

Personal Property Securities Legislation Amendment Act 2010 No 57

[2010-57]



New South Wales

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Note**

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Personal Property Securities Legislation Amendment Act 2010 No 57



New South Wales

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Personal Property Securities Legislation Amendment Act 2010 No 57



New South Wales

An Act to amend certain Acts and Regulations consequent on the enactment by the Parliament of the Commonwealth of the *Personal Property Securities Act 2009*; and for related purposes.

1 Name of Act

This Act is the *Personal Property Securities Legislation Amendment Act 2010*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Explanatory notes

The matter appearing under the heading “Explanatory note” in Schedule 1 does not form part of this Act.

Schedule 1 Amendment of Acts and Regulations

1.1 Building and Construction Industry Security of Payment Act 1999 No 46

Section 11 Due date for payment

Insert after section 11 (5):

- (6) Except as otherwise provided by this section, the rules and principles of the common law and equity apply to the determination of priorities between a lien under subsection (3) over any unfixed plant and materials and any other interest in the plant and materials.
- (7) Section 73 (2) of the *Personal Property Securities Act 2009* of the Commonwealth is declared to apply to liens under subsection (3).

Explanatory note

Section 73 of the *Personal Property Securities Act 2009* of the Commonwealth (**the Commonwealth Act**) provides for priorities in certain circumstances between security interests in personal property to which that Act applies and interests in the property created, arising or being provided for under a law of the State (a **statutory interest**).

Section 73 (2) of the Commonwealth Act enables a law of a State, by declaring that the subsection applies to a statutory interest, to provide for the priority between the statutory interest and security interests to be determined in accordance with the law of the State rather than the Commonwealth Act. However, the declaration operates only in relation to statutory interests arising after the declaration comes into effect.

The proposed amendment to the *Building and Construction Industry Security of Payment Act 1999*:

- (a) provides for the determination of priorities between a lien created under section 11 of that Act and other security interests to be determined in accordance with that section rather than in accordance with section 73 of the Commonwealth Act, and
- (b) confirms that the common law and equity applies to the determination of priorities unless section 11 provides otherwise.

1.2 Confiscation of Proceeds of Crime Act 1989 No 90

[1] Section 48 Charge on property subject to restraining order or freezing notice

Omit “of the State” from section 48 (4).

Insert instead “(whether or not a law of the State)”.

[2] Section 48 (6)

Insert after section 48 (5):

- (6) Section 73 (2) of the *Personal Property Securities Act 2009* of the Commonwealth is declared to apply to a charge created by subsection (1).

[3] Section 83 Charge on property subject to registered interstate restraining orders

Omit “of New South Wales” from section 83 (4).

Insert instead “(whether or not a law of the State)”.

[4] Section 83 (6)

Insert after section 83 (5):

- (6) Section 73 (2) of the *Personal Property Securities Act 2009* of the Commonwealth is declared to apply to a charge created by subsection (1).

Explanatory note

Section 73 of the *Personal Property Securities Act 2009* of the Commonwealth (**the Commonwealth Act**) provides for priorities in certain circumstances between security interests in personal property to which that Act applies and interests in the property created, arising or being provided for under a law of the State (a **statutory interest**). Section 73 (2) of the Commonwealth Act enables a law of a State, by declaring that the subsection applies to a statutory interest, to provide for the priority between the statutory interest and security interests to be determined in accordance with the law of the State rather than the Commonwealth Act. However, the declaration operates only in relation to statutory interests arising after the declaration comes into effect.

Items [2] and [4] of the proposed amendments to the [Confiscation of Proceeds of Crime Act 1989 \(the Act\)](#) provide for the determination of priorities between a charge created under sections 48 and 83 of that Act, respectively, and other security interests to be determined in accordance with those sections rather than in accordance with section 73 of the Commonwealth Act.

Items [1] and [3] of the proposed amendments to the Act will enable the NSW Trustee and Guardian or an appropriate officer to register such charges created in relation to personal property under the Commonwealth Act.

1.3 Conveyancing Act 1919 No 6

[1] Section 184C General Register of Deeds

Insert “that were” before “registered” wherever occurring in section 184C (2) (g) and (h).

[2] Section 184C (2) (h1)

Omit “that are”. Insert “that were”.

Explanatory note

The proposed amendments to the [Conveyancing Act 1919](#) limit references to instruments that are registered under the [Security Interests in Goods Act 2005](#) and certain other personal property legislation to instruments that were previously registered under that legislation.

1.4 Conveyancing (General) Regulation 2008

Schedule 1 Fees

Omit items 2 and 3.

Explanatory note

The proposed amendment to the [Conveyancing \(General\) Regulation 2008](#) omits references to the [Security Interests in Goods Act 2005](#) that will become outdated on the repeal of that Act by the [Personal Property Securities \(Commonwealth Powers\) Amendment Act 2009](#).

1.5 Criminal Assets Recovery Act 1990 No 23

[1] Section 31 Charge on property

Insert after section 31 (4):

- (5) Section 73 (2) of the [Personal Property Securities Act 2009](#) of the Commonwealth is declared to apply to a charge created by subsection (1).

[2] Section 52G Charge on property subject to interstate restraining order

Omit “of New South Wales” from section 52G (5).

Insert instead “(whether or not a law of the State)”.

[3] Section 52G (7)

Insert after section 52G (6):

- (7) Section 73 (2) of the *Personal Property Securities Act 2009* of the Commonwealth is declared to apply to a charge created by this section.

Explanatory note

Section 73 of the *Personal Property Securities Act 2009* of the Commonwealth (**the Commonwealth Act**) provides for priorities in certain circumstances between security interests in personal property to which that Act applies and interests in the property created, arising or being provided for under a law of the State (a **statutory interest**). Section 73 (2) of the Commonwealth Act enables a law of a State, by declaring that the subsection applies to a statutory interest, to provide for the priority between the statutory interest and security interests to be determined in accordance with the law of the State rather than the Commonwealth Act. However, the declaration operates only in relation to statutory interests arising after the declaration comes into effect.

Items [1] and [3] of the proposed amendments to the *Criminal Assets Recovery Act 1990* (**the Act**) provide for the determination of priorities between a charge created under sections 31 and 52G of that Act, respectively, and other security interests to be determined in accordance with those sections rather than in accordance with section 73 of the Commonwealth Act.

Item [2] of the proposed amendments to the Act will enable the NSW Trustee and Guardian or an appropriate or authorised officer to register a charge created by section 52G of the Act in relation to personal property under the Commonwealth Act. Section 31 of the Act already makes similar provision in relation to charges created by that section.

1.6 Duties Act 1997 No 123

Section 222 Exempt mortgages and supporting instruments

Omit section 222 (2) (f1). Insert instead:

- (f1) an instrument that creates a security interest in crops or livestock (within the meaning of the *Personal Property Securities Act 2009* of the Commonwealth), and

Explanatory note

The proposed amendment to the *Duties Act 1997* omits a reference to an agricultural goods mortgage under the *Security Interests in Goods Act 2005* that will become outdated on the repeal of that Act by the *Personal Property Securities (Commonwealth Powers) Amendment Act 2009*. The reference is replaced with a reference to the equivalent concept under the *Personal Property Securities Act 2009* of the Commonwealth.

1.7 Fair Trading Act 1987 No 68

[1] Section 9A Exchange of information

Omit “but only to the extent that the information is reasonably necessary to assist in the exercise of functions under this Act (or any other Act administered by the Minister for Fair Trading, whether solely or jointly with another Minister) or the functions of the relevant agency concerned.” from section 9A (3).

Insert instead:

but only to the extent that the information is reasonably necessary:

- (c) to assist in the exercise of functions (**existing NSW fair trading functions**) under this Act (or any other Act administered by the Minister for Fair Trading, whether solely or jointly with another Minister) or of the functions of the relevant agency concerned, or
- (d) to assist in a proposed transfer of existing NSW fair trading functions to the relevant agency concerned or a proposed transfer of functions of the relevant agency concerned to the Minister, Director-General or other fair trading agency of the State.

[2] Section 9A (6)

Omit the subsection. Insert instead:

- (6) This section does not:
 - (a) limit the functions that may be exercised by the Director-General under section 9, or
 - (b) require the Director-General to provide information to a relevant agency only in accordance with an information sharing arrangement where that information can otherwise be lawfully provided, or
 - (c) limit the operation of any other Act or law under which a relevant agency is authorised or required to disclose information to another person or body.

[3] Schedule 5 Savings and transitional provisions

Insert before clause 12:

11J Personal Property Securities Legislation Amendment Act 2010

Section 9A (as amended by the *Personal Property Securities Legislation Amendment Act 2010*) extends to information obtained before the commencement of the amendments to that section.

Explanatory note

Item [1] of the proposed amendments to the *Fair Trading Act 1987* (**the Act**) enables information sharing arrangements to be entered into by the Director-General within the meaning of that Act in connection with the proposed transfer of functions relating to fair trading (including to a Commonwealth agency).

Item [2] of the proposed amendments to the Act makes it clear that the Director-General may share information with other agencies even in the absence of an information sharing arrangement under section 9A of the Act where the Director-General can lawfully do so.

Item [3] of the proposed amendments to the Act enacts a transitional provision that confirms that the amendments proposed to be made by items [1] and [2] extend to information obtained before the commencement of the amendments.

1.8 Fines Act 1996 No 99

Schedule 1 Statutory provisions under which penalty notices issued

Omit the matter relating to the *Registration of Interests in Goods Act 1986*.

Explanatory note

The proposed amendment to the *Fines Act 1996* omits a reference to the *Registration of Interests in Goods Act 1986* that will become outdated on the repeal of that Act by the *Personal Property Securities (Commonwealth Powers) Amendment Act 2009*.

1.9 Fisheries Management Act 1994 No 38

Section 286A

Insert after section 286:

286A Certain licences, leases, permits and other rights not personal property under *Personal Property Securities Act 2009* (Cth)

Each of the following is declared not to be personal property for the purposes of the *Personal Property Securities Act 2009* of the Commonwealth:

- (a) a commercial fishing licence,
- (b) an endorsement on a commercial fishing licence,
- (c) a fishing boat licence,
- (d) a share in any share management fishery,
- (e) an aquaculture lease,
- (f) an aquaculture permit,
- (g) a charter fishing boat licence,
- (h) an allocation made under Division 8 of Part 3,
- (i) a permit issued under section 37,
- (j) a permit issued under Part 7,
- (k) a licence granted under Subdivision 1 of Division 6 of Part 7A.

Note—

The *Personal Property Securities Act 2009* of the Commonwealth does not apply in relation to a right, licence or authority granted by or under a law of a State that is declared by the law not to be personal

property for the purposes of that Act.

Explanatory note

Section 8 (1) (k) of the *Personal Property Securities Act 2009* of the Commonwealth (**the Commonwealth Act**) provides for that Act not to apply to a particular right, licence or authority (**the statutory right**) granted by or under a law of a State, if, at the time when the statutory right is granted, or at any time afterwards, a provision of that law declares that kind of statutory right not to be personal property for the purposes of the Commonwealth Act (no matter whether the provision remains in force). The definition of **personal property** in section 10 of the Commonwealth Act also excludes any statutory right that has been declared not to be personal property for the purposes of the Commonwealth Act.

The proposed amendment to the *Fisheries Management Act 1994* ensures that certain licences, shares, leases, permits and other rights issued or granted under the Act are not treated as being personal property for the purposes of the Commonwealth Act.

1.10 Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86

Schedule 1 Modification of Health Practitioner Regulation National Law

Insert after clause 3 (2) of Schedule 5F of the modifications to the Health Practitioner Regulation National Law (as set out in Schedule 1 [25] to the Act):

- (3) To avoid doubt, any failure to register a pecuniary interest that is a security interest with respect to a pharmacy business does not—
 - (a) affect the validity, priority or enforceability of the security interest or of the agreement or other arrangement providing for the security interest; or
 - (b) otherwise limit the effect of the security interest or the agreement or other arrangement providing for the security interest.

Explanatory note

Section 254 (2) (d) of the *Personal Property Securities Act 2009* of the Commonwealth recognises that a law of a State that requires a security interest in personal property to be registered under that law is capable of operating concurrently with the Commonwealth Act if a failure to register the security interest under the law does not limit the effect of the security interest or a security agreement for the security interest.

The proposed amendment to the *Health Practitioner Regulation (Adoption of National Law) Act 2009* makes it clear that a failure under clause 3 of Schedule 5F of the modifications set out in that Act to the Health Practitioner Regulation National Law to register a pecuniary interest that is a security interest with respect to a pharmacy business does not limit the effect of the interest or the agreement that creates the interest.

1.11 Housing Act 2001 No 52

Section 69B Access to information for preventing, investigating or prosecuting fraud

Omit section 69B (1) (e).

Explanatory note

The proposed amendment to the *Housing Act 2001* omits a reference to the Register of Interests in Goods kept under the *Registration of Interests in Goods Act 1986* that will become outdated on the repeal of that Act by the *Personal Property*

Securities (Commonwealth Powers) Amendment Act 2009.

1.12 Impounding Act 1993 No 31

[1] Section 20 Impounding authority to notify owner

Omit “Register under the *Registration of Interests in Goods Act 1986* for registrable interests in the vehicle” from section 20 (1).

Insert instead “PPS Register for information concerning PPS security interests in the vehicle”.

[2] Section 20 (4)

Omit “Register reveals a registrable interest”.

Insert instead “PPS Register reveals a PPS security interest”.

[3] Section 20 (8)

Insert after section 20 (7) (before the note):

(8) In this section:

PPS Register means the Personal Property Securities Register under the *Personal Property Securities Act 2009* of the Commonwealth.

PPS security interest, in relation to a motor vehicle, means a security interest in the vehicle to which the *Personal Property Securities Act 2009* of the Commonwealth applies (including a transitional security interest within the meaning of that Act).

Explanatory note

The proposed amendments to the *Impounding Act 1993* require an impounding authority to search the new Personal Property Securities Register established under the *Personal Property Securities Act 2009* of the Commonwealth for security interests in a motor vehicle before impounding the vehicle. Currently, an impounding authority is required to search the Register maintained under the *Registration of Interests in Goods Act 1986*. That Register will be replaced by the Register under the Commonwealth Act when that Act commences.

1.13 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

[1] Section 219 Disposal of property on application to court

Insert “(including adjusting rights by extinguishing, whether in whole or in part, any interests in the property of such persons)” after “parts of property” in section 219 (2) (a).

[2] Section 219 (5)

Insert after section 219 (4):

- (5) An order under subsection (2) (a) that provides for the extinguishment, whether in whole or in part, of any interest in property operates to extinguish the interest according to its tenor.

Explanatory note

Section 254 (2) (g) of the *Personal Property Securities Act 2009* of the Commonwealth (**the Commonwealth Act**) recognises that a law of a State that operates to extinguish (however described) a security interest in circumstances other than those provided under the Commonwealth Act is capable of operating concurrently with the Commonwealth Act.

The proposed amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002* ensure that a court exercising functions under section 219 of that Act (Disposal of property on application to court) may adjust rights between parties by extinguishing an interest of any of those parties.

1.14 Local Government Act 1993 No 30

Section 68B

Insert after section 68A:

68B Approvals not personal property under *Personal Property Securities Act 2009* (Cth)

An approval under this Part is declared not to be personal property for the purposes of the *Personal Property Securities Act 2009* of the Commonwealth.

Note—

The *Personal Property Securities Act 2009* of the Commonwealth does not apply in relation to a right, licence or authority granted by or under a law of a State that is declared by the law not to be personal property for the purposes of that Act.

Explanatory note

Section 8 (1) (k) of the *Personal Property Securities Act 2009* of the Commonwealth (**the Commonwealth Act**) provides for that Act not to apply to a particular right, licence or authority (**the statutory right**) granted by or under a law of a State, if, at the time when the statutory right is granted, or at any time afterwards, a provision of that law declares that kind of statutory right not to be personal property for the purposes of the Commonwealth Act (no matter whether the provision remains in force). The definition of **personal property** in section 10 of the Commonwealth Act also excludes any statutory right that has been declared not to be personal property for the purposes of the Commonwealth Act.

The proposed amendment to the *Local Government Act 1993* ensures that approvals under Part 1 of Chapter 7 of that Act are not treated as being personal property for the purposes of the Commonwealth Act.

1.15 Mining Act 1992 No 29

[1] Section 218B

Insert after section 218A:

218B Registration of certain interests in mineral claims

- (1) The Director-General is to keep a register of legal and equitable interests in

mineral claims.

- (2) Any person claiming a legal or equitable interest in a mineral claim may apply for registration of the interest.
- (3) An application must be lodged with the Director-General and must be accompanied by the appropriate lodgment fee and by documentary evidence of the legal or equitable interest concerned.
- (4) The Director-General may, if satisfied that the applicant holds the interest concerned, register the document by which the legal or equitable interest is evidenced.
- (5) The Director-General may, on application by the holder of an interest or otherwise, make such amendments to the register kept under this section as are appropriate to reflect dealings in the interest.
- (6) Without limiting the generality of subsection (5), the Director-General may cancel the registration of an interest if of the opinion that the interest has ceased to exist.
- (7) The registration of an interest under this section is not to be taken to be evidence of the existence of the interest.
- (8) For the purposes of any legal proceedings concerning a mineral claim:
 - (a) a registered interest has priority over an interest that is not registered, and
 - (b) an earlier registered interest has priority over a later registered interest.
- (9) The register must be kept available at such offices of the Department as may be prescribed by the regulations for inspection, free of charge, by members of the public.
- (10) Section 208 applies to an application under this section in the same way as it applies to an application referred to in section 208 (1).

[2] Section 235F

Insert after section 235E:

235F Registration of certain interests in opal prospecting licences

- (1) The Director-General is to keep a register of legal and equitable interests in opal prospecting licences.
- (2) Any person claiming a legal or equitable interest in an opal prospecting licence may apply for registration of the interest.

- (3) An application must be lodged with the Director-General and must be accompanied by the appropriate lodgment fee and by documentary evidence of the legal or equitable interest concerned.
- (4) The Director-General may, if satisfied that the applicant holds the interest concerned, register the document by which the legal or equitable interest is evidenced.
- (5) The Director-General may, on application by the holder of an interest or otherwise, make such amendments to the register kept under this section as are appropriate to reflect dealings in the interest.
- (6) Without limiting the generality of subsection (5), the Director-General may cancel the registration of an interest if of the opinion that the interest has ceased to exist.
- (7) The registration of an interest under this section is not to be taken to be evidence of the existence of the interest.
- (8) For the purposes of any legal proceedings concerning an opal prospecting licence:
 - (a) a registered interest has priority over an interest that is not registered, and
 - (b) an earlier registered interest has priority over a later registered interest.
- (9) The register must be kept available at such offices of the Department as may be prescribed by the regulations for inspection, free of charge, by members of the public.

[3] Section 379A

Insert after section 379:

379A Certain licences and leases not personal property under [Personal Property Securities Act 2009](#) (Cth)

Each of the following is declared not to be personal property for the purposes of the [Personal Property Securities Act 2009](#) of the Commonwealth:

- (a) an exploration licence,
- (b) an assessment lease,
- (c) a mineral claim,
- (d) a mining lease,

(e) an opal prospecting licence.

Note—

The *Personal Property Securities Act 2009* of the Commonwealth does not apply in relation to a right, licence or authority granted by or under a law of a State that is declared by the law not to be personal property for the purposes of that Act.

[4] Schedule 6 Savings, transitional and other provisions

Insert at the end of the Schedule (with appropriate Part and clause numbers):

Part Provision consequent on enactment of *Personal Property Securities Legislation Amendment Act 2010*

Application of sections 218B and 235F

- (1) Section 218B (as inserted by the *Personal Property Securities Legislation Amendment Act 2010*) applies only in relation to mineral claims granted or renewed after the commencement of the section.
- (2) Section 235F (as inserted by the *Personal Property Securities Legislation Amendment Act 2010*) applies only in relation to opal prospecting licences granted after the commencement of the section.

Explanatory note

Section 8 (1) (k) of the *Personal Property Securities Act 2009* of the Commonwealth (**the Commonwealth Act**) provides for that Act not to apply to a particular right, licence or authority (**the statutory right**) granted by or under a law of a State, if, at the time when the statutory right is granted, or at any time afterwards, a provision of that law declares that kind of statutory right not to be personal property for the purposes of the Commonwealth Act (no matter whether the provision remains in force). The definition of **personal property** in section 10 of the Commonwealth Act also excludes any statutory right that has been declared not to be personal property for the purposes of the Commonwealth Act.

Item [3] of the proposed amendments to the *Mining Act 1992* (**the Act**) ensures that certain licences, leases and claims under the Act are not treated as being personal property for the purposes of the Commonwealth Act.

Items [1] and [2] of the proposed amendments to the Act will require the Director-General of the Department of Industry and Investment to keep registers of legal and equitable interests in mineral claims and opal prospecting licences. The Director-General already keeps similar registers in relation to other licences and leases issued under the Act. As the Commonwealth Act will not apply in relation to these claims and licences, these proposed amendments also provide for priorities between registered and unregistered interests. Item [4] of the proposed amendments enacts a transitional provision to make it clear that the requirement to maintain a register only applies in relation to mineral claims or opal prospecting licences that are granted or renewed after the commencement of the provisions concerned.

**1.16 Personal Property Securities (Commonwealth Powers) Act 2009
No 35**

**[1] Schedule 1 Savings, transitional and other provisions consequent on enactment of
Personal Property Securities Act 2009 of the Commonwealth**

Insert after clause 2 (1):

(1A) Without limiting subclause (1), the Director-General is also specifically authorised to provide any of the following persons with such information recorded in REVS as the Director-General considers appropriate in order to assist in verifying the accuracy of information recorded in REVS for the purposes of data migration to the PPS Register:

- (a) any person who is (or formerly was) recorded in REVS as a debtor or creditor in relation to prescribed goods (within the meaning of the *Registration of Interests in Goods Act 1986*),
- (b) any person acting on behalf of such a debtor or creditor (or former debtor or creditor),
- (c) any other person engaged by the Director-General to assist, or who is otherwise involved in assisting, in the migration of data from REVS to the PPS Register.

(1B) The Director-General may charge fees with respect to the provision of information under subclause (1A).

[2] Schedule 1, clause 5

Insert “, 8” after “7” in paragraph (a) of the definition of **registration function** in clause 5 (3).

[3] Schedule 1, clause 7

Insert after clause 7 (5):

- (6) Without limiting clause 4 (2) (b), the regulations may make provision for or with respect to fees payable in relation to certificates (or copies of certificates) issued under or in accordance with this clause.

[4] Schedule 1, clause 8

Insert “and subclause (2)” after “Chapter 9 (Transitional provisions) of the PPS Act”.

[5] Schedule 1, clause 8 (2)

Insert at the end of clause 8 (after the note):

- (2) If a registered interest (within the meaning of the existing Act) in prescribed goods becomes a migrated security interest (within the meaning of the PPS Act), the date (if any) recorded in the PPS Register as the date on which the interest was originally registered is taken to be the date on which the interest was originally registered under the existing Act in the absence of evidence to the contrary.

[6] Schedule 1, clause 22 (3)

Insert “or of verifying the accuracy of information recorded in REVS” after “PPS Register” in paragraph (a) of the definition of ***PPS transitional matter***.

[7] Schedule 1, clause 22A

Insert after clause 22:

22A References to charges and fixed and floating charges

- (1) This clause applies in relation to a reference in an Act or statutory rule to a charge, a fixed charge, or a floating charge, over property, but only to the extent that:
 - (a) the charge referred to has attached to personal property, and
 - (b) title to the personal property to which the charge has attached is in the grantor, and
 - (c) the charge is a security interest to which the PPS Act applies.
- (2) However, this clause does not apply to:
 - (a) a reference to a charge, a fixed charge, or a floating charge, if the charge referred to is a perfected security interest that is provided for by a transfer of an account or chattel paper, or
 - (b) any other reference (or any reference belonging to a class) prescribed by the regulations.
- (3) On and from the registration commencement time:
 - (a) a reference to a charge over property is taken to be a reference to a security interest that has attached to:
 - (i) a circulating asset, or
 - (ii) personal property that is not a circulating asset, and
 - (b) a reference to a fixed charge over property is taken to be a reference to a security interest that has attached to personal property that is not a circulating asset, and
 - (c) a reference to a floating charge over property is taken to be a reference to a security interest that has attached to a circulating asset.
- (4) Any word or expression used in this clause that is defined in the PPS Act has the same meaning as in that Act.

[8] Schedule 1, clause 23A

Insert after clause 23:

23A Enforcement of and other dealings with PPS security interests restricted in certain circumstances

- (1) On and from the registration commencement time (but subject to this clause and the regulations), a person may not take action to enforce a PPS security interest in personal property or otherwise deal with the interest or property:
 - (a) if the action or dealing is (or would be) inconsistent with a relevant State property law (or an order made under such a law) that:
 - (i) requires, authorises or permits the property to be dealt with in a particular manner (including by disposing of the property whether by sale, destruction or any other means), or
 - (ii) prohibits or prevents the property being dealt with in a particular manner or places other limitations or restrictions on how the property may be dealt with, or
 - (b) if the action or dealing would operate to prevent, impede or defeat the making of an application to a court, tribunal or any other person or body under a relevant State property law with respect to how the property is to be dealt with, or
 - (c) in such other circumstances as may be prescribed by the regulations.
- (2) Each of the following is a **relevant State property law** for the purposes of this clause:
 - (a) Schedule 2 to the *Commercial Agents and Private Inquiry Agents Act 2004*,
 - (b) the *Confiscation of Proceeds of Crime Act 1989*,
 - (c) the *Criminal Assets Recovery Act 1990*,
 - (d) Part 8 of the *Holiday Parks (Long-term Casual Occupation) Act 2002*,
 - (e) the *Impounding Act 1993*,
 - (f) Division 2 of Part 17 of the *Law Enforcement (Powers and Responsibilities) Act 2002*,
 - (g) the *Pawnbrokers and Second-hand Dealers Act 1996*,
 - (h) section 42 of the *Property (Relationships) Act 1984*,

- (i) Division 8 of Part 12 of the *Residential Parks Act 1998*,
 - (j) Division 5 of Part 5 of the *Residential Tenancies Act 1987*,
 - (k) Division 2 of Part 6 of the *Residential Tenancies Act 2010*,
 - (l) Division 7 of Part 9 of the *Retirement Villages Act 1999*,
 - (m) section 28 of the *Terrorism (Police Powers) Act 2002*,
 - (n) the *Uncollected Goods Act 1995*,
 - (o) Division 9 of Part 2 of the *Victims Support and Rehabilitation Act 1996*,
 - (p) the *Warehousemen's Liens Act 1935*,
 - (q) an Act or statutory rule (or a provision of an Act or statutory rule) that is prescribed by the regulations to be a relevant State property law for the purposes of this clause.
- (3) The regulations may make provision for or with respect to the following:
- (a) the application of subclause (1) in relation to a relevant State property law (include the modification of the subclause in its application to such a law),
 - (b) the modification of a relevant State property law so as to enable it to operate concurrently, or to remove a direct inconsistency, with the PPS Act (including providing for the extinguishment of a PPS security interest in connection with the application of the law).
- (4) This clause does not:
- (a) affect the meaning or operation of a relevant State property law in its application to interests other than PPS security interests, or
 - (b) affect the meaning or operation of a relevant State property law to the extent that the law would (even if subclause (1) had not been enacted) be capable of operating according to its tenor because it is:
 - (i) a law of the State capable of operating concurrently with the PPS Act, or
 - (ii) a law of the State that makes provision for a matter mentioned in section 245 (2) (a), (b) or (c) of the PPS Act, or
 - (iii) a law of the State the effect of which is covered by section 258 (2) of the PPS Act, or
 - (c) prevent the enforcement of, or other dealings with, a PPS security interest:
 - (i) by the State or an instrumentality or other agency of the State, or

- (ii) by any other person (or person belonging to a class of persons) prescribed by the regulations.

(5) In this clause:

modification includes addition, exception, omission or substitution.

order includes a direction or notice.

PPS security interest means a security interest to which the PPS Act applies (including a transitional security interest).

Note—

Section 254 (2) (b), (c) and (g) of the PPS Act recognises that a law of a State that has any of the following effects is capable of operating concurrently with the PPS Act except in cases of direct inconsistency between the PPS Act and the law of the State:

- (a) prohibiting or limiting a person creating, acquiring or dealing with personal property or a security interest in personal property,
- (b) prohibiting or limiting the right of a person to hold, transfer or assign a security interest in personal property,
- (c) imposing limitations or additional obligations or requirements in relation to the enforcement of a security interest in personal property,
- (d) operating to extinguish (however described) a security interest in circumstances other than those provided under the PPS Act.

In the event of a direct inconsistency between the PPS Act and a law of the State having any of the effects referred to in paragraphs (a)–(c) above, section 258 (1) and (2) of the PPS Act operate to limit the operation of the PPS Act so as to avoid that inconsistency arising.

The PPS Act also extends to certain security interests created before the registration commencement time (referred to as transitional security interests in that Act).

[9] Schedule 1, clause 24 (3) (d)

Insert after clause 24 (3) (c):

- (d) the [Personal Property Securities Legislation Amendment Act 2010](#).

[10] Schedule 1, clause 24 (4) (a)

Insert “or another Act or statutory rule” after “this Schedule”.

[11] Schedule 1, clause 25

Omit the clause. Insert instead:

25 Savings and transitional provisions consequent on enactment of [Personal](#)

Property Securities Legislation Amendment Act 2010

- (1) The following amendments made by the amending Act extend, on and from the commencement of the amendment concerned, to interests created or arising before that commencement:
- (a) the amendments made to section 219 of the *Law Enforcement (Powers and Responsibilities) Act 2002*,
 - (b) the amendment made to section 42 of the *Property (Relationships) Act 1984*,
 - (c) the amendments made to section 28 of the *Terrorism (Police Powers) Act 2002*.
- (2) In this clause:

amending Act means the *Personal Property Securities Legislation Amendment Act 2010*.

Explanatory note

Item [1] of the proposed amendments to the *Personal Property Securities (Commonwealth Powers) Act 2009* (**the Act**) enables the information in the Register kept under the *Registration of Interests in Goods Act 1986* to be provided to certain persons in order to assist in the verification of information recorded in the Register for the purposes of the migration of data to the new Personal Property Securities Register (**the PPS Register**) established under the *Personal Property Securities Act 2009* of the Commonwealth (**the Commonwealth Act**). Item [6] of the proposed amendments to the Act makes a consequential amendment.

Item [2] of the proposed amendments to the Act enables the Director-General under the *Registration of Interests in Goods Act 1986* to refuse to exercise functions under section 8 of that Act during the pre-PPS transitional period.

Item [3] of the proposed amendments to the Act enables regulations to be made prescribing fees in relation to certificates (or copies of certificates) issued in relation to certain matters arising under the *Registration of Interests in Goods Act 1986*.

Item [5] of the proposed amendments to the Act allows information recorded in the PPS Register concerning the original date of registration of an interest under the *Registration of Interests in Goods Act 1986* to be relied on for the purposes of determining priorities under the *Registration of Interests in Goods Act 1986* in relation to matters occurring before the commencement of the Commonwealth Act. Item [4] of the proposed amendments makes a consequential amendment.

Item [7] of the proposed amendments to the Act provides for certain references in State legislation to charges, fixed charges or floating charges over personal property to be updated to reflect changes in terminology effected by the Commonwealth Act. Section 339 of the Commonwealth Act makes similar provision with respect to references in Commonwealth legislation.

Item [8] of the proposed amendments to the Act prevents security interests to which the Commonwealth Act applies being enforced or otherwise dealt with in a manner that would be inconsistent with, or defeat the operation of, certain State property laws (such as laws relating to abandoned, uncollected or impounded goods, criminal assets and proceeds and certain other restrictions on dealings involving property).

Item [9] of the proposed amendments to the Act enables the Governor to make savings and transitional regulations consequent on the enactment of the proposed Act. Item [10] of the proposed amendments makes a consequential amendment.

Item [11] of the proposed amendments to the Act omits a provision that has become outdated because of the enactment of the Commonwealth Act in 2009 rather than in 2010. The proposed amendment also inserts savings and transitional provisions consequent on the enactment of the proposed Act.

1.17 Petroleum (Onshore) Act 1991 No 84

Section 126B

Insert after section 126A:

126B Petroleum titles and low-impact prospecting titles not personal property under [Personal Property Securities Act 2009](#) (Cth)

Each of the following is declared not to be personal property for the purposes of the [Personal Property Securities Act 2009](#) of the Commonwealth:

- (a) a petroleum title,
- (b) a low-impact prospecting title granted under Division 6 of Part 3.

Note—

The [Personal Property Securities Act 2009](#) of the Commonwealth does not apply in relation to a right, licence or authority granted by or under a law of a State that is declared by the law not to be personal property for the purposes of that Act.

Explanatory note

Section 8 (1) (k) of the [Personal Property Securities Act 2009](#) of the Commonwealth (**the Commonwealth Act**) provides for that Act not to apply to a particular right, licence or authority (**the statutory right**) granted by or under a law of a State, if, at the time when the statutory right is granted, or at any time afterwards, a provision of that law declares that kind of statutory right not to be personal property for the purposes of the Commonwealth Act (no matter whether the provision remains in force). The definition of **personal property** in section 10 of the Commonwealth Act also excludes any statutory right that has been declared not to be personal property for the purposes of the Commonwealth Act.

The proposed amendment to the [Petroleum \(Onshore\) Act 1991](#) ensures that petroleum titles and low-impact prospecting titles under that Act are not treated as being personal property for the purposes of the Commonwealth Act.

1.18 Property (Relationships) Act 1984 No 147

Section 42 Transactions to defeat claims

Insert after section 42 (3):

- (3A) Without limiting subsection (3), a court making an order with respect to property under that subsection may also order that any interest (including a security interest or transitional security interest to which the [Personal Property Securities Act 2009](#) of the Commonwealth applies) is extinguished if the court is satisfied that it is appropriate to do so to prevent the defeat of an order referred to in subsection (2).
- (3B) An order under subsection (3A) operates to extinguish an interest to which it relates according to its tenor.

Explanatory note

Section 254 (2) (g) of the [Personal Property Securities Act 2009](#) of the Commonwealth (**the Commonwealth Act**) recognises that a law of a State that operates to extinguish (however described) a security interest in circumstances other than those provided under the Commonwealth Act is capable of operating concurrently with the Commonwealth Act.

The proposed amendment to the [Property \(Relationships\) Act 1984](#) ensures that a court may order that an interest in property (including a security interest to which the Commonwealth Act applies) is extinguished to avoid transactions aimed at defeating claims under the [Property \(Relationships\) Act 1984](#).

1.19 Registration of Interests in Goods Act 1986 No 37

Schedule 1 Savings, transitional and other provisions

Insert after Part 3:

Part 4 Personal Property Securities Legislation Amendment Act 2010

10 Previous use of manufacturer's numbers as prime identifiers

- (1) Any registered interest in a motor vehicle that, at any time before the commencement of this clause, was identified in the Register by reference to the manufacturer's number of the vehicle is taken to have been (and always to have been) validly recorded in the Register by reference to the prime identifier of the vehicle.
- (2) In this clause:

manufacturer's number, in relation to a motor vehicle, means the original number (comprising letters or numbers, or both) that is permanently affixed to or imprinted on the vehicle by the manufacturer with the intention of uniquely identifying the vehicle.

Explanatory note

The proposed amendment to the [Registration of Interests in Goods Act 1986](#) validates the use of a manufacturer's number as the prime identifier of any motor vehicle that currently appears (or previously appeared) in the Register kept under that Act as a motor vehicle with a registered interest in it. The purpose of the amendment is to assist in securing the integrity of data in that Register before it is transferred to the new Personal Property Securities Register established under the [Personal Property Securities Act 2009](#) of the Commonwealth.

1.20 Registration of Interests in Goods Regulation 2004

[1] Clause 4 Definitions

Insert in alphabetical order:

manufacturer's number, in relation to a motor vehicle, means the original number (comprising letters or numbers, or both) that is permanently affixed to or imprinted on the vehicle by the manufacturer with the intention of uniquely identifying the vehicle.

[2] Clause 5 Prime identifier for motor vehicles

Insert at the end of clause 5 (b):

, or

- (c) the manufacturer's number (if the vehicle does not have a chassis number or vehicle identification number).

Explanatory note

The proposed amendments to the [Registration of Interests in Goods Regulation 2004](#) enable the prime identifier of a motor vehicle that is recorded in the Register kept under the [Registration of Interests in Goods Act 1986](#) to be the manufacturer's number if the vehicle does not have a chassis number or a vehicle identification number (VIN). The purpose of the amendments is to assist in securing the integrity of data in that Register before it is transferred to the new Personal Property Securities Register established under the [Personal Property Securities Act 2009](#) of the Commonwealth.

1.21 Road Transport (General) Act 2005 No 11

Section 217 Definitions

Omit the definition of **registered interest**. Insert instead:

registered interest, in relation to a motor vehicle, means a security interest in the vehicle with respect to which a financing statement (within the meaning of the [Personal Property Securities Act 2009](#) of the Commonwealth) has been registered under that Act.

Explanatory note

The proposed amendment to the [Road Transport \(General\) Act 2005](#) replaces a reference to an interest in a motor vehicle registered under the [Registration of Interests in Goods Act 1986](#) with a reference to the corresponding concept under the [Personal Property Securities Act 2009](#) of the Commonwealth. Under the Commonwealth Act, financing statements are registered with respect to security interests in personal property rather than the interests themselves.

1.22 Sale of Goods Act 1923 No 1

Section 26 Sale by person not the owner

Omit "[Registration of Interests in Goods Act 1986](#)" from section 26 (2) (a).

Insert instead "[Personal Property Securities Act 2009](#) of the Commonwealth".

Explanatory note

The proposed amendment to the [Sale of Goods Act 1923](#) replaces a reference to the [Registration of Interests in Goods Act 1986](#) with a reference to the [Personal Property Securities Act 2009](#) of the Commonwealth.

1.23 Terrorism (Police Powers) Act 2002 No 115

[1] Section 28 Disposal of property on application to court

Insert "(including adjusting rights by extinguishing, whether in whole or in part, any

interests in the property of such persons)” after “parts of property” in section 28 (2) (a).

[2] Section 28 (5)

Insert after section 28 (4):

- (5) An order under subsection (2) (a) that provides for the extinguishment, whether in whole or in part, of any interest in property operates to extinguish the interest according to its tenor.

Explanatory note

Section 254 (2) (g) of the [Personal Property Securities Act 2009](#) of the Commonwealth (**the Commonwealth Act**) recognises that a law of a State that operates to extinguish (however described) a security interest in circumstances other than those provided under the Commonwealth Act is capable of operating concurrently with the Commonwealth Act.

The proposed amendments to the [Terrorism \(Police Powers\) Act 2002](#) ensure that a court may order that an interest in property (including a security interest to which the Commonwealth Act applies) seized by a police officer under that Act is extinguished to facilitate the disposal of the property.

1.24 Uncollected Goods Act 1995 No 68

[1] Section 3 Definitions

Omit the definition of **publicly registered interest**. Insert instead:

publicly registered interest, in relation to goods, means:

- (a) in the case of a motor vehicle or a boat or vessel—a security interest in the motor vehicle or the boat or vessel recorded in the Personal Property Securities Register under the [Personal Property Securities Act 2009](#) of the Commonwealth, or
- (b) in the case of any other goods—an interest in the goods recorded in a register (whether of the Commonwealth or the State) that is prescribed by the regulations.

[2] Section 8 Applications to Local Court for orders for disposal of uncollected goods

Omit section 8 (4) (b). Insert instead:

- (b) a written search result (within the meaning of section 174 of the [Personal Property Securities Act 2009](#) of the Commonwealth) in relation to the vehicle.

Explanatory note

The proposed amendments to the [Uncollected Goods Act 1995](#) replace references to registered interests and certificates under the [Registration of Interests in Goods Act 1986](#) with references to equivalent concepts under the [Personal Property Securities Act 2009](#) of the Commonwealth.

1.25 Warehousemen's Liens Act 1935 No 19

[1] Section 3 Declaration of warehouseman's lien

Insert at the end of the section:

- (2) A warehouseman's lien over property has priority over any other interest in the property and may be enforced accordingly.
- (3) Section 73 (2) of the [Personal Property Securities Act 2009](#) of the Commonwealth is declared to apply to a warehouseman's lien.

[2] Section 5 Necessity of notice by warehouseman where goods deposited by person entrusted with possession

Omit section 5 (1) (b). Insert instead:

- (b) to any other person of whose interest in the goods the warehouseman has actual knowledge.

[3] Section 6 Power to sell goods

Omit section 6 (2) (c). Insert instead:

- (c) to any other person of whose interest in the goods the warehouseman has actual knowledge.

Explanatory note

Section 73 of the [Personal Property Securities Act 2009](#) of the Commonwealth (**the Commonwealth Act**) provides for priorities in certain circumstances between security interests in personal property to which that Act applies and interests in the property created, arising or being provided for under a law of the State (a **statutory interest**).

Section 73 (2) of the Commonwealth Act enables a law of a State, by declaring that the subsection applies to a statutory interest, to provide for the priority between the statutory interest and security interests to be determined in accordance with the law of the State rather than the Commonwealth Act. However, the declaration operates only in relation to statutory interests arising after the declaration comes into effect.

Item [1] of the proposed amendments to the [Warehousemen's Liens Act 1935](#) (**the Act**) provides that a warehouseman's lien over goods has priority over any other interests in the goods. The amendment also provides that priority of interests is to be determined in accordance with that section rather than in accordance with section 73 of the Commonwealth Act.

Items [2] and [3] of the proposed amendments to the Act omit references to registered interests under the [Security Interests in Goods Act 2005](#) which will become outdated when the [Personal Property Securities Act 2009](#) of the Commonwealth commences.

1.26 Warehousemen's Liens Regulation 2007

Clause 4 Verification of statements of account

Omit clause 4 (2) (e).

Explanatory note

The amendment to the [Warehousemen's Liens Regulation 2007](#) omits a reference to the [Security Interests in Goods Act 2005](#) which will become outdated when the [Personal Property Securities Act 2009](#) of the Commonwealth commences. The amendment is consequential on amendments made to the [Warehousemen's Liens Act 1935](#) by the proposed Act.

1.27 Workers Compensation Act 1987 No 70

Sections 278 and 279

Insert before section 280:

278 Compensation not personal property under [Personal Property Securities Act 2009](#) (Cth)

Compensation under this Act is declared not to be personal property for the purposes of the [Personal Property Securities Act 2009](#) of the Commonwealth.

279 Enforcement of interests in certain assets and deposits in priority over Authority or Nominal Defendant prevented

- (1) This section applies in relation to the following assets and deposits (***affected assets or deposits***):
 - (a) any amount of money deposited as required under section 172A,
 - (b) any assets of an insurer in respect of which the Authority has taken a charge or other security under section 182 (1) (c),
 - (c) any amount of money deposited as required under section 213 or the deposit of securities of equal value deposited under section 215.
- (2) A person may not enforce an interest in affected assets or deposits (whether or not a PPS security interest) in priority over the interest of the Authority or the Nominal Defendant in the assets or deposits.
- (3) Subsection (2) extends to an interest created or arising before the commencement of this section.
- (4) In this section:

PPS security interest means a security interest to which the [Personal Property Securities Act 2009](#) of the Commonwealth applies (including a transitional security interest within the meaning of that Act).

Explanatory note

Section 254 (2) (b) and (c) of the [Personal Property Securities Act 2009](#) of the Commonwealth (**the Commonwealth Act**) recognises that a law of a State that has any of the following effects is capable of operating concurrently with the Commonwealth Act except in cases of direct inconsistency between the Commonwealth Act and the law of the State:

- (a) prohibiting or limiting a person creating, acquiring or dealing with personal property or a security interest in personal property,
- (b) prohibiting or limiting the right of a person to hold, transfer or assign a security interest in personal property,
- (c) imposing limitations or additional obligations or requirements in relation to the enforcement of a security interest in personal property.

In the event of a direct inconsistency between the Commonwealth Act and a law of the State having such an effect, section 258 (1) and (2) of the Commonwealth Act operate to limit the operation of the Commonwealth Act so as to avoid that inconsistency arising.

Section 8 (1) (k) of the Commonwealth Act also provides for that Act not to apply to a particular right, licence or authority (**the statutory right**) granted by or under a law of a State, if, at the time when the statutory right is granted, or at any time afterwards, a provision of that law declares that kind of statutory right not to be personal property for the purposes of the Commonwealth Act (no matter whether the provision remains in force). The definition of **personal property** in section 10 of the Commonwealth Act also excludes any statutory right that has been declared not to be personal property for the purposes of the Commonwealth Act.

The proposed amendment to the [Workers Compensation Act 1987](#):

- (a) ensures that compensation under that Act is not treated as being personal property for the purposes of the Commonwealth Act, and
- (b) prevents a person from enforcing an interest in certain assets and deposits in which the WorkCover Authority or the Nominal Defendant has an interest in priority over the Authority's or Nominal Defendant's interest.