definition of *PPSA security interest*)

Repeal the definition, substitute:

***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*.

Note: This amendment replaces the definition inserted by item 19 of Schedule 1 to the *Personal Property Securities (Consequential Amendments) Act 2009*.

***Trade Marks Act 1995***

**30 Section 6 (definition of *PPSA security interest*)**

Repeal the definition, substitute:

***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*.

Note: This amendment replaces the definition inserted by item 18 of Schedule 2 to the *Personal Property Securities (Consequential Amendments) Act 2009*.

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[*Minister's second reading speech made in—  
House of Representatives on 10 March 2010  
Senate on 15 June 2010*]