

# Personal Property Securities (Commonwealth Powers) Act 2009 No 35

[2009-35]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Does not include amendments by**
  - [Residential \(Land Lease\) Communities Act 2013 No 97](#) (not commenced)
  - [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2013 No 111](#) (not commenced — to commence on 3.1.2014)

### Authorisation

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# Personal Property Securities (Commonwealth Powers) Act 2009 No 35



New South Wales

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# Personal Property Securities (Commonwealth Powers) Act 2009 No 35



New South Wales

An Act to refer certain matters relating to security interests in personal property to the Parliament of the Commonwealth for the purposes of section 51 (xxxvii) of the [Constitution of the Commonwealth](#).

## 1 Name and purpose of Act

- (1) This Act is the [Personal Property Securities \(Commonwealth Powers\) Act 2009](#).
- (2) The purpose of this Act is to refer certain matters relating to security interests in personal property to the Parliament of the Commonwealth for the purposes of section 51 (xxxvii) of the [Constitution of the Commonwealth](#).

## 2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Section 6 (2), (3) and (4) commence on a day or days to be appointed by proclamation.

## 3 Definitions

In this Act:

**amendment reference** means a reference under section 6 (2), (3) or (4).

**Commonwealth PPS Act** means a Commonwealth Act enacted in the terms, or substantially in the terms, of the tabled text and as in force from time to time.

**Commonwealth PPS instrument** means any instrument (whether or not of a legislative character) that is made or issued under the Commonwealth PPS Act.

**crops** includes (but is not limited to) the kinds of things that are included in the definition of **crops** for the purposes of the tabled text.

**excluded State statutory right** means a State statutory right that is declared by the

law of the State by or under which it is granted not to be personal property for the purposes of the Commonwealth PPS Act.

**express amendment** of the Commonwealth PPS Act means the direct amendment of the text of that Act (whether by the insertion, omission, repeal, substitution or relocation of words or matter) by another Commonwealth Act, but does not include the enactment by a Commonwealth Act of a provision that has or will have substantive effect otherwise than as part of the text of the Commonwealth PPS Act.

**fixtures** means goods, other than crops, that are affixed to land.

**general law** means the principles and rules of the common law and equity to the extent to which they have effect in the State from time to time.

**goods** means personal property that is tangible property, and includes (but is not limited to) the kinds of things that are included in the definition of **goods** for the purposes of the tabled text.

**initial reference** means the reference under section 6 (1).

**initial referred provisions** means the tabled text to the extent to which that text deals with matters that are included in the legislative powers of the Parliament of the State.

**interest**, in relation to property, includes a right in the property.

**land** includes all estates and interests in land, whether freehold, leasehold or chattel, but does not include goods that are affixed to land.

**law of the State** means any Act of the State or any instrument made under such an Act, whenever enacted or made and as in force from time to time.

**licence** means either of the following:

- (a) a transferable right, entitlement or authority to do one or more of the following:
  - (i) to manufacture, produce, sell, transport or otherwise deal with personal property,
  - (ii) to provide services,
  - (iii) to explore for, exploit or use a resource,

- (b) a transferable authority to exercise rights comprising intellectual property,

but does not include an excluded State statutory right.

**personal property** means property (including a licence) other than:

- (a) land, or
- (b) an excluded State statutory right.

**reference** means:

- (a) the initial reference, or
- (b) an amendment reference.

**referred PPS matters** in relation to personal property—see section 4.

**register** means any system for recording interests or information (whether in written or electronic form).

**security interest** in personal property—see section 5.

**State statutory right** means a right, entitlement or authority that is granted by or under a law of the State.

**tabled text** means the text of the proposed *Personal Property Securities Bill 2009* for a Commonwealth Act as tabled, by or on behalf of the Minister introducing the Bill for this Act, in the Legislative Assembly of New South Wales on 16 June 2009.

**transferable**, in relation to a right, entitlement or authority, means transferable under the general law or a law of the State by the holder of the right, entitlement or authority (whether or not the right, entitlement or authority is exclusive, and whether or not a transfer is restricted or requires consent).

**water right** means a right, entitlement or authority, whether or not exclusive, that is granted by or under the general law or a law of the State in relation to the control, use or flow of water, but does not include an excluded State statutory right.

#### 4 Meaning of “referred PPS matters”

(1) In this Act, **referred PPS matters**, in relation to personal property, means:

- (a) the matter of security interests in the personal property, and
- (b) without limiting the generality of paragraph (a), each of the following matters:
  - (i) the recording of security interests, or information with respect to security interests, in the personal property in a register,
  - (ii) the recording in such a register of any other information with respect to the personal property (whether or not there are any security interests in the personal property),
  - (iii) the enforcement of security interests in the personal property (including priorities to be given as between security interests, and as between security interests and other interests, in the personal property).

(2) However, **referred PPS matters** does not include the matter of making provision

with respect to personal property or interests in personal property in a manner that excludes or limits the operation of a law of the State to the extent that the law makes provision with respect to:

- (a) the creation, holding, transfer, assignment, disposal or forfeiture of a State statutory right, or
- (b) limitations, restrictions or prohibitions concerning the kinds of interests that may be created or held in, or the kinds of persons or bodies that may create or hold interests in, a State statutory right, or
- (c) without limiting the generality of paragraph (a) or (b)—any of the following matters:
  - (i) the forfeiture of property or interests in property (or the disposal of forfeited property or interests) in connection with the enforcement of the general law or any law of the State,
  - (ii) the transfer, by operation of that law of the State, of property or interests in property from any specified person or body to any other specified person or body (whether or not for valuable consideration or a fee or other reward).

(3) In this section:

**forfeiture** means confiscation, seizure, extinguishment, cancellation, suspension or any other forfeiture.

## 5 Meaning of “security interest” in personal property

- (1) In this Act, a **security interest** in personal property means an interest in relation to personal property provided for by a transaction that, in substance, secures payment or performance of an obligation (without regard to the form of the transaction or the identity of the person who has title to the property).
- (2) A **security interest** in personal property also includes the following interests in relation to personal property, whether or not the transaction concerned, in substance, secures payment or performance of an obligation:
  - (a) the interest of a transferee under a transfer of a monetary obligation or chattel paper,
  - (b) the interest of a consignor who delivers goods to a consignee under a consignment,
  - (c) the interest of a lessor or bailor under a lease or bailment of goods.
- (3) A **security interest** in personal property does not include a licence.
- (4) In this section:

**chattel paper** means one or more writings that evidence both a monetary obligation and a security interest in, or a lease of, specific personal property.

**writing** includes (but is not limited to) the kinds of things that are included in the definition of **writing** for the purposes of the tabled text.

## 6 Initial and amendment references

- (1) The matters to which the initial referred provisions relate are referred to the Parliament of the Commonwealth on the day on which this subsection commences, but only to the extent of the making of a law with respect to those matters by including the initial referred provisions in an Act enacted in the terms, or substantially in the terms, of the tabled text.
- (2) The referred PPS matters in relation to personal property (other than fixtures and water rights) are referred to the Parliament of the Commonwealth on the day on which this subsection commences, but only to the extent of the making of laws with respect to those matters in relation to property of that kind by making express amendments of the Commonwealth PPS Act.
- (3) The referred PPS matters in relation to fixtures are referred to the Parliament of the Commonwealth on the day on which this subsection commences, but only to the extent of the making of laws with respect to those matters in relation to fixtures by making express amendments of the Commonwealth PPS Act.
- (4) The referred PPS matters in relation to transferable water rights are referred to the Parliament of the Commonwealth on the day on which this subsection commences, but only to the extent of the making of laws with respect to those matters in relation to such water rights by making express amendments of the Commonwealth PPS Act.
- (5) Except as provided by subsection (2), the operation of each of subsections (1), (2), (3) and (4) is not affected by the other subsections.
- (6) The reference of any matter under subsection (1), (2), (3) or (4) has effect only:
  - (a) if and to the extent that the matter is not included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference under section 51 (xxxvii) of the [Constitution of the Commonwealth](#)), and
  - (b) if and to the extent that the matter is included in the legislative powers of the Parliament of the State.
- (7) For the avoidance of doubt, it is the intention of the Parliament of the State that:
  - (a) the Commonwealth PPS Act may be expressly amended, or have its operation otherwise affected, at any time after the commencement of subsection (1) by provisions of Commonwealth Acts the operation of which is based on legislative powers that the Parliament of the Commonwealth has apart from the references

under subsection (1), (2), (3) or (4), and

(b) the Commonwealth PPS Act may have its operation affected, otherwise than by express amendment, at any time after the commencement of subsection (1) by provisions of a Commonwealth PPS instrument.

(8) Despite any other provision of this section, a reference under subsection (1), (2), (3) or (4) has effect for a period:

(a) beginning when the subsection under which the reference is made commences, and

(b) ending at the end of the day fixed under section 7 as the day on which the reference is to terminate,

but not longer.

## **7 Termination of references**

(1) The Governor may, at any time, by proclamation published on the NSW legislation website, fix a day as the day on which:

(a) all of the references that have effect are to terminate, or

(b) any or all of the amendment references that have effect are to terminate.

(2) A day fixed under subsection (1) must be no earlier than the first day after the end of the period of 12 months beginning with the day on which the proclamation is published under that subsection.

(3) The Governor may, by proclamation published on the NSW legislation website, revoke a proclamation published under subsection (1), in which case the revoked proclamation is taken (for the purposes of section 6) never to have been published.

(4) A revoking proclamation has effect only if published before the day fixed under subsection (1).

(5) The revocation of a proclamation published under subsection (1) does not prevent publication of a further proclamation under that subsection.

(6) If a proclamation terminating any amendment reference (but not the initial reference) has been published under subsection (1) and has not been revoked, the expression ***all of the references*** in subsection (1) (a) refers only to the initial reference and such of the other amendment references that have not yet been terminated.

## **8 Effect of termination of amendment references before initial reference**

(1) If an amendment reference terminates before the initial reference terminates, the termination of the amendment reference does not affect:



- (a) laws that were made under the amendment reference before that termination (whether or not they have come into operation before that termination), or
  - (b) the continued operation in the State of the Commonwealth PPS Act as in operation immediately before that termination or as subsequently amended or affected by:
    - (i) laws referred to in paragraph (a) that come into operation after that termination, or
    - (ii) provisions referred to in section 6 (7) (a) or (b).
- (2) Accordingly, an amendment reference continues to have effect for the purposes of subsection (1) unless the initial reference is terminated.
- (3) Subsection (1) does not apply to or in relation to an amendment of the Commonwealth PPS Act that is excluded from the operation of this section by the proclamation that terminates the amendment reference.
- (4) For the purposes of subsection (1):
- (a) the laws referred to in subsection (1) (a) include Commonwealth PPS instruments, and
  - (b) the reference in subsection (1) (b) to the Commonwealth PPS Act as in operation immediately before the termination of the amendment reference includes that legislation as affected by Commonwealth PPS instruments that have come into operation before that time.

## **9 Evidence of tabled text**

- (1) A certificate of the Clerk of the Legislative Assembly of New South Wales certifying that a document is an accurate copy of the tabled text, or is an accurate copy of a particular part or of particular provisions of the tabled text, is admissible in evidence in any proceedings and is evidence:
- (a) of the matter certified, and
  - (b) that the text of the proposed Commonwealth Bill was tabled in the Legislative Assembly of New South Wales as referred to in the definition of **tabled text** in section 3.
- (2) Subsection (1) does not affect any other way in which the tabling or content of the tabled text, or the accuracy of a copy of the tabled text or of a part or provisions of the tabled text, may be established.

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

## Commonwealth

### Part 1 Preliminary

#### 1 Definitions

(1) In this Schedule:

**Director-General** means the Director-General within the meaning of the [Registration of Interests in Goods Act 1986](#).

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**General Register of Deeds** means the General Register of Deeds kept under Division 1 of Part 23 of the [Conveyancing Act 1919](#).

**matter** includes act, omission, body, person and thing.

**migration time** has the same meaning as in the PPS Act.

**PPS Act** means the [Personal Property Securities Act 2009](#) of the Commonwealth.

**PPS Register** means the Personal Property Securities Register established under the PPS Act.

**PPS Registrar** means the Registrar of Personal Property Securities under the PPS Act.

**registration commencement time** has the same meaning as in the PPS Act.

**REVS** means the Register maintained under the [Registration of Interests in Goods Act 1986](#).

**the 2009 amending Act** means the [Personal Property Securities \(Commonwealth Powers\) Amendment Act 2009](#).

**transitional security interest** has the same meaning as in the PPS Act.

(2) A reference in this Schedule to an Act or statutory rule that is repealed by the 2009 amending Act is, on and from the day on which the Act or statutory rule is repealed, a reference to the Act or statutory rule as in force immediately before that day.

(3) Notes included in this Schedule do not form part of this Act.

### Part 2 Savings and transitional provisions relating to transfer of

## functions to Commonwealth

### Division 1 General

#### 2 Provision of information to the Commonwealth

- (1) The Director-General is specifically authorised to provide the Commonwealth, the PPS Registrar or any other officer of the Commonwealth with such information recorded in, or concerning the use of, REVS as the Director-General considers appropriate in order to assist the Commonwealth in establishing the PPS Register.
- (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) For the purposes of subclause (1), information recorded in REVS on behalf of another State or a Territory pursuant to an agreement under section 15A of the *Registration of Interests in Goods Act 1986* may be provided to the Commonwealth, the PPS Registrar or any other officer of the Commonwealth only if the Director-General has been requested to do so by or on behalf of the State or Territory concerned.
- (3) The Registrar-General is specifically authorised to provide the Commonwealth, the PPS Registrar or any other officer of the Commonwealth with such information recorded in, or concerning the use of, the General Register of Deeds for the purposes of the *Security Interests in Goods Act 2005* as the Registrar-General considers appropriate in order to assist the Commonwealth in establishing the PPS Register.
- (4) The Director-General and Registrar-General may provide the information that they are authorised to provide under this clause in whatever form (including by means of electronic data or in a form approved for the purposes of the PPS Act) as they consider appropriate.
- (5) Subject to subclause (6), the provisions of this clause prevail to the extent of any

inconsistency with the provisions of any other Act or statutory rule.

- (6) The provisions of this clause are in addition to, and do not derogate from, the provisions of section 9A of the *Fair Trading Act 1987*.

## **Division 2 Interests to which *Registration of Interests in Goods Act 1986* applies**

### **3 Interpretation**

In this Division:

**existing Act** means the *Registration of Interests in Goods Act 1986*.

**post-PPS transitional period** means the period of 7 years commencing at the registration commencement time.

**pre-PPS transitional period** means the period:

- (a) commencing at the migration time or such earlier time as may be prescribed by the regulations, and
- (b) ending at the registration commencement time.

**prescribed goods** has the same meaning as in the existing Act.

**the Minister** means the Minister administering the *Fair Trading Act 1987*.

### **3A Effect of abolition of Administrative Decisions Tribunal**

- (1) The functions of the Administrative Decisions Tribunal under this Division become, on and from the establishment day, the functions of the Civil and Administrative Tribunal.
- (2) Accordingly, a reference in another provision of this Division that confers or imposes a function on the Administrative Decisions Tribunal is to be read, on and after the establishment day, as being a reference to the Civil and Administrative Tribunal.
- (3) The provisions of this clause are in addition to, and do not derogate from, the provisions of Part 2 of Schedule 1 to the *Civil and Administrative Tribunal Act 2013*.
- (4) In this clause:

**establishment day** has the same meaning as in the *Civil and Administrative Tribunal Act 2013*.

### **4 Existing Act ceases to have effect at registration commencement time**

- (1) The existing Act ceases to have effect in relation to prescribed goods at the registration commencement time, except as otherwise provided by this Division.

- (2) If a provision of the existing Act (the **primary provision**) is continued in effect by this Division:
- (a) any other provision of the existing Act (a **related provision**) that is referred to in the primary provision is also continued in effect to the extent necessary for the purposes of the continued application of the primary provision, and
  - (b) any power to make regulations in respect of a matter that is conferred by the primary provision or a related provision is taken to include a power for the matter to be prescribed by regulations made under this Act after the registration commencement time.
- (3) The regulations under the existing Act as in force immediately before the registration commencement time continue to apply for the purposes of a primary provision or related provision that confers a regulation-making power for a matter under the existing Act until regulations are made under this Act for that matter.
- (4) This Division has effect:
- (a) despite anything to the contrary in the existing Act, and
  - (b) in relation to provisions of the existing Act that this Division continues in effect after the registration commencement time even after the existing Act is repealed by the 2009 amending Act.

**Note—**

Section 3 of the 2009 amending Act provides for the repeal of the existing Act on a day appointed by proclamation (being a day that is not earlier than the day on which the registration commencement time occurs).

**5 Director-General may refuse to exercise registration functions**

- (1) Subject to clause 6, the Director-General may refuse to exercise a registration function during the pre-PPS transitional period.
- (2) Without limiting subclause (1), the Director-General may refuse to exercise a registration function during the pre-PPS transitional period in relation to a matter that was not finally determined or concluded immediately before the commencement of that period.
- (3) In this clause:

**registration function** means any function conferred or imposed on the Director-General by or under:

- (a) section 5, 6, 7, 8 or 16A of the existing Act, or
- (b) any other provision of the existing Act concerning registration or REVS as may be prescribed by the regulations.

## 6 Show cause proceedings under section 7 of existing Act

- (1) This clause applies to the following matters:
  - (a) a notice given to a person by the Director-General under section 7 (3) of the existing Act that is in force immediately before the registration commencement time if the period specified in the notice had not yet expired by that time (an **existing show cause notice**),
  - (b) the cancellation of the registration of an interest by the Director-General following the giving of a notice to a person under section 7 (3) of the existing Act if the person has a right to apply to the Administrative Decisions Tribunal for a review of the cancellation immediately before the registration commencement time (an **existing reviewable cancellation decision**),
  - (c) an application to the Administrative Decisions Tribunal for the review of a decision of the Director-General following the giving of a notice under section 7 (3) of the existing Act to cancel the registration of an interest if the application is pending, but not finally determined, immediately before the registration commencement time (an **existing review application**).
- (2) An existing show cause notice may be dealt with under the existing Act as if the power of the Director-General under section 7 (4) of that Act to decide whether to cancel the registration of the interest were a power to decide whether the registration should have been cancelled had the Act continued in effect.
- (3) An existing reviewable cancellation decision may be the subject of an application for review to the Administrative Decisions Tribunal, and may be dealt with by the Tribunal, under the existing Act as if the right to seek the review of the decision of the Director-General to cancel the registration of the interest were a right to seek a review of a decision of the Director-General that the registration should have been cancelled had the Act continued in effect.
- (4) An existing review application may be determined by the Administrative Decisions Tribunal under the existing Act as if the jurisdiction of the Tribunal to review the decision of the Director-General to cancel the registration of the interest were jurisdiction to review a decision of the Director-General that the registration should have been cancelled had the Act continued in effect.
- (5) The Director-General may, if satisfied that a matter to which this clause applies has been finalised, provide the PPS Registrar with a written notice (based on the results of the finalisation of the matter) stating the following:
  - (a) the nature of the matter that has been finalised,
  - (b) whether or not the interest to which the matter related should have been registered in REVS,

- (c) whether or not the interest should be treated as a migrated security interest for the purposes of the PPS Act.

**Note—**

The PPS Registrar has power under the PPS Act to remove migrated data that has mistakenly been included in the PPS Register.

**7 Search certificates and notices**

- (1) The provisions of section 8 of the existing Act continue to apply after the registration commencement time in relation to any certificate issued under that section before that time.
- (2) The Director-General may continue to issue certificates under section 8 (5) of the existing Act during the post-PPS transitional period as to the state of REVS in relation to goods at any time in the 7 years before the registration commencement time.
- (3) The provisions of section 8 (6)–(9) of the existing Act, in their application to certificates under section 8 (5), continue to apply to certificates issued as provided by subclause (2).
- (4) The regulations may make provision for or with respect to the issue of certificates under section 8 (1) of the existing Act during the pre-PPS transitional period.
- (5) Regulations made for the purposes of subclause (4) prevail to the extent of any inconsistency with the provisions of the existing Act.
- (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.

**8 Enforcement of interests in prescribed goods**

- (1) Subject to Chapter 9 (Transitional provisions) of the PPS Act and subclause (2):
  - (a) sections 9 and 10 of the existing Act continue to apply to purchases that occurred before the registration commencement time, and
  - (b) sections 3B, 10A and 11 of the existing Act continue to apply in relation to:
    - (i) transitional security interests in prescribed goods, and
    - (ii) any other interests in prescribed goods that arose before the registration commencement time.

**Note—**

Chapter 9 of the PPS Act makes provision for matters of a transitional nature in relation to the commencement of the provisions of that Act. The PPS Act will start to apply to security interests in personal property (including transitional security interests) at the registration commencement time.

Section 308 of the PPS Act defines a **transitional security interest** to be a security interest provided for by a transitional security agreement if:

- (a) in the case of a security interest arising before the registration commencement time—the PPS Act would have applied in relation to the security interest immediately before the registration commencement time, but for section 310 (which provides for the Act to start to apply at that time), or
- (b) in the case of a security interest arising at or after the registration commencement time:
  - (i) the transitional security agreement as in force immediately before the registration commencement time provides for the granting of the security interest, and
  - (ii) the PPS Act applies in relation to the security interest.

A **transitional security agreement** is an agreement or act by which a security interest of a kind to which the PPS Act applies is created, arises or is provided for and that was in force immediately before the registration commencement time.

- (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.

## 9 Compensation provisions under existing Act

- (1) The provisions of sections 13 and 14 of the existing Act continue to apply after the registration commencement time in relation to the determination of compensation for loss sustained in connection with an application for registration of a registrable interest (within the meaning of that Act) that was made before that time.
- (2) The provisions of section 15 of the existing Act continue to apply in relation to decisions of the Director-General made before the registration commencement time.

## 10 Offences under existing Act

The provisions of the existing Act continue to apply after the registration commencement time in relation to offences committed, or alleged to have been committed, before that time.

## 11 Fees and charges payable under existing Act

- (1) The following fees and charges remain recoverable by the Director-General in a court of competent jurisdiction after the registration commencement time:
  - (a) any fees or charges that were payable under the existing Act immediately before that time,
  - (b) any fees or charges for which the Director-General may require payment under subclause (2).
- (2) After the registration commencement time, the Director-General may require payment



by an account customer (within the meaning of section 16A of the existing Act) of any fees and charges that would have been payable under arrangements made under the existing Act for a matter arising before that time had the Act continued in effect.

## **12 Agreements under section 15A of existing Act**

- (1) Any agreement in force under section 15A of the existing Act immediately before the registration commencement time continues to have effect after that time in respect of matters arising before that time.
- (2) Section 15A (2) of the existing Act continues to have effect for this purpose.

## **13 Funding arrangements**

- (1) The Registration of Interests in Goods Account established under section 11 of the existing Act is abolished at the registration commencement time.
- (2) The Director-General may, by order in writing, direct that any money standing to the credit of that Account on the date of its abolition be applied for any of the purposes referred to in section 11 (5) of the existing Act.
- (3) For the purposes of subclause (2), a reference to the existing Act in section 11 (5) of that Act is taken to include a reference to this Division and the provisions of the existing Act that are continued in effect by this Division.

## **14 Delegations by Director-General**

- (1) The Director-General may delegate the following functions of the Director-General to appropriate persons:
  - (a) a function under this Schedule (apart from this power of delegation),
  - (b) a function under any provision of the existing Act that continues to have effect after the registration commencement time by operation of this Division.
- (2) The following are **appropriate persons** for the purposes of subclause (1):
  - (a) a person engaged in the administration of the existing Act,
  - (b) a person engaged in the administration of any other Act administered by the Minister.
- (3) A delegation that is in force immediately before the registration commencement time in relation to a provision of the existing Act that continues to have effect after that time by operation of this Division has effect as a delegation under this clause until it is revoked by the Director-General.

## **Division 3 Interests to which [Security Interests in Goods Act 2005](#)**

## **applies**

### **15 Interpretation**

In this Division:

**agricultural goods mortgage, aquaculture fish mortgage, crop mortgage** and **stock mortgage** have the same meanings as in the existing Act.

**existing Act** means the [Security Interests in Goods Act 2005](#).

**goods** has the same meaning as in the existing Act.

**pre-PPS transitional period** means the period:

- (a) commencing at the migration time or such earlier time as may be prescribed by the regulations, and
- (b) ending at the registration commencement time.

### **16 Existing Act ceases to have effect at registration commencement time**

- (1) The existing Act ceases to have effect in relation to goods at the registration commencement time, except as otherwise provided by this Division.
- (2) If a provision of the existing Act (the **primary provision**) is continued in effect by this Division:
  - (a) any other provision of the existing Act (a **related provision**) that is referred to in the primary provision is also continued in effect to the extent necessary for the purposes of the continued application of the primary provision, and
  - (b) any power to make regulations in respect of a matter that is conferred by the primary provision or a related provision is taken to include a power for the matter to be prescribed by regulations made under this Act after the registration commencement time.
- (3) This Division has effect:
  - (a) despite anything to the contrary in the existing Act, and
  - (b) in relation to provisions of the existing Act that this Division continues in effect after the registration commencement time even after the existing Act is repealed by the 2009 amending Act.

#### **Note—**

Section 4 of the 2009 amending Act provides for the repeal of the existing Act on a day appointed by proclamation (being a day that is not earlier than the day on which the registration commencement time occurs).

### **17 Registrar-General may refuse to exercise registration functions**

- (1) The Registrar-General may refuse to exercise a registration function during the pre-PPS transitional period.
- (2) Without limiting subclause (1), the Registrar-General may refuse to exercise a registration function during the pre-PPS transitional period in relation to a matter that was not finally determined or concluded immediately before the commencement of that period.
- (3) In this clause:

**registration function** means any function conferred or imposed on the Registrar-General by or under a provision of the existing Act relating to the registration of instruments for the purposes of the existing Act.

### **18 Agricultural goods mortgages**

- (1) Nothing in this Division is intended to affect the continued validity and enforceability of any agricultural goods mortgage that is in effect immediately before the time when the existing Act ceases to apply to agricultural goods by operation of clause 16.
- (2) Any instrument executed before the registration commencement time that has not been (but could have been) registered under the existing Act as an agricultural goods mortgage immediately before the registration commencement time is taken to have had effect as an agricultural goods mortgage immediately before that time.
- (3) Any instrument executed before the registration commencement time that has not been (but could have been) registered under the existing Act as a variation, renewal, assignment or discharge of an agricultural goods mortgage immediately before the registration commencement time is taken to have effect as such immediately before that time.
- (4) This clause has effect subject to Chapter 9 (Transitional provisions) of the PPS Act.

### **19 Enforcement of interests in goods**

- (1) Subject to Chapter 9 (Transitional provisions) of the PPS Act, the existing enforcement provisions continue to apply in relation to:
  - (a) transitional security interests in goods, and
  - (b) any other security interests in goods (within the meaning of the existing Act) that arose before the registration commencement time.

**Note—**

See the note to clause 8.

(2) In this clause:

**existing enforcement provisions** means the following provisions of the existing Act:

- (a) in relation to crop mortgages—sections 8–11,
- (b) in relation to stock mortgages—section 14,
- (c) in relation to aquaculture fish mortgages—section 16,
- (d) in relation to agricultural goods mortgages—section 19,
- (e) Division 4 of Part 3.

## **20 Offences under section 32 of the existing Act**

The provisions of the existing Act continue to apply after the registration commencement time in relation to offences committed, or alleged to have been committed, under section 32 of that Act before that time.

## **21 Fees payable for registration**

Any fee that was payable under the [Conveyancing Act 1919](#) for the registration of an instrument for the purposes of the existing Act immediately before the registration commencement time continues to be payable under that Act.

## **Part 3 Miscellaneous**

### **22 Compensation not payable in respect of PPS transitional matters**

(1) Compensation is not payable by or on behalf of:

- (a) the State or an authority of the State, or
- (b) an officer, employee or agent of the State,

for an act or omission that is a PPS transitional matter or that arises (directly or indirectly) from a PPS transitional matter.

(2) Subclause (1):

- (a) applies only in respect of acts done or omitted to be done in good faith, and
- (b) does not apply to acts or omissions that cause personal injury to a person or the death of a person, and
- (c) does not limit the operation of clause 9.

(3) In this clause:

**compensation** includes damages and any other form of monetary compensation.

**PPS transitional matter** means any of the following:

- (a) the provision of information to the Commonwealth, the PPS Registrar, any other officer of the Commonwealth or any other person for the purpose of assisting the Commonwealth in establishing the PPS Register or of verifying the accuracy of information recorded in REVS,
- (b) a refusal by the Director-General or the Registrar-General to exercise a registration function as provided by clause 5 or 17 respectively,
- (c) the administration of this Act or the regulations,
- (d) the exercise of functions under this Act or the regulations.

## **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.

### **23 Implied power to make declarations that licences etc not personal property**

A power conferred by an Act on any person or body to make a statutory rule that grants or confers, or provides for the granting or conferral of, a licence or other State statutory right includes the power to declare that the licence or right is not personal property for the purposes of the PPS Act.

**Note—**

The terms *licence* and *State statutory right* are defined by section 3 of this Act.

### **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).

## 24 Regulations

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subclause (1), the regulations may declare a matter to be an



excluded matter for the purposes of section 259 of the PPS Act in relation to:

- (a) the whole of the PPS Act (or an instrument made under that Act), or
- (b) a specified provision of the PPS Act (or an instrument made under that Act), or
- (c) the PPS Act (or an instrument made under the PPS Act), other than a specified provision, or
- (d) the PPS Act (or an instrument made under the PPS Act), otherwise than to a specified extent.

(3) Without limiting subclauses (1) and (2), the regulations may contain provisions of a savings or transitional nature consequent on the enactment or making of the following Acts and instruments:

- (a) this Act,
- (b) the 2009 amending Act,
- (c) the PPS Act or any Act or instrument of the Commonwealth that amends the PPS Act,
- (d) the *Personal Property Securities Legislation Amendment Act 2010*.

(4) If the regulations so provide, any provision referred to in subclause (3) may:

- (a) have effect despite any specified provision of this Schedule or another Act or statutory rule, and
- (b) take effect from the date of assent to the Act or the making of the instrument concerned or a later date.

(5) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

(6) Any matter for which a regulation made under this Act makes provision is taken to be a matter for which a regulatory impact statement is not required for the purposes of the *Subordinate Legislation Act 1989*.

**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](#).