



Personal Property Securities Act 2009

No. 130, 2009

This future law compilation was prepared on 4 September 2023 taking into account amendments made by the *Personal Property Securities Amendment (Framework Reform) Act 2023* (B17MV112.V34).

The date of commencement for the incorporated amendments was unknown at the time of preparation.

About this compilation

This compilation

This is a future compilation of the *Personal Property Securities Act 2009* that shows the expected text of the law as amended by the Personal Property Securities Amendment (Framework Reform) Bill 2023 (B17MV112.V34).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the future compilation.

Future amendments

The details of expected future amendments incorporated into the text, that have not yet commenced are underlined in the endnotes.

Any future amendments that are included in the endnotes are underlined.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to personal property securities, and for related purposes

Chapter 1—Introduction

Part 1.1—Preliminary

1 Short title

This Act may be cited as the *Personal Property Securities Act 2009*.

2 Commencement

This Act commences on the day after it receives the Royal Assent.

2A Schedule 1

Schedule 1 has effect.

Note: Schedule 1 contains application, saving and transitional provisions relating to amendments of this Act.

3 Guide to this Act

Overview

This Act is a law about security interests in personal property.

A security interest is an interest in personal property provided for by a transaction that secures payment or the performance of an obligation. The form of the transaction and the identity of the person who has title to the property do not affect whether an interest is a security interest.

Section 3

Personal property includes many different kinds of tangible and intangible property, other than real property. Examples include vehicles, household goods, business inventory, intellectual property and company shares. Personal property is known as collateral if it is (or is anticipated to be) the subject of a security interest.

A security interest is enforceable against a grantor when it attaches to collateral. A security interest attaches to collateral when a person gives value for acquiring the security interest (or does something else to acquire it), and in return, the person gains rights in the collateral.

A security interest is enforceable against third parties when it has attached to the collateral and either the secured party has possession or control of the collateral, or a security agreement covers the collateral.

If a security interest in collateral is perfected, it takes priority over another security interest that is unperfected when the security interest comes to be enforced. A security interest is perfected if:

- (a) it has attached to collateral; and
- (b) it is enforceable against third parties; and
- (c) certain extra steps (possession or control of the collateral, or registration on the Register of Personal Property Securities) have been taken to protect the interest.

Certain security interests are also declared to be temporarily perfected, or perfected, under this Act.

The secured party whose security interest has the highest priority is entitled to enforce that interest ahead of secured parties with security interests that have a lower priority.

Section 3

Between perfected security interests, perfection by control has a higher priority than other forms of perfection. The next level of priority is given (subject to certain rules) to perfected purchase money security interests. If no other way of working out priority between perfected interests is provided, the highest priority is given to the security interest that has been continuously perfected for the longest period.

The Register of Personal Property Securities enables secured parties to give notice of actual or prospective security interests. Notice is given by the recording of data about secured parties, grantors and collateral. The register may be kept electronically, for example in a form that is interactive and accessible over the internet.

Summary

Chapter 1 deals with some preliminary matters, including the general application of the Act (Part 1.2) and its interpretation (Part 1.3).

Chapter 2 sets out general rules relating to security interests. These include the following:

- (a) general principles relating to security agreements, security interests, attachment and perfection (Part 2.2);
- (b) interpretation provisions about possession and control (Part 2.3);
- (c) rules about when attachment and perfection of security interests occurs in particular situations (Part 2.4);
- (d) the circumstances in which personal property is taken free of a security interest in the property (Part 2.5);
- (e) how to work out the priority between competing security interests (and in some cases, other sorts of interests) in personal property (Part 2.6);
- (f) rules about the transfer of interests in collateral (Part 2.7).

Section 3

Chapter 3 contains specific rules about the following:

- (a) agricultural interests (Part 3.2);
- (b) security interests in accessions to personal property and their priority (Part 3.3);
- (c) security interests in personal property that is processed or commingled and their priority (Part 3.4).

Chapter 4 deals with how to enforce a security interest in personal property. Parties can contract out of some of the provisions of Chapter 4.

Chapter 5 provides for the establishment and maintenance of a register with respect to personal property securities and certain prescribed personal property (the Register of Personal Property Securities).

The Registrar of Personal Property Securities is responsible for maintaining the register. Chapter 5 also deals with how the register can be searched, and how certain non-registered data can be provided through the register (as a portal).

A search by reference to the details of an individual grantor must be made for an authorised purpose set out in the Act. A person who carries out an unauthorised search, or uses data from an unauthorised search, may be liable to pay compensation or a civil penalty (or both).

Chapter 6 deals with the role of the courts in proceedings that relate to security interests in personal property. It confers jurisdiction on courts and provides rules for the transfer of proceedings between courts. It also describes the Registrar's role in judicial proceedings and applies Parts 4 to 7 of the Regulatory Powers Act to enable contraventions of civil penalty provisions to be enforced.

Chapter 7 deals with the following:

Section 3

- (a) rules for determining whether the law of Australia or the law of another jurisdiction governs a security interest transaction;
- (b) the constitutional operation of this Act;
- (c) the relationship between this Act and other Australian laws.

Chapter 8 deals with the following:

- (a) rules about the vesting of certain unperfected interests (Part 8.2);
- (b) rights to damages and compensation in relation to contraventions of this Act (Part 8.3);
- (c) requests to secured parties for information, how notices may be given and certain other procedural and administrative matters (Parts 8.4 to 8.7).

Chapter 9 deals with the initial application of this Act.

The Act started to apply at the registration commencement time, which was determined by the Minister under paragraph 306(2)(b) as 30 January 2012.

Chapter 9 also deals with references to charges and fixed and floating charges in Commonwealth laws (other than this Act).

Schedule 1 contains application, saving and transitional provisions relating to amendments of this Act.

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Part 1.2—General application of this Act

4 Guide to this Part

This Part contains general rules about the application of this Act. These deal with the following matters:

- (a) binding the Crown;
- (b) the application of this Act in the external Territories.

For the application of this Act in Australia in relation to security interests, see Chapter 7 (Operation of laws).

5 Crown to be bound

This Act binds the Crown in each of its capacities.

7 Application in the external Territories

Extension to Norfolk Island

- (1) This Act extends to Norfolk Island.
- (2) A reference in this Act to “Australia” includes a reference to Norfolk Island.

Extension to other external Territories

- (3) This Act extends to such other external Territories (if any) as are prescribed by the regulations for the purposes of this section.
- (4) Without limiting subsection (3), if an external Territory is prescribed for the purposes of this section, regulations prescribing the external Territory may provide that:
 - (a) only some of the provisions of this Act apply in the external Territory; and

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- (b) provisions that apply in the external Territory only apply in specified circumstances.
- (5) If:
- (a) an external Territory is prescribed by the regulations for the purposes of this section; and
 - (b) in a provision of this Act that applies (either generally or in particular circumstances) in the external Territory there is a reference to “Australia” or a reference to a term the definition of which includes a reference to “Australia”;
- then, unless the contrary intention appears, the reference to “Australia” in that provision as so applying, or in that definition as applying for the purposes of that provision as so applying, includes a reference to that external Territory.

*Acts Interpretation Act 1901 definition of **Australia***

- (6) To avoid doubt, this section applies despite paragraph 17(a) of the *Acts Interpretation Act 1901* (definition of **Australia**).

Part 1.3—Definitions

Division 1—Introduction

9 Guide to this Part

This Part is about the terms that are defined in this Act.

Division 2 contains the Dictionary. The Dictionary is a list of every term defined in this Act. A term will either be defined in the Dictionary itself, or in another provision of this Act. If another provision defines the term, the Dictionary will have a signpost to that definition.

Division 3 contains some longer definitions. These include the definition of *security interest* (in section 12).

A security interest is an interest in personal property provided for by a transaction that secures payment or the performance of an obligation. The form of the transaction and the identity of the person who has title to the property do not affect whether an interest is a security interest. Certain transactions that do not secure payment or the performance of an obligation may also give rise to a security interest: transfers of accounts, consignments and certain long-term leases and bailments (called PPS leases).

Division 2—The Dictionary

10 The Dictionary

In this Act:

accession: goods are an **accession** to other goods if they are installed in, or affixed to, the other goods, unless:

- (a) both those goods and the other goods are required or permitted by the regulations to be described by serial number; or
- (b) those goods are processed or commingled with the other goods.

Note: For **processed** or **commingled** goods, see section 99.

account means a monetary obligation (whether or not earned by performance, and, if payable in Australia, whether or not the person who owes the money is located in Australia) that arises from:

- (a) disposing of property (whether by sale, transfer, assignment, lease, licence or in any other way); or
- (b) granting a right, or providing services, in the ordinary course of a business of granting rights or providing services of that kind (whether or not the account debtor is the person to whom the right is granted or the services are provided);

but does not include any of the following:

- (c) an ADI account;
- (d) chattel paper;
- (e) an intermediated security;
- (f) an investment instrument;
- (g) a negotiable instrument.

Example: An account that is a credit card receivable is covered by paragraph (b).

ADI means any of the following:

- (a) an authorised deposit taking institution within the meaning of the *Banking Act 1959*;

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- (b) a body corporate authorised to carry on banking business (within the meaning of that Act) in a foreign country;
- (c) the Reserve Bank of Australia.

ADI account means an account, within the ordinary meaning of that term, kept by a person (whether alone or jointly with one or more other persons) with an ADI that is payable on demand or at some time in the future (as agreed between the ADI and the person or persons).

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

after-acquired property means personal property acquired by the grantor after a security agreement is made.

agency includes an authority or instrumentality.

amendment demand: see section 178.

amendment time: see section 160.

approved form: see section 302.

attaches: see section 19.

Australia has a meaning affected by section 7.

bankruptcy has the same meaning as in paragraph 51(xvii) of the Constitution.

Note: Other parts of speech and grammatical forms of “bankruptcy” (for example, “bankrupt”) have a corresponding meaning (see section 18A of the *Acts Interpretation Act 1901*).

business day means a day other than:

- (a) a Saturday or a Sunday; or
- (b) a day which is a public holiday for the whole of:
 - (i) any State; or
 - (ii) the Australian Capital Territory; or
 - (iii) the Northern Territory; or
- (c) a day that falls between Christmas Day and New Year’s Day; or

- (d) a day on which the Registrar has suspended the operation of the register, in whole or in part, under paragraph 147(5)(a);
or
- (e) a day that is prescribed by the regulations for the purposes of this definition.

carrying on an enterprise has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

circulating asset: see section 339.

Note: See also the *Corporations Act 2001*, sections 51CA and 51CB.

civil penalty provision has the same meaning as in the Regulatory Powers Act.

clearing and settlement facility has the meaning given by Chapter 7 of the *Corporations Act 2001*.

collateral:

- (a) means personal property to which a security interest is attached; and
- (b) in relation to a registration with respect to a security interest—includes personal property described by the registration (whether or not a security interest is attached to the property).

Note: Section 161 authorises the registration of a financing statement that describes personal property before or after a security agreement is made covering the property, or a security interest has attached to the property.

commercial consignment, in relation to goods, means a consignment of the goods if:

- (a) the consignor retains an interest in the goods that the consignor delivers to the consignee; and
- (b) the consignor delivers the goods to the consignee for the purpose of disposal; and
- (c) the consignor and the consignee both deal in goods of that kind in the ordinary course of business;

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but does not include an agreement under which goods are delivered:

- (d) to an auctioneer for the purpose of sale; or
- (e) to a consignee for the purpose of disposal of the goods, if it is generally known by persons doing business with the consignee that the consignee disposes of the goods of others.

Note: For the purposes of paragraph (e), knowledge may be actual or constructive knowledge (see the definition of *knowledge* in this section).

commingled, in relation to goods that are collateral: see section 99.

company means:

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

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

continuously perfected: see section 56.

control: see Part 2.3.

Note: **Control** has an extended meaning in section 341 (control of inventory and accounts in relation to fixed and floating charges).

controller: see section 109.

crops means crops (whether matured or not and whether naturally grown or planted) that have not been harvested, including:

- (a) the products of agriculture or aquaculture, if the products have not been harvested; and
- (b) trees (but only if they are personal property), if the trees have not been harvested.

currency means currency authorised as a medium of exchange by the law of Australia or of any other country.

dealing, in relation to property, includes (without limitation) the following:

- (a) a transfer of the property;
- (b) any other disposal of the property;
- (c) the creation of a security interest, or any other interest, in the property.

debtor means:

- (a) a person who owes payment or performance of an obligation that is secured by a security interest in personal property (whether or not the person is also the grantor of the security interest); or
- (b) a transferee of, or successor to, an obligation mentioned in paragraph (a).

default, in relation to a security agreement, means:

- (a) a failure to make a payment, or perform another obligation, that is secured by a security interest provided for by the security agreement; or
- (b) the occurrence of an event that, under the security agreement, gives the secured party a right or remedy to enforce the security interest.

defect, in relation to a registration, includes an irregularity, omission or error in the registration.

Deputy Registrar means a Deputy Registrar of Personal Property Securities.

Note: See Part 5.9 for the office of Deputy Registrar.

description of personal property: see section 15A.

disposal, in relation to property, includes (without limitation) disposal of the property by sale, lease or licence.

document of title means a writing issued by or addressed to a bailee:

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- (a) that covers goods in the bailee's possession that are identified or are fungible portions of an identified mass; and
- (b) in which it is stated that the goods identified in it will be delivered:
 - (i) to a named person, or to the transferee of that person; or
 - (ii) to the bearer; or
 - (iii) to the order of a named person.

effective: a registration is **effective** with respect to particular collateral if it is effective with respect to that collateral under Part 5.4.

enterprise has the meaning given by section 9-20 of the *A New Tax System (Goods and Services Tax) Act 1999*.

execution creditor means a creditor who has recovered judgment and issued execution against a grantor.

expenses, in relation to the enforcement of a security interest in collateral, includes advances, costs and taxes for obtaining possession of, protecting (including insuring), maintaining, preserving or repairing the collateral.

Note: Reasonable expenses in relation to the enforcement of a security interest are taken to be secured by a security interest unless the parties agree otherwise (see section 137).

express amendment of this Act: see section 244.

Federal Court means the Federal Court of Australia.

financial product means any of the following, or an interest in any of the following:

- (a) shares;
- (b) bonds;
- (c) any other financial instrument;
- (d) any other financial asset.

financial property means any of the following personal property:

- (b) currency;

- (c) a document of title;
- (d) an investment instrument;
- (e) a negotiable instrument.

financing change statement means:

- (a) data amending a registered financing statement; or
- (b) an amendment of a registered financing statement to end its effectiveness (including an amendment to remove the registration).

financing statement means data registered (or that is to be registered) pursuant to an application for registration under subsection 150(1).

Note: For requirements relating to financing statements, see Part 5.3 (Registration).

fish means any of the following, while alive:

- (a) marine, estuarine or freshwater fish, or other aquatic animal life, at any stage of their life history;
- (b) oysters and other aquatic molluscs, crustaceans, echinoderms, beachworms and other aquatic polychaetes;

but does not include any fish prescribed by the regulations for the purposes of this definition.

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

foreign jurisdiction: see section 39.

general law means the principles and rules of the common law and equity.

goods means personal property that is tangible property, including the following:

- (a) crops;
- (b) livestock;
- (c) wool;

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- (d) minerals that have been extracted (including hydrocarbons) in any form, whether solid, liquid or gaseous and whether organic or inorganic;
 - (e) satellites and other space objects;
- but does not include financial property or an intermediated security.

grantor means:

- (a) a person who has the interest in the personal property to which a security interest is attached (whether or not the person owes payment or performance of an obligation secured by the security interest); or
- (b) a person who receives goods under a commercial consignment; or
- (c) a lessee under a PPS lease; or
- (d) a transferor of an account; or
- (e) a transferee of, or successor to, the interest of a person mentioned in paragraphs (a) to (d); or
- (f) in relation to a registration with respect to a security interest:
 - (i) a person registered in the registration as a grantor; or
 - (ii) a person mentioned in paragraphs (a) to (e).

insolvency has the same meaning as in paragraph 51(xvii) of the Constitution.

Note: Other parts of speech and grammatical forms of “insolvency” (for example, “insolvent”) have a corresponding meaning (see section 18A of the *Acts Interpretation Act 1901*).

intangible property means personal property (including a licence) that is not any of the following:

- (a) financial property;
- (b) goods;
- (c) an intermediated security.

intellectual property licence means an authority or licence (within the ordinary meaning of that term) to exercise rights comprising intellectual property.

intermediary: see section 15.

intermediated security: see section 15.

inventory means personal property (whether goods or intangible property) that, in the course or furtherance, to any degree, of an enterprise in relation to which an ABN, within the meaning of the *A New Tax System (Australian Business Number) Act 1999*, has been allocated:

- (a) is held by a person for sale or lease, or has been leased by a person as lessor; or
- (b) is held by a person to be provided under a contract for services, or has been so provided; or
- (c) is held by a person as raw materials or as work in progress; or
- (d) is held, used or consumed by a person, as materials.

investment instrument means an obligation, or any share or similar right of participation in an entity, that:

- (a) is one of a class or series, or by its terms is divisible into a class or series; and
- (b) is of a type dealt in or traded on a recognised market, or is issued as a medium for investment;

but does not include any of the following:

- (c) a document of title;
- (d) an intermediated security;
- (e) a negotiable instrument;
- (f) an instrument prescribed by regulations made for the purposes of this paragraph.

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

knowledge: a person *knows*, or has *knowledge*, of a circumstance if:

- (a) the person has actual knowledge of the circumstance; or

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- (b) the person (the **first person**) would have had actual knowledge of the circumstance if the first person had:
 - (i) made the inquiries that would ordinarily have been made by an honest and prudent person in the first person's situation; or
 - (ii) made the inquiries that would ordinarily have been made by an honest and prudent person with the first person's actual knowledge in the first person's situation.

land includes all estates and interests in land, whether freehold, leasehold or chattel, but does not include fixtures.

land law: see section 141.

law of the Commonwealth, a State or a Territory means:

- (a) an Act of the Commonwealth, the State or the Territory; or
- (b) an instrument made under such an Act.

licence means either of the following, if it is transferable by the licensee (whether or not the right, entitlement, authority or licence is exclusive, and whether or not a transfer is restricted or requires consent):

- (a) a 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) an intellectual property licence;

but does not include a right, entitlement or authority that is:

- (c) granted by or under a law of the Commonwealth, a State or a Territory; and
- (d) declared by that law not to be personal property for the purposes of this Act.

Note: A right, entitlement or authority to which paragraph (c) or (d) applies is not personal property for the purposes of this Act (for the meaning of **personal property**, see elsewhere in this section).

livestock includes:

- (a) while they are alive—alpacas, cattle, fish, goats, horses, llamas, ostriches, poultry, sheep, swine and other animals; and
- (b) the unborn young of animals mentioned in paragraph (a); and
- (c) the products of livestock before they become proceeds (for example, the wool on a sheep's back before the sheep is shorn).

located, in relation to personal property, or a person: see section 235.

lower court: see section 211.

mandatory enforcement rule: see section 111.

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

migrated security interest: see section 332.

modification includes addition, omission and substitution.

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

negotiable instrument has the same meaning as in the general law, but does not include any of the following:

- (a) the creation or transfer of a right to payment in connection with interests in land, if the writing evidencing the creation or transfer does not specifically identify that land;
- (b) a document of title;
- (c) an intermediated security.

new value means value other than value provided to reduce or discharge an earlier debt or liability owed to the person providing the value.

non-purchase money security interest means a security interest that is not a purchase money security interest.

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Note: For *purchase money security interest*, see section 14.

non-referring State means a State that is not a referring State.

Note: For the meaning of *referring State*, see section 244.

notice of objection: see section 133.

penalty unit has the meaning given by section 4AA of the *Crimes Act 1914*.

perfected: see section 21.

personal property: see sections 13A and 13B.

possession has a meaning affected by section 24.

PPS lease (short for Personal Property Securities lease): see section 13.

PPS matter (short for Personal Property Securities matter): see section 206.

predominantly: personal property is intended to be used *predominantly* for personal, domestic or household purposes if:

- (a) the personal property:
 - (i) is intended to be used only for those purposes; or
 - (ii) is intended to be used for other purposes as well, but is intended to be mostly used for personal, domestic or household purposes; and
- (b) the personal property is not acquired as an investment.

present liability means a liability:

- (a) that has arisen; and
- (b) whose extent or amount is fixed or capable of being ascertained;

whether or not the liability is immediately due to be met.

priority time, for a security interest: see section 55A.

proceeds: see section 31.

processed, in relation to goods that are collateral: see section 99.

provides: a security agreement ***provides*** for a security interest if the interest arises under the agreement.

purchase money security interest: see section 14.

receiver: see section 109.

receiver and manager: see section 109.

receiving court: see section 210.

recovered goods security interest: see section 38 (recovered goods—third party finance).

referred PPS matters (short for referred Personal Property Securities matters): see section 245.

referring State: see section 244.

register means the Personal Property Securities Register established under section 147.

registered data conditions: see section 176B (access to registered data).

Registrar means the Registrar of Personal Property Securities.

Note: See Part 5.9 for the office of Registrar.

registration means a registered financing statement (as amended by any registered financing change statement) with respect to:

- (a) a security interest; or
- (b) personal property prescribed by regulations made for the purposes of paragraph 148(c).

registration commencement time: see section 306.

registration event: see section 155.

registration time: see:

- (a) section 160; or

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- (aa) section 333 (registration with respect to migrated data); or
- (b) section 336 (preparatory registration with respect to transitional security interests).

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

Note: The Regulatory Powers Act is applied to this Act as in force at the start of the day on which the *Personal Property Securities Amendment (Framework Reform) Act 2023* receives the Royal Assent, and later amendments of the Regulatory Powers Act do not apply to this Act: see section 220A.

relevant superior court: see section 211.

secured party:

- (a) means a person who holds a security interest for the person's own benefit or for the benefit of another person (or both); and
- (c) in relation to a registration with respect to a security interest—includes a person registered as a secured party in the registration.

securities account: see section 15.

security agreement means:

- (a) an agreement or act by which a security interest is created, arises or is provided for; or
- (b) writing evidencing such an agreement or act.

security interest: see sections 12 and 12A.

serial number, in relation to collateral, means a serial number by which the regulations require, or permit, the collateral to be described in a registration.

State Family Court, in relation to a State, means a court of that State to which section 41 of the *Family Law Act 1975* applies because of a Proclamation made under subsection 41(2) of that Act.

superior court: see section 211.

take fish: see section 144C.

term deposit means a deposit made with an ADI that matures on a particular date (whether or not the ADI can be required to repay the deposit before that date).

third party data: see section 176C (access to third party data).

third party data conditions: see section 176C (access to third party data).

this Act includes the regulations.

transfer matter: see section 210.

transferring court: see section 210.

transitional register: see section 330.

transitional security agreement: see section 307.

transitional security interest: see section 308.

value:

- (a) means consideration that is sufficient to support a contract; and
- (b) includes an antecedent debt or liability; and
- (c) in relation to the definition of **purchase money security interest**—has a meaning affected by section 14.

vehicle means goods that have a VIN.

Note: VIN is short for vehicle identification number. See definition of **VIN** elsewhere in this section.

verification statement: see section 155.

VIN means the vehicle identification number allocated to a road vehicle, within the meaning of the *Road Vehicle Standards Act*

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2018, in accordance with the national road vehicle standards under that Act.

Note: VIN is short for vehicle identification number. See definition of *vehicle* elsewhere in this section.

water source: see section 144C.

wool means the natural fibre from any livestock that produce fleece that can be shorn (such as sheep, goats, alpacas and llamas).

writing includes:

- (a) the recording of words or data in any way (including electronically), if, at the time the recording was made, it was reasonable to expect that the words or data would be readily accessible so as to be useable for subsequent reference; and
- (b) the display, or other representation, of words or data by any form of communication (including electronic), if:
 - (i) the display or representation is recorded in any way (including electronically); and
 - (ii) at the time the recording was made, it was reasonable to expect that the words or data would be readily accessible so as to be useable for subsequent reference.

10A References to secured parties, grantors, debtors etc.

For the purposes of this Act, a reference to a person by any of the following descriptions is taken to be a reference to the person only in the capacity described:

- (a) secured party;
- (b) grantor;
- (c) debtor;
- (d) any other description of a person.

Example: Paragraph 62(2)(a) refers to the day the grantor obtains possession of goods. The effect of section 10A is that the day mentioned is the day the grantor obtains possession of the goods in the capacity of grantor, even if the person who is the grantor possessed the goods before that day in another capacity.

11 Application of the *Acts Interpretation Act 1901*

- (1) The *Acts Interpretation Act 1901*, as in force at the start of the day on which this Act receives the Royal Assent, applies to this Act.
- (2) Amendments of the *Acts Interpretation Act 1901* made after that time do not apply to this Act.

Division 3—Concepts relating to security interests and personal property

12 Meaning of *security interest*

- (1) A *security interest* means an interest in 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).

Note: Certain interests are not *security interests*: see subsection (2) of this section and section 12A.

- (2) However, a *security interest* does not include an interest:
- (a) of a kind excluded from the definition of *security interest* by section 12A; or
 - (b) if regulations are made in relation to the interest for the purposes of subsection 12A(2)—to the extent that section 12A excludes the interest from the definition of *security interest*.

Note: Interests of a kind mentioned in subsection 12A(1) are, generally speaking, not *security interests* for the purposes of this Act. However, under subsection 12A(2), the regulations may provide that such an interest is not excluded from the definition of *security interest* for the purposes of one or more specified provisions of this Act, or the whole Act.

The effect of such regulations is that such an interest is a *security interest* for those purposes if it is covered by subsection (1) or (3) of this section.

- (3) A *security interest* also includes the following interests, 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 an account;
 - (b) the interest of a consignor who delivers goods to a consignee under a commercial consignment;
 - (c) the interest of a lessor of goods under a PPS lease.

- (3A) A person who owes payment or performance of an obligation to another person may take a security interest in the other person's right to require the payment or the performance of the obligation.
- (4) Without limiting subsection (3A):
 - (a) an account debtor, in relation to an account, may take a security interest in the account; and
 - (b) an ADI may take a security interest in an ADI account that is kept with the ADI.
- (6) A security interest is not created only by an agreement or undertaking to do either of the following:
 - (a) to postpone or subordinate a person's right to payment or performance of all or any part of a debtor's obligation to another person's right to payment or performance of all or any part of another of the debtor's obligations;
 - (b) to postpone or subordinate all or any part of a secured party's rights under a security agreement to all or any part of another secured party's rights under another security agreement with the same grantor.

12A Interests that are not *security interests*

Excluded interests

- (1) This section excludes interests of the following kinds from the definition of ***security interest***, subject to subsection (2):
 - (a) the interest of a seller who has shipped goods to a buyer under a negotiable bill of lading, or its equivalent, to the order of the seller, or to the order of an agent of the seller, unless the parties have otherwise evidenced an intention to create or provide for a security interest in the goods;
 - (b) a lien, charge, or any other interest in personal property, that is created, arises or is provided for under a law of the Commonwealth (other than this Act), a State or a Territory, unless the person who owns the property in which the interest is granted agrees to the interest;

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- (c) a lien, charge, or any other interest in personal property, that is created, arises or is provided for by operation of the general law;
- (d) a right of set-off or right of combination of accounts (within the ordinary meaning of that term);
- (e) an interest provided for by a sale of an account as part of a sale of business, unless the seller remains in apparent control (within the ordinary meaning of that term) of the business after the sale;
- (f) an interest arising from the extinguishment of a beneficial interest in an account;
- (g) an interest provided for by the transfer of an unearned right to payment under a contract to a person who is to perform the transferor's obligations under the contract;
- (h) an interest provided for by the transfer of an account made solely to facilitate the collection of the account on behalf of the person making the transfer;
- (i) an interest provided for by a transfer of the beneficial interest in a monetary obligation where, after the transfer, the transferee holds the monetary obligation on trust for the transferor;
- (j) a trust over some or all of an amount provided by way of financial accommodation, if the person to whom the financial accommodation is provided is required to use the amount in accordance with a condition under which the financial accommodation is provided;
- (k) an interest provided for by the transfer of present or future remuneration (including wages, salary, commission, allowances or bonuses) payable to an individual as an employee or contractor;
- (l) an interest provided for by the transfer of an interest or claim in, or under, a contract of annuity or policy of insurance, except a transfer of a right to an insurance payment or other payment as indemnity or compensation for loss of, or damage to, collateral (or proceeds of collateral);

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- (m) the following interests in property created under the *Bankruptcy Act 1966*:
 - (i) the interest of the Official Trustee or a registered trustee who has taken control (within the meaning of section 50 of that Act) of a debtor's or grantor's property under that section;
 - (ii) the interest of the Official Trustee or a registered trustee in property of a debtor or grantor that has vested in the Official Trustee or the registered trustee under section 58 of that Act;
 - (iii) a charge created under section 139ZN of that Act;
 - (iv) a charge created under section 139ZR of that Act;
 - (v) an interest created under a personal insolvency agreement under Part X of that Act;
- (n) any right or interest held by a person, or any interest provided for by any transaction, under any of the following (as defined in section 5 of the *Payment Systems and Netting Act 1998*):
 - (i) an approved netting arrangement;
 - (ii) a close-out netting contract;
 - (iii) a market netting contract;
- (o) a charge created by section 5 of the *Loans Redemption and Conversion Act 1921*;
- (p) a licence;
- (q) an interest of a kind prescribed by regulations made for the purposes of this paragraph.

Note: Paragraph (p) has the effect that (subject to subsection (2)) a licence, in itself, is not a **security interest**. However, a licence may be collateral subject to a security interest.

Exception—regulations

- (2) The regulations may provide that an interest of a kind mentioned in subsection (1) (including an interest of a kind prescribed for the purposes of paragraph (1)(q)) is not excluded by this section, for the purposes of:
 - (a) one or more specified provisions of this Act; or

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(b) the whole Act.

Note: The effect of regulations made for the purposes of subsection (2) is that the interest is a *security interest* for those purposes if it is covered by subsection 12(1) or (3).

13 Meaning of *PPS lease*

- (1) A *PPS lease* means:
- (a) a lease of goods for a term of more than 2 years; or
 - (b) a lease of goods that:
 - (i) is automatically renewable, or renewable at the option of either party; and
 - (ii) has accordingly been renewed for terms totalling more than 2 years; or
 - (c) a lease of goods for a term of 2 years or less, or for an indefinite term, if the lessee, with the consent of the lessor, retains uninterrupted (or substantially uninterrupted) possession of the goods for a period of more than 2 years after first acquiring possession.
- (2) A lease starts to be a *PPS lease*:
- (a) in the case of a lease mentioned in paragraph (1)(a)—when the lease is entered into; or
 - (b) in the case of a lease mentioned in paragraph (1)(b)—when the lease is renewed for a term that will end more than 2 years after the lease is entered into; or
 - (c) in the case of a lease mentioned in paragraph (1)(c)—at the start of the day after the end of the period of 2 years after the lessee first acquires possession of the goods.
- (3) However, a *PPS lease* does not include the following:
- (a) a lease by a lessor not regularly engaged in the business of leasing goods;
 - (b) a lease of personal property for use predominantly for personal, domestic or household purposes, if:
 - (i) the lease is part of a lease of land; and

- (ii) that use of personal property is incidental to the use and enjoyment of the land;
- (c) a lease of personal property prescribed by regulations made for the purposes of this paragraph.

- Note 1: The interest of a lessor of goods under a PPS lease is a security interest in those goods that is a purchase money security interest (see paragraphs 12(3)(c) and 14(1)(c)). The interest can be perfected by registration (see section 150).
- Note 2: The lessor's interest in the goods (or their proceeds) has priority over any non-purchase priority money security interest in the same goods or proceeds if the lessor's interest is perfected by registration within 15 business days after the lease starts to be a PPS lease under subsection (2) (or after the grantor takes possession of the goods, if later) (see section 62).
- Note 3: The lessor's interest, if perfected by registration within the period mentioned in note 2, also has priority over another perfected purchase money security interest that is granted by the same grantor in the same goods or proceeds to any other person (see section 63).
- Note 4: Even if a lease is not a PPS lease at the time the lease is entered into (in the cases mentioned in paragraphs (1)(b) and (c)), the lessor may apply to register a financing statement describing the goods as collateral at any time on the basis of a reasonable belief that the lease will become a PPS lease, and accordingly that the lessor will become a secured party, because of either of those paragraphs (see sections 150 and 151).

13A Meaning of *personal property*

- (1) ***Personal property*** means property (including a licence) other than land.
- (2) However, ***personal property*** does not include an interest in property:
 - (a) of a kind excluded from the definition of ***personal property*** by section 13B; or
 - (b) if regulations are made in relation to the interest for the purposes of subsection 13B(2)—to the extent that section 13B excludes that interest from the definition of ***personal property***.

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Note: Interests of a kind mentioned in subsection 13B(1) are, generally speaking, not *personal property* for the purposes of this Act. However, under subsection 13B(2), the regulations may provide that such an interest is not excluded from the definition of *personal property* for the purposes of one or more specified provisions of this Act, or the whole Act.

The effect of such regulations is that such an interest is *personal property* for those purposes if it is covered by subsection (1) of this section.

13B Interests that are not *personal property*

Excluded interests

- (1) This section excludes interests of the following kinds from the definition of *personal property*, subject to subsection (2) of this section:
- (a) an interest in a fixture;
 - (b) an interest provided for by the creation or transfer of an interest in land under the law of the State or Territory in which the land is located;
 - (c) an interest provided for by the creation or transfer of:
 - (i) an interest in relation to land, if the interest is registrable under the law of the State or Territory in which the land is located; or
 - (ii) an interest in relation to land consisting of an interest in a right to payment in connection with land (for example, an assignment of rights to receive rent payable under a lease);
 - (d) an interest constituted by a right, entitlement or authority, whether or not exclusive, that is granted by or under the general law or a law of the Commonwealth, a State or a Territory in relation to the control, use or flow of water, including (without limitation) a right that a person has against another person to receive (or otherwise gain access to) water;
 - (e) an interest that a person has:

Section 13B

- (i) as a member of a superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); or
- (ii) as a member of an approved deposit fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); or
- (iii) as a holder of a retirement savings account (within the meaning of the *Retirement Savings Accounts Act 1997*); or
- (iv) in an account kept under the *Small Superannuation Accounts Act 1995* in the name of the person; or
- (v) as a holder of a superannuation annuity (within the meaning of the *Income Tax Assessment Act 1997*);
- (f) an interest constituted by a particular right, licence or authority (the **statutory right**) granted by or under a law of the Commonwealth, a State or a Territory, if, at the time 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 this Act (no matter whether the provision remains in force);
- (g) an interest of a kind prescribed by regulations made for the purposes of this paragraph.

Exception—regulations

- (2) The regulations may provide that an interest of a kind mentioned in subsection (1) (including an interest of a kind prescribed for the purposes of paragraph (1)(g)) is not excluded from the definition of **personal property** by this section, for the purposes of:
 - (a) one or more specified provisions of this Act; or
 - (b) the whole Act.

Note: The effect of regulations made for the purposes of subsection (2) is that the interest is **personal property** for those purposes if it is covered by subsection 13A(1).

Section 14

14 Meaning of *purchase money security interest*

Main definition

- (1) A ***purchase money security interest*** is any of the following:
- (a) a security interest taken in collateral, to the extent that it secures all or part of its purchase price, subject to subsection (1A) (which deals with transactions of sale and lease back);
 - (b) a security interest taken in collateral by a person who gives value for the purpose of enabling the grantor to acquire rights in the collateral, to the extent that the value is applied to acquire those rights;
 - (c) a security interest taken by a consignor who delivers goods to a consignee under a consignment (whether or not a commercial consignment);
 - (d) a security interest taken by a lessor under a lease (whether or not a PPS lease).

Sale and lease back transactions

- (1A) A security interest arising under a transaction of sale and lease back of collateral to the grantor is a ***purchase money security interest***:
- (a) only if the grantor buys the collateral and sells it to the secured party; and
 - (b) only if, and to the extent that, the purchase price (or part of the purchase price) for the collateral is paid directly by the secured party to the supplier of the collateral.

Exceptions

- (2) Security interests in the following collateral are not ***purchase money security interests***:
- (a) an investment instrument;
 - (b) an intermediated security;
 - (c) a monetary obligation;

(d) a negotiable instrument.

Mixed securities

- (3) If a security interest in collateral secures obligations covered by subsection (7) (***purchase money obligations***) and other obligations, the security interest is a purchase money security interest only to the extent that it secures the purchase money obligations.
- (4) If a security interest is granted in personal property (***purchase money collateral***) that secures a purchase money obligation, together with other collateral, the security interest is a purchase money security interest only to the extent that it is granted in the purchase money collateral.

Replacement of security interest has same status

- (5) A security interest in collateral that replaces a purchase money security interest is also a purchase money security interest to the extent that it secures purchase money obligations in relation to that collateral.

Application of payments to obligations

- (6) In any transaction, if the extent to which a security interest is a purchase money security interest depends on the application of a payment to a particular obligation, the payment must be applied:
- (a) in accordance with any method of application to which the parties agree; or
 - (b) if the parties do not agree on a method—in accordance with any intention of the debtor manifested at or before the time of the payment; or
 - (c) if neither paragraph (a) nor (b) applies—in the following order:
 - (i) to obligations that are not secured, in the order in which those obligations were incurred;
 - (ii) to obligations that are secured, but not by purchase money security interests, in the order in which those obligations were incurred;

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- (iii) to obligations that are secured by purchase money security interests, in the order in which those obligations were incurred.

Purchase money obligations

- (7) This subsection covers an obligation of a debtor incurred:
 - (a) as all or part of the purchase price of the collateral; or
 - (b) for value given to enable the grantor to acquire or use the collateral (provided the collateral is so acquired or used); or
 - (c) as a result of a renewal, refinancing, consolidation or restructure of an obligation mentioned in paragraph (a) or (b), whether or not by the same secured party.
- (7A) If a secured party holds a purchase money security interest in a part of a grantor's inventory, a reference in subsection (7) to collateral includes a reference to any other part of the inventory in which the secured party holds or has held a purchase money security interest.
- (7B) Subsection (7A) does not apply to any inventory that is required or permitted by the regulations to be described by serial number.

References to purchase price and value

- (8) In this section, a reference to a purchase price, or value, includes a reference to credit charges and interest payable for the purchase or loan credit.

Note: For priority rules relating to purchase money security interests, see Division 3 of Part 2.6.

15 Meaning of *intermediated security* and related terms

Meaning of intermediated security

- (1) An ***intermediated security*** is the rights of a person in whose name an intermediary maintains a securities account, to the extent that those rights are in respect of:
 - (a) that securities account; and
 - (b) the financial products credited to that account.

Meaning of intermediary

- (2) An **intermediary** is a person who maintains securities accounts:
 - (a) for the holders of intermediated securities; or
 - (b) for the holders of intermediated securities and on the person's own behalf.
- (3) An **intermediary** does not include a central bank.

Meaning of securities account

- (4) A **securities account** means an account to which interests in financial products may be credited or debited.

15A Meaning of *description* of personal property

General meaning

- (1) A **description** of personal property is any of the following descriptions, if the description is sufficient to enable the property to be identified:
 - (a) a description by item or kind;
 - (b) a description as:
 - (i) all present and after-acquired property; or
 - (ii) all present and after-acquired property, except specified items or kinds of personal property.

Descriptions of personal property in financing statements and financing change statements

- (2) However, a description of personal property in a financing statement or financing change statement need not be sufficient to enable the property to be identified, subject otherwise to this Act.

Note: Section 153 requires a financing statement or a financing change statement to describe collateral and proceeds in accordance with the regulations.

Chapter 2—General rules relating to security interests

Part 2.1—Guide to this Chapter

16 Guide to this Chapter

This Chapter sets out general rules relating to security interests in personal property.

Part 2.2 contains some general principles relating to these security interests, the agreements that govern them and their enforceability. The Part describes how a security interest is attached to personal property and perfected.

Part 2.3 deals with the concepts of possession and control of personal property.

Part 2.4 contains some rules about attachment and perfection of security interests in particular situations.

Part 2.5 sets out circumstances in which a person takes an interest in personal property free of a security interest in the property.

Part 2.6 sets out how to work out the priority between competing security interests (and in some cases, other sorts of interests) in personal property. If a specific rule does not deal with the priority between security interests, then the priority is determined in accordance with the default rules in section 55.

Part 2.7 contains some rules about transferring interests in collateral.

Part 2.2—Security interests: general principles

17 Guide to this Part

This Part sets out some general principles about security interests.

These principles relate to the enforceability of security agreements against grantors of security interests and third parties.

A security interest is only effective if it has *attached* to collateral. A security interest attaches to collateral when the grantor has rights in the collateral, or can transfer it to the secured party, and value is given, or the security interest otherwise arises.

A security interest is only enforceable against a third party if it has attached to collateral and the secured party possesses the collateral, has perfected the security interest by controlling the collateral or has entered into a written security agreement that describes the collateral.

This Part also contains rules about how a security interest is perfected and how it is continuously perfected. A perfected security interest has priority over an unperfected security interest, and the security interest that has been continuously perfected for the longest time generally has the highest priority (see Part 2.6 for priority rules).

Perfection occurs when a security interest has attached to collateral and any further steps needed to make the security interest effective against third parties have been taken.

These steps involve registration on the Personal Property Securities Register or possession or control of the collateral. In certain situations this Act provides for perfection, or temporary perfection, by the operation of the Act itself.

Section 18

18 General rules about security agreements and security interests

- (1) A security agreement is effective according to its terms.
- (2) A security agreement may provide for security interests in after-acquired property.
- (3) A security interest in after-acquired property attaches without specific appropriation by the grantor.
- (4) A security interest provided for by a security agreement may secure an obligation to make a payment, or another obligation, arising after the security interest is granted.

19 Enforceability of security interests against grantors—attachment

Attachment required for enforceability

- (1) A security interest is enforceable against a grantor in respect of particular collateral only if the security interest has attached to the collateral.

Attachment rule

- (2) A security interest **attaches** to collateral when:
 - (a) the grantor has rights in the collateral; and
 - (b) either:
 - (i) value is given for the security interest; or
 - (ii) the grantor does an act by which the security interest arises.

Time of attachment

- (3) Subsection (2) does not apply if the parties to a security agreement have agreed that a security interest attaches at a later time, in which case the security interest **attaches** at the time specified in the agreement.

- (4) To avoid doubt, a reference in a security agreement to a floating charge is not a reference to an agreement that the security interest created by the floating charge attaches at a time later than provided under subsection (2).

If a secured party has title to goods

- (5) If a security interest in goods is granted in circumstances in which the secured party has title to the goods at general law, for the purposes of the application of paragraph (2)(a), when the grantor obtains possession of the goods, the grantor acquires rights sufficient for the attachment to the goods of:
- (a) that security interest; and
 - (b) any other security interest (whether granted before or after the security interest mentioned in paragraph (a)).

Examples of circumstances in which the secured party has title to goods at general law:

- (a) a security interest in goods sold to the grantor subject to retention of title by the secured party;
 - (b) a security interest in goods that are consigned to the grantor (whether or not under a commercial consignment);
 - (c) a security interest in goods leased to the grantor (whether or not under a PPS lease).
- (6) A security interest mentioned in subsection (5) attaches to the goods at the time the grantor obtains possession of the goods, or when the security interest is granted, whichever is later.

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

20 Enforceability of security interests against third parties

General rule

- (1) A security interest is enforceable against a third party in respect of particular collateral only if:

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- (a) the security interest is attached to the collateral; and
- (b) one of the following applies:
 - (i) the secured party possesses the collateral (other than as a result of seizure or repossession);
 - (ii) the secured party has perfected the security interest by control;
 - (iii) a security agreement that provides for the security interest covers the collateral in accordance with subsection (2).

Note: For possession and control of collateral, see Part 2.3.

Writing describing security and collateral of security agreement

- (2) A security agreement covers collateral in accordance with this subsection if:
 - (a) the security interest provided for by the security agreement is evidenced by writing; and
 - (b) the writing mentioned in paragraph (a) includes a description of the collateral; and
 - (c) the writing mentioned in paragraph (a) is:
 - (i) signed by the grantor (see subsection (3)); or
 - (ii) adopted or accepted by the grantor by an act, or omission, that reasonably appears to be done with the intention of adopting or accepting the writing.

Methods of signing writing

- (3) Without limiting subparagraph (2)(c)(i), for the purposes of that subparagraph a grantor is taken to sign writing if, with the intention of identifying the grantor and adopting, or accepting, the writing, the person applies:
 - (a) writing (including a symbol) executed or otherwise adopted by the person; or
 - (b) writing wholly or partly encrypted, or otherwise processed, by the person.

Note: For the meaning of *writing*, see section 10.

Proceeds

- (6) A security interest in proceeds is enforceable against a third party whether or not the security agreement providing for the security interest contains a description of the proceeds.

Note: Section 32 deals with whether a security interest in collateral attaches to proceeds of the collateral.

21 Perfection—main rule

- (1) A security interest in particular collateral is *perfected* if:
- (a) the security interest is temporarily perfected, or otherwise perfected, by force of this Act; or
 - (b) all of the following apply:
 - (i) the security interest is attached to the collateral;
 - (ii) the security interest is enforceable against a third party;
 - (iii) subsection (2) applies.
- (2) This subsection applies if:
- (a) for any collateral, a registration is effective with respect to the collateral; or
 - (b) for any collateral, the secured party has possession of the collateral (other than possession as a result of seizure or repossession); or
 - (c) for the following kinds of collateral, the secured party has control of the collateral:
 - (i) an ADI account;
 - (ii) an intermediated security;
 - (iii) an investment instrument.
- Note: For what constitutes possession and control of collateral, see Part 2.3.
- (3) A security interest may be perfected regardless of the order in which attachment and any step mentioned in subsection (2) occur.
- (4) A single registration may perfect one or more security interests.

Section 22

22 Perfection—goods possessed by a bailee

Perfection of security interest

- (1) A security interest that has attached to goods in the possession of a bailee (other than the grantor or the debtor) is perfected if any of the following applies, regardless of when the security interest attached to the goods:
- (a) the security interest is perfected by registration, as provided by section 21;
 - (b) the security interest is perfected by possession, as provided by section 21, because the bailee possesses the property on behalf of the secured party;
 - (c) the bailee issues a document of title to the goods in the name of the secured party;
 - (d) the bailee issues a negotiable document of title to the goods, and the secured party has a perfected security interest in the document.

Temporary perfection while negotiable document of title in transit

- (2) A security interest in goods in the possession of a bailee (other than the grantor or the debtor) is temporarily perfected for the period:
- (a) starting at the time the bailee issues a negotiable document of title to the goods; and
 - (b) ending at the earlier of the following times:
 - (i) the end of the period of 10 business days after the day of issue of the document;
 - (ii) the end of the day the secured party takes possession of the document.

Part 2.3—Possession and control of personal property

23 Guide to this Part

This Part includes some rules about the possession and control of personal property.

Possession of personal property is generally effective to perfect a security interest in the property (see paragraph 21(2)(b)). A grantor and secured party cannot both have possession of collateral. There are special rules about possession of goods transported by a common carrier.

Control of certain types of personal property is effective to perfect a security interest in the property (see paragraph 21(2)(c)). This Part includes some special rules about the control of the following:

- (a) ADI accounts;
- (b) intermediated securities;
- (c) investment instruments.

24 Possession

Possession by one party exclusive of possession by others

- (1) A secured party cannot have **possession** of personal property if the property is in the actual or apparent possession of the grantor or debtor, or another person on behalf of the grantor or debtor.
- (2) A grantor or debtor cannot have **possession** of personal property if the property is in the actual or apparent possession of the secured party, or another person on behalf of the secured party.

Section 25

Timing rule for possession of goods transported by common carrier

- (3) A grantor or debtor to whom goods are transported by a common carrier acquires possession of the goods only when the earlier of the following occurs:
- (a) the grantor or debtor, or another person at the request of the grantor or debtor, actually acquires possession of the goods;
 - (b) the grantor or debtor, or another person at the request of the grantor or debtor, acquires possession of a document of title to the goods.

25 Control of an ADI account

A secured party has *control* of an ADI account for the purposes of section 21 (perfection—main rule) if, and only if, the secured party is the ADI.

Note: *Control* has an extended meaning in relation to ADIs in sections 341 and 341A (control in relation to fixed and floating charges).

26 Control of intermediated securities

Main rule

- (1) A secured party has *control* of an intermediated security if, and only if:
- (a) the intermediated security cannot be dealt with except with the consent of the secured party; and
 - (b) subsection (2) or (3) applies.

Control by maintenance of securities account

- (2) This subsection applies in relation to the securities account maintained by the intermediary if:
- (a) the securities account is maintained in the secured party's name; or
 - (b) both:

- (i) the securities account is maintained in the name of another person (other than the grantor or the debtor) on the secured party's behalf; and
- (ii) the other person acknowledges in writing that the securities account is so maintained on behalf of the secured party.

Control by agreement not to deal without consent

- (3) This subsection applies if:
 - (a) either:
 - (i) there is an agreement in force between the secured party and the intermediary, to which the grantor has consented; or
 - (ii) if the secured party is the intermediary—there is an agreement in force between the secured party and the grantor; and
 - (b) the agreement has the effect that the intermediated security cannot be dealt with except with the consent of the secured party.

27 Control of investment instruments

Main rule

- (1) A secured party has **control** of an investment instrument if, and only if:
 - (a) the investment instrument cannot be dealt with except with the consent of the secured party; and
 - (b) subsection (2), (3) or (4) applies.

Control by registration on issuer's books

- (2) This section applies (whether or not the instrument is evidenced by a certificate) if:
 - (a) the secured party is registered as the owner of the instrument on books maintained for that purpose by or on behalf of the issuer of the instrument; or

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- (b) both:
 - (i) another person (other than the grantor or debtor) is registered, on the secured party's behalf, as the owner of the instrument on books maintained for that purpose by or on behalf of the issuer of the instrument; and
 - (ii) the other person acknowledges in writing that the registration mentioned in subparagraph (i) is on behalf of the secured party.

Control by agreement not to deal without consent

- (3) This subsection applies to the secured party in relation to an investment instrument that is not evidenced by a certificate if:
 - (a) there is an agreement in force between the secured party and the issuer of the instrument, to which the grantor has consented; and
 - (b) the agreement has the effect that the instrument cannot be dealt with except with the consent of the secured party.

Control by possession of certificate

- (4) This subsection applies to the secured party in relation to an investment instrument that is evidenced by a certificate if:
 - (a) the secured party has possession of the certificate; or
 - (b) both:
 - (i) another person (other than the grantor or debtor) possesses the instrument on the secured party's behalf; and
 - (ii) the other person acknowledges in writing that the instrument is possessed on behalf of the secured party.

Part 2.4—Attachment and perfection: specific rules

Division 1—Introduction

30 Guide to this Part

This Part contains rules about when attachment and perfection (including, in some circumstances, temporary perfection) of security interests occurs in particular situations.

Division 2 deals with security interests in the proceeds of collateral, and in collateral after it is transferred.

Proceeds of collateral are identifiable or traceable personal property that is derived from dealings with the collateral. Proceeds also includes certain insurance or indemnity rights, payments in redemption of certain intangible collateral, certain rights of licensors of intellectual property, and certain rights relating to investment instruments and intermediated securities.

If collateral gives rise to proceeds by a dealing in the collateral, an existing security interest in the collateral remains attached to the collateral and attaches to the proceeds as well (except in certain cases). Division 2 also includes some other rules about the perfection of such interests and their enforcement. Special provisions are made for the perfection and temporary perfection of security interests in proceeds, and for the temporary perfection of security interests in collateral after it is transferred.

Section 30

Division 3 deals with the perfection (and temporary perfection) of security interests in goods that are returned to the grantor or the debtor. After goods are returned for certain dealings (for example, sale or exchange), a security interest in the goods that had previously been perfected otherwise than by registration may be temporarily perfected for 10 business days. The same period of temporary perfection is provided in similar circumstances if possession or control of a negotiable instrument or investment instrument is returned to the grantor or debtor.

If goods are taken free of a security interest, but are repossessed by the grantor or debtor, the security interest reattaches to the goods, and (if the security interest had been perfected by registration) the perfection status of the security interest is unaffected.

Division 3 also provides special rules for the attachment and perfection of a security interest in goods if a sale or lease of the goods creates an account that is transferred to another person.

Division 4 deals with situations where collateral or a grantor of a security interest is relocated from a foreign jurisdiction to Australia. The security interest in the collateral is temporarily perfected if certain conditions are met.

Division 2—Proceeds and transfer

31 Meaning of *proceeds*

(1) In this Act:

proceeds of collateral to which a security interest is (or is to be) attached means identifiable or traceable personal property of the following types, subject to subsections (2) and (3):

- (a) personal property that is derived directly or indirectly from a dealing with the collateral (or proceeds of the collateral);
- (b) a right to an insurance payment or other payment as indemnity or compensation for loss of, or damage to, the collateral (or proceeds of the collateral);
- (c) a payment made in total or partial discharge or redemption of the collateral (or proceeds of the collateral), if the collateral (or proceeds) consists of any of the following:
 - (ii) intangible property;
 - (iii) an investment instrument;
 - (iv) an intermediated security;
 - (v) a negotiable instrument;
- (d) if the collateral is intellectual property (or an intellectual property licence)—in addition to any other proceeds, the right of a licensor of the property (whether or not the property is itself a licence) to receive payments under any licence agreement in relation to the collateral;
- (e) if the collateral is an investment instrument or intermediated security—any of the following:
 - (i) rights arising out of the collateral;
 - (ii) property collected on the collateral;
 - (iii) property distributed on account of the collateral.

Note: In section 120 (distribution of property received from enforcement) proceeds has its ordinary meaning, so this definition does not apply.

Section 31

Whether proceeds are traceable

- (2) Proceeds are traceable whether or not there is a fiduciary relationship between the person who has a security interest in the proceeds, as provided in section 32, and the person who has rights in or has dealt with the proceeds.

Restriction to proceeds in which grantor has a transferable interest

- (3) However, personal property is **proceeds** only if:
- (a) the grantor of the security interest in the collateral has rights in the proceeds; and
 - (b) the interest in the proceeds does not arise because of the operation of paragraph 120(3)(f).

Note: Paragraph 120(3)(f) provides for the distribution of an amount or proceeds to the grantor upon the enforcement of a security interest.

- (3A) Paragraph (3)(a) does not apply to a person who is the grantor of the collateral because of paragraph (e) of the definition of **grantor** in section 10.

Note: Paragraph (e) of the definition of **grantor** includes as a grantor a transferee of, or successor to, the interests of another grantor.

Crops and livestock

- (4) The **proceeds** of collateral that is crops include the harvested produce of the crops, if the produce is identifiable or traceable.
- (5) The **proceeds** of collateral that is livestock include products of the livestock (for example, meat or wool), if the products are identifiable or traceable.
- (6) However, livestock are not the **proceeds** of collateral merely because they are the unborn young, or the offspring, of livestock that are collateral.

32 Proceeds—attachment

Continuing attachment of security interest in collateral, and attachment to proceeds

- (1) Subject to this Act:
 - (a) if collateral is dealt with, the security interest remains attached to the collateral, unless the secured party agreed that a party to the dealing could take the collateral free of the security interest; and
 - (b) if collateral gives rise to proceeds (by being dealt with or otherwise), the security interest attaches to the proceeds unless the security agreement provides otherwise.

Note: A party to a dealing in collateral can also take the collateral free of the security interest because of the operation of another provision of this Act (for example, under Part 2.5).

Enforcement of security interest against collateral and proceeds

- (2) If the secured party enforces a security interest against both collateral and proceeds that arise as a result of a transfer of the collateral, the amount secured by the security interest in the collateral and proceeds is limited to the market value of the collateral immediately before the collateral gave rise to the proceeds.

Note: For the enforceability of a security interest against a third party in relation to proceeds, see also subsection 20(6).
- (4) To avoid doubt, subsection (2) does not affect any right the secured party may have to recover the amount secured without enforcing the security interest.

Priority for proceeds

- (5) The priority time for a security interest in proceeds of original collateral is the same as the priority time for the security interest in the original collateral.

Note: For *priority time*, see section 55A.

Section 33

33 Proceeds—perfection and temporary perfection

Perfection by reference to perfection of security interest in original collateral

- (1) A security interest in proceeds is perfected if the security interest in the original collateral is perfected by a registration that:
 - (a) describes the proceeds, if the description complies with any regulations made for the purposes of item 4 of the table in section 153 (registration—financing statements); or
 - (b) covers the original collateral, if the proceeds are of a kind that are within the description of the original collateral; or
 - (c) covers the original collateral, if the proceeds consist of currency, cheques or an ADI account, or a right to an insurance payment or any other payment as indemnity or compensation for loss or damage to the collateral or proceeds.

Temporary perfection in other situations

- (2) If a security interest in original collateral is perfected, but a security interest in the proceeds is not perfected under subsection (1), the security interest in the proceeds is temporarily perfected for the period starting at the time the security interest in the original collateral attaches to the proceeds and ending at the end of 10 business days afterwards.

34 Transferred collateral—temporary perfection after transfer

Security interest in collateral is temporarily perfected

- (1) If collateral is transferred, and at the time of the transfer a secured party held a perfected security interest in the collateral, that security interest is temporarily perfected for the period starting at the time of the transfer and ending at the earliest of the following times:
 - (a) the end of the month that is 24 months after the time of the transfer;

- (b) if the security interest in the collateral was perfected by registration at the time of the transfer—the end time for the registration (as registered at the time of the transfer);
- (c) if another security interest attaches to the collateral at or after the time of the transfer, and the other security interest is perfected:
 - (i) in a case in which the original secured party consented to the transfer—the end of 10 business days after the day of the transfer; or
 - (ii) in a case in which the original secured party otherwise acquires the knowledge required to perfect the original secured party's interest by registration (or to re-perfect the interest by an amendment of a registration)—the end of 10 business days after the day the original secured party acquires the knowledge.

Note: The knowledge required is the knowledge of the transferee's (the new grantor's) details. Unless these are registered, the original secured party's registration may be ineffective under section 165.

Transfer free of security interest

- (3) This section does not apply in relation to a transfer of collateral if the transferee takes the collateral free of the security interest.

Section 35

Division 3—Collateral returned to grantor or debtor

35 Returned collateral—from bailee

(1) A security interest in goods that is perfected by possession of the goods or a negotiable document of title to the goods under subsection 22(1) is temporarily perfected for the period covered by subsection (2) of this section if possession of the goods or document is given to the grantor or the debtor at a particular time (the *action time*) for the purpose of any of the following actions in relation to the goods:

- (a) sale;
- (b) exchange;
- (c) any other action in preparation for sale or exchange, including (but not limited to) the following:
 - (i) loading;
 - (ii) unloading;
 - (iii) storing;
 - (iv) shipping;
 - (v) manufacturing;
 - (vi) processing;
 - (vii) packaging.

Note: Subsection 22(1) provides for the perfection of a security interest in goods possessed by a bailee.

(2) This subsection covers the period starting at the action time and ending at the end of 10 business days after the day the action time occurs.

36 Returned collateral—negotiable instruments and investment instruments

(1) A security interest in a negotiable instrument or an investment instrument that is perfected by possession or control is temporarily perfected for the period covered by subsection (2) if possession or control of the instrument is given to the grantor or the debtor at a

particular time (the *action time*) for the purpose of any of the following actions in relation to the instrument:

- (a) sale;
 - (b) exchange;
 - (c) presentation;
 - (d) collection;
 - (e) renewal;
 - (f) registration (other than under this Act) for the purposes of a transfer.
- (2) This subsection covers the period starting at the action time and ending at the end of 10 business days after the day the action time occurs.

37 Recovered goods—reattachment of security interest

Scope

- (1) This section applies if:
- (a) goods are subject to a security interest; and
 - (b) the grantor sells or leases the goods to a person; and
 - (c) as a result of the sale or lease, the security interest ceases to be attached to the goods because of the operation of this Act; and
 - (d) the goods are later returned to, or repossessed by, the grantor at a particular time (the *recovery time*).

Reattachment of security interest

- (2) The security interest reattaches to the goods at the recovery time if the goods are returned to or repossessed by the grantor because of any of the following events:
- (a) in the case of a sale—the contract of sale is rescinded;
 - (b) in the case of a lease—the lease expires or is rescinded;
 - (c) the goods are repossessed in the exercise by the grantor of a right in enforcing the contract of sale or lease;

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- (d) any other event prescribed by regulations made for the purposes of this paragraph.

Note: Section 76 deals with the priority of a security interest that reattaches under this section.

Perfection of security interest

- (3) The perfection of the security interest, and the time of registration or perfection of the security interest, are to be determined as if the goods had not been sold or leased, if:
 - (a) the security interest reattaches to the goods under subsection (2); and
 - (b) the security interest was perfected by registration immediately before the time of the sale or lease; and
 - (c) the registration is effective at the recovery time.

38 Recovered goods—third party finance

Scope

- (1) This section applies if:
 - (a) goods are sold or leased; and
 - (b) the sale or lease gives rise to an account; and
 - (c) a person (the ***secured party***) takes a security interest in the account.

Recovered goods security interest

- (2) The secured party is also taken to have a security interest (a ***recovered goods security interest***) in the goods if, at a particular time (the ***recovery time***), the goods are returned to, or repossessed by, the seller or lessor because of any of the following events:
 - (a) in the case of a sale—the contract of sale is rescinded;
 - (b) in the case of a lease—the lease expires or is rescinded;
 - (c) the goods are repossessed in the exercise of a right by the seller or lessor in enforcing the account;

- (d) any other event prescribed by regulations made for the purposes of this paragraph.

Note: Section 76 deals with the priority of a security interest that arises under this section.

- (3) The recovered goods security interest attaches to the goods at the recovery time.

Temporary perfection of recovered goods security interest

- (4) If the security interest in the account was perfected immediately before the recovery time, the recovered goods security interest is temporarily perfected for the period starting at the recovery time and ending at the end of 10 business days after the day of the recovery time.

Section 39

Division 4—Relocation of collateral or grantor to Australia etc.

39 Relocation of collateral

Scope

- (1) This section applies to a security interest in collateral if:
- (a) the collateral has been located in a jurisdiction (the *foreign jurisdiction*) outside Australia; and
 - (b) the collateral is relocated to Australia; and
 - (c) for a period (the *foreign continuous perfection period*) immediately before the collateral was relocated, the security interest had a status under the law of the foreign jurisdiction that is functionally equivalent to the status the security interest would have had if it had been continuously perfected for that period under this Act.

Note: For the *location* of collateral, see section 235.

Temporary perfection before and after relocation

- (2) The security interest is taken to have been, and to continue to be, temporarily perfected during the period (the *temporary perfection period*):
- (a) starting at the beginning of the foreign continuous perfection period; and
 - (b) ending at the earlier of the following times:
 - (i) the end of 60 days after the day the collateral becomes located in Australia;
 - (ii) the end of 10 business days after the day the secured party has actual knowledge that the collateral has become located in Australia.

40 Relocation of grantor in relation to intangible property or financial property

Scope

- (1) This section applies to a security interest in collateral that is intangible property, or financial property, if:
- (a) the grantor has been located in a jurisdiction (the ***foreign jurisdiction***) outside Australia, and either of the following events (the ***relocation event***) occurs:
 - (i) the grantor becomes located in Australia;
 - (ii) the grantor transfers the collateral to a person who is located in Australia; and
 - (b) as a result of the relocation event, the perfection (and the effect of perfection or non-perfection) of the security interest becomes governed by the law of Australia, as provided by Part 7.2; and
 - (c) for a period (the ***foreign continuous perfection period***) immediately before the relocation event, the security interest had a status under the law of the foreign jurisdiction that is functionally equivalent to the status the security interest would have had if it had been continuously perfected for that period under this Act.
- Note: For the ***location*** of the grantor, see section 235.
- (2) The security interest is taken to have been, and to continue to be, temporarily perfected during the period (the ***temporary perfection period***):
- (a) starting at the beginning of the foreign continuous perfection period; and
 - (b) ending at the earlier of the following times:
 - (i) the end of 60 days after the relocation event;
 - (ii) the end of 10 business days after the day the secured party has actual knowledge of the relocation event.

Chapter 2 General rules relating to security interests

Part 2.4 Attachment and perfection: specific rules

Division 4 Relocation of collateral or grantor to Australia etc.

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Exceptions

- (3) This section does not apply to:
- (a) intellectual property, an intellectual property licence or an ADI account; or
 - (b) a negotiable instrument.

Note: The property mentioned in paragraph (3)(a) is *intangible property*; negotiable instruments are *financial property* (see section 10).

Part 2.5—Taking personal property free of security interests

41 Guide to this Part

This Part is about taking personal property free of security interests.

Rules are set out for when personal property may be taken free of a security interest in relation to the following:

- (a) unperfected security interests;
- (b) serial number defects;
- (c) vehicles;
- (d) taking in the ordinary course of business;
- (e) personal, domestic or household property;
- (f) currency;
- (g) debts;
- (h) negotiable instruments;
- (i) negotiable documents of title;
- (j) investment instruments and intermediated securities in the ordinary course of trading;
- (k) investment instruments;
- (l) intermediated securities;
- (m) temporarily perfected security interests.

42 Application of this Part

This Part:

- (a) applies to a security interest:
 - (i) whether or not the security interest is perfected (except in sections 43 (unperfected interests) and 52 (temporarily perfected interests)); and

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- (ii) whether the security interest attaches to personal property as original collateral or as proceeds; and
- (b) does not apply to the acquisition of an interest in personal property free of a security interest if the interest that is taken is itself a security interest.

43 Taking personal property free of unperfected security interest

Main rule

- (1) A buyer or lessee of personal property, for new value, takes the personal property free of an unperfected security interest in the property.

Exception

- (2) Subsection (1) does not apply if the buyer or lessee buys or leases the personal property with knowledge of the security interest, unless the personal property is of a kind prescribed by regulations made for the purposes of this subsection.

44 Taking personal property free of security interest if serial number incorrect or missing

Main rule

- (1) A buyer or lessee of personal property, for new value, takes the personal property free of a security interest in the property if:
 - (a) the regulations provide that personal property of that kind may, or must, be described by serial number in a registration; and
 - (b) searching the register, immediately before the time of the sale or lease, by reference only to the serial number of the property, would not disclose a registration that perfected the security interest.

Exceptions

- (2) Subsection (1) does not apply if the buyer or lessee buys or leases the personal property with knowledge of the security interest, unless the personal property is of a kind prescribed by the regulations for the purposes of this subsection.
- (3) Within the period of 24 months after the registration commencement time, subsection (1) does not apply if the security interest is a transitional security interest, other than:
 - (a) a migrated security interest in a vehicle; or
 - (b) a migrated security interest in a watercraft within the meaning of the regulations.

45 Taking vehicles free of security interest

Incorrect or missing VIN

- (1) A buyer or lessee, for new value, of a vehicle takes the vehicle free of a security interest in the vehicle if:
 - (a) there is a time during the period between the start of the previous day and the time of the sale or lease by reference to which a search of the register (by reference otherwise only to the vehicle's VIN) would not disclose a registration that perfected the security interest; and
 - (b) the seller or lessor is:
 - (i) the person who granted the security interest; or
 - (ii) if the person who granted the security interest has lost the right to possess the vehicle, or is estopped from asserting an interest in the vehicle—another person who is in possession of the vehicle.
- (2) Subsection (1) does not apply if:
 - (a) the secured party is in possession of the vehicle immediately before the time of the sale or lease; or
 - (b) the vehicle is bought at a sale held by or on behalf of an execution creditor; or

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- (d) the buyer or lessee buys or leases the vehicle with knowledge of the security interest.

Taking from prescribed person

- (3) A buyer or lessor, for new value, of a vehicle takes the vehicle free of a security interest in the vehicle if regulations made for the purposes of this subsection apply to the seller or lessor of the vehicle.
- (4) Subsection (3) does not apply if:
 - (a) the secured party is in possession of the vehicle immediately before the time of the sale or lease; or
 - (b) the vehicle is bought at a sale held by or on behalf of an execution creditor; or
 - (d) the buyer or lessee buys or leases the vehicle with knowledge that the sale or lease constitutes a breach of the security agreement that provides for the security interest.

46 Taking personal property free of security interest in ordinary course of business

Main rule

- (1) A buyer or lessee of personal property, for new value, takes the personal property free of a security interest given by the seller or lessor, or that arises under section 32 (proceeds—attachment), if the personal property was sold or leased in the ordinary course of the seller's or lessor's business of selling or leasing personal property of that kind.

Exception

- (2) Subsection (1) does not apply if the buyer or lessee buys or leases the personal property with knowledge that the sale or lease constitutes a breach of the security agreement that provides for the security interest.

47 Taking personal, domestic or household property free of security interest

Main rule

- (1) A buyer or lessee of personal property, for new value, that the buyer or lessee intends (at the time of purchase or lease) to use predominantly for personal, domestic or household purposes takes the personal property free of a security interest in the property if the new value given for the personal property is not more than:
 - (a) \$5,000; or
 - (b) if a greater amount is prescribed by regulations for the purposes of this subsection—that amount.

Exceptions

- (2) Subsection (1) does not apply if:
 - (a) the personal property is of a kind that the regulations provide may, or must, be described by serial number in a registration; or
 - (b) the buyer or lessee buys or leases the personal property with knowledge of the security interest; or
 - (c) at the time the contract or agreement providing for the sale or lease is entered into, the market value of the personal property is more than:
 - (i) \$10,000; or
 - (ii) if a greater amount is prescribed by regulations made for the purposes of this subparagraph—that amount.

48 Taking currency free of security interest

Main rule

- (1) A person who becomes a holder of currency takes the currency free of a security interest in the currency.

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Exception

- (2) Subsection (1) does not apply if the person takes the currency with knowledge that taking the currency constitutes a breach of the security interest.

48A Taking payment of a debt by EFT etc. free of security interest

Main rule

- (1) A creditor receives payment of a debt owing by a debtor through a payment covered by subsection (2) free of a security interest in any of the following:
- (a) the funds paid;
 - (b) the intangible that was the source of the payment;
 - (c) a negotiable instrument used to effect the payment.

Example: A bank account from which the funds were paid is an example of an intangible that was the source of the payment.

- (2) Payments made by a debtor are covered by this subsection if they are made through the use of any of the following:
- (a) an electronic funds transfer;
 - (b) a debit, transfer order, authorisation, or similar written payment mechanism executed by the debtor when the payment was made;
 - (c) a negotiable instrument.

Exception

- (3) Subsection (1) does not apply if the creditor receives the payment with knowledge that the payment constitutes a breach of the security agreement that provides for the security interest.

48B Taking negotiable instrument free of security interest

Main rule

- (1) A person acquires a negotiable instrument free of a security interest in the instrument if:
 - (a) the person acquires the instrument for new value; and
 - (b) the person takes possession of the instrument.

Exception

- (2) Subsection (1) does not apply if the instrument is acquired with knowledge that the acquisition constitutes a breach of the security agreement that provides for the security interest.

48C Taking negotiable document of title free of security interest

Main rule

- (1) A person acquires a negotiable document of title free of a security interest in the document of title if:
 - (a) the person acquires the document of title for new value; and
 - (b) the person takes possession of the document of title.

Exception

- (2) Subsection (1) does not apply if the document is acquired with knowledge that the acquisition constitutes a breach of the security agreement that provides for the security interest.

49 Taking investment instrument or intermediated security free of security interest in the ordinary course of trading

A person who buys an investment instrument or an intermediated security in the ordinary course of trading on a financial market prescribed by regulations made for the purposes of this section takes the instrument or intermediated security free of a security interest in the instrument or intermediated security.

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50 Taking investment instrument or intermediated security free of security interest in an off-market dealing

Scope

- (1) This section applies to a person (the *buyer*) who buys an investment instrument or an intermediated security otherwise than in a dealing to which section 49 applies.

Main rule

- (2) The buyer takes the investment instrument or intermediated security free of a security interest in the instrument or intermediated security if:
 - (a) the buyer gives new value for the investment instrument or intermediated security; and
 - (b) the investment instrument or intermediated security is transferred into the name, or possession, of the buyer, or another person (other than the grantor or debtor) on the buyer's behalf.

Exception

- (3) Subsection (2) does not apply if the buyer buys the investment instrument or intermediated security with knowledge of the security interest.

52 Taking personal property free of temporarily perfected security interest

Main rule

- (1) A buyer or lessee, for new value, of personal property takes the personal property free of a security interest that is temporarily perfected by force of this Act (other than a transitional security interest perfected by force of section 322) immediately before the time of the sale or lease, if the security interest is not otherwise perfected at that time.

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

Exception

- (2) Subsection (1) does not apply if the buyer or lessee buys or leases the personal property with knowledge of the security interest.

Part 2.6—Priority between security interests

Division 1—Introduction

54 Guide to this Part

This Part deals with how to work out the priority between competing security interests in collateral (and in some cases, other kinds of interests).

Priority rules are relevant when the same personal property is subject to 2 or more security interests. If there is a default under a security agreement, the rules determine the order of priority in which the various secured parties can enforce their security interests under Chapter 4.

Division 2 sets out the default rules that apply if this Act provides no other way of determining that priority.

Unless otherwise provided:

- (a) perfected interests have priority over unperfected interests; and
- (b) priority between perfected interests amongst themselves, and unperfected interests amongst themselves, is determined on a first-in-time basis.

The Division contains other rules of general application (such as the priority that applies to the proceeds of collateral). Security interests perfected by control have the highest priority.

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

Division 3 deals with the priority rules that apply when one of the security interests is a perfected purchase money security interest. These interests are exceptions to the first-in-time rule (except for certain security interests in an account dealt with in section 64). A perfected purchase money security interest that is granted to a seller, lessor or consignor takes priority over a perfected purchase money security interest that is granted to others.

Division 4 deals with priority of security interests in transferred collateral where a transferor and a transferee have both granted security interests in the transferred collateral. Provided the transferor-granted security interest has remained perfected, that security interest will take priority.

Division 6 deals with priorities in relation to the following:

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

Division 2—Priority of security interests generally

55 Default priority rules

- (1) This section sets out the priority between security interests in the same collateral if this Act provides no other way of determining that priority.

Note: For other rules about priorities, see the following:

- (a) the remaining provisions of this Part;
- (b) Chapter 3 (agricultural interests, accessions and commingling);
- (c) Part 9.4 (transitional application of this Act).

Priority between unperfected security interests

- (2) Priority between unperfected security interests in the same collateral is to be determined by:
- (a) the order of attachment of the security interests; or
 - (b) if the security interests attach to the collateral at the same time—the order in which the security agreements providing for the security interests were entered into.

Perfected security interest has priority over unperfected security interest

- (3) A perfected security interest in collateral has priority over an unperfected security interest in the same collateral.

Priority for perfection in other ways

- (4) Priority between 2 or more security interests in collateral that are currently perfected is to be determined by the order in which the priority time for each security interest occurs.

55A Meaning of *priority time*

- (1) The *priority time* for a security interest in collateral is the earliest of the following times:
- (a) the registration time in relation to the security interest;

(b) the time the security interest is perfected.

- (2) However, a time is a **priority time** for a security interest only if, when the security interest is perfected at or after that time, the security interest remains continuously perfected.

Note 1: A security interest in the proceeds of original collateral has the same priority as the security interest in the original collateral (see subsection 32(5)).

Note 2: If a purchase money security interest is replaced by another purchase money security interest as mentioned in subsection 14(5), the replacement security interest generally has the same priority as the security interest it replaces (see section 63A).

55B When is priority determined?

Priority between security interests in the same item of collateral is to be determined at each time that proceeds of that item of collateral become available for distribution as a result of the enforcement of any party's security interest in that item.

56 How a security interest is continuously perfected

A security interest is **continuously perfected** if:

- (a) the security interest is perfected in one way under this Act; and
- (b) the security interest remains so perfected, or is subsequently perfected in the same or another way under this Act; and
- (c) there is no intervening period when the security interest is unperfected.

Example: A security interest could be continuously perfected in ways including the following:

- (a) the original perfection could be by possession and the subsequent perfection by registration;
- (b) both the original perfection and the subsequent perfection could be by 2 different registrations.

Section 57

57 Priority of security interests perfected by control

Priority interests

- (1) A security interest in collateral that is currently perfected by control has priority over a security interest in the same collateral that is currently perfected by another means.

Note: Only security interests in certain kinds of property can be perfected by control (see paragraph 21(2)(c) and Part 2.3).

- (2) Priority between security interests in the same collateral that are currently perfected by control, if the perfection by control has been continuous, is to be determined by:
- (a) the order in which the interests were perfected by control; or
 - (b) if the security interests were perfected by control at the same time—the order in which the secured parties put in place mechanisms to enable them to take control of the collateral.

Control priority takes precedence over any other priority rule

- (3) This section applies despite the application of any other provision of this Part.

58 Priority of secured obligations

A security interest has the same priority in respect of all obligations that are secured by the security interest, whether the obligations are incurred before or after the security interest arises.

Note: This section is subject to section 68 (which deals with priorities in some situations if there is a break in continuous perfection due to a transfer of collateral).

60 Transfer of security interests does not affect priority

If a security interest in collateral is transferred, the transferred interest has the same priority immediately after the transfer as it had immediately before the transfer.

Note: Division 4 deals with transfer of collateral.

61 Priority in accordance with priority agreement between secured parties

- (1) A security interest in collateral has priority over another security interest in the same collateral if the secured parties so agree.
- (2) Such an agreement:
 - (a) is effective according to its terms between the secured parties; and
 - (b) may be enforced by a third party if the third party is the person, or one of a class of persons, for whose benefit the agreement is intended; and
 - (c) subject to paragraph (b), does not affect the rights of any other person with an interest in the collateral.

Section 62

Division 3—Priority of purchase money security interests

62 Priority for perfected purchase money security interests over other perfected security interests

Main rule

- (1) A perfected purchase money security interest granted by a grantor in collateral or its proceeds has priority over a perfected non-purchase money security interest granted by the same grantor in the same collateral or proceeds to any other person if subsection (2) applies to the purchase money security interest.

Note: For the priority between a non-purchase money security interest in an account and purchase money security interests in inventory or certain other security interests, see section 64.

When main rule applies

- (2) This subsection applies to a purchase money security interest if it is perfected by registration before the end of 15 business days after the following day:
- (a) for goods (other than goods subject to a purchase money security interest that arises under a PPS lease)—the day the grantor, or another person at the request of the grantor, obtains possession of the goods;
 - (b) for goods subject to a purchase money security interest that arises under a PPS lease—the later of the following days:
 - (i) the day when the lease concerned starts to be a PPS lease under subsection 13(2);
 - (ii) the day the lessee, or another person at the request of the lessee, obtains possession of the goods;
 - (c) for any other property—the day the purchase money security interest attaches to the property.

Replacement purchase money security interest

- (3) If the purchase money security interest replaces another purchase money security interest as mentioned in subsection 14(5),

subsection (2) of this section applies to the replacement security interest as follows:

- (a) the day to which paragraph (2)(a) applies is the day the grantor first has possession of the collateral as grantor under the replacement security interest; and
- (b) the day to which paragraph (2)(b) applies is the day the grantor becomes the lessee under the lease that, for the purposes of the replacement security interest, replaces the lease mentioned in that paragraph; and
- (c) the day to which paragraph (2)(c) applies is the day the replacement security interest attaches to the property.

Note 1: For the priority of replacement purchase money security interests generally, see subsection 63A.

Note 2: The periods specified in this section may be extended by a court under section 293.

Note 3: This section is subject to section 57 (priority of security interests perfected by control).

63 Priority between purchase money security interests—sellers, lessors and consignors

- (1) This section applies to a perfected purchase money security interest (the *priority PMSI*) granted in collateral or its proceeds to a seller, lessor or consignee of the collateral.
- (2) If the priority PMSI is perfected by registration within the period of 15 business days that is applicable under subsections 62(2) and (3), the priority PMSI has priority over another perfected purchase money security interest that is granted by the same grantor in the same collateral or proceeds to any other person.

Note: The periods specified in section 62 may be extended by a court under section 293 for the purposes of this section.

Section 63A

**63A Priority of replacement purchase money security interests—
general**

For the purposes of this Act, if a purchase money security interest replaces another purchase money security interest, as mentioned in subsection 14(5), the replacement purchase money security interest is taken to have the same priority as the purchase money security interest that it replaces, subject to:

- (a) section 62 (priority for perfected purchase money security interests over other perfected security interests); and
- (b) section 63 (priority between purchase money security interests—sellers, lessors and consignors).

64 Priority for non-purchase money security interest in accounts

Scope

- (1A) This section applies to the following security interests in relation to an account:
- (a) a non-purchase money security interest (the *accounts financier's interest*) granted to a person (the *accounts financier*) for new value in the account as original collateral and perfected by registration;
 - (b) a purchase money security interest (the *inventory financier's PMSI*) granted to another person (the *inventory financier*) by the same grantor in inventory and perfected by registration, if the inventory financier's PMSI attaches to the account as proceeds of the inventory;
 - (c) a non-purchase money security interest (an *inventory financier's non-PMSI*) (if any) in the account as original collateral or proceeds that is granted by the same grantor to the inventory financier.

Priority for non-purchase money security interests in accounts

- (1) Despite section 62, the accounts financier's interest has priority over the inventory financier's PMSI, and the inventory financier's non-PMSI (if any), if:

- (a) both of the following conditions are met:
 - (i) the registration time for the accounts financier's interest occurs before the registration time for the inventory financier's PMSI;
 - (ii) the registration in respect of the accounts financier's interest describes the collateral as an account, in accordance with regulations made for the purposes of item 4 of the table in subsection 153(1); or
- (b) both of the following conditions are met:
 - (i) the accounts financier gives a notice in accordance with subsection (2) to the inventory financier;
 - (ii) the notice is given at least 15 business days before the day the accounts financier's interest attaches to the account.

Note 1: This section is subject to section 57 (priority of security interests perfected by control).

Note 2: The period specified in subparagraph (b)(ii) may be extended by a court under section 293.

- (2) A notice is given in accordance with this subsection if the notice:
 - (a) is in the approved form; or
 - (b) includes statements to the effect that:
 - (i) the accounts financier may be acquiring a security interest in accounts that are proceeds of inventory in which the inventory financier may also hold a purchase money security interest and other security interests; and
 - (ii) section 64 provides that the accounts financier's interest will have priority over the inventory financier's interests mentioned in paragraphs 64(1A)(b) and (c) in relation to accounts to which the accounts financier's interest attaches at least 15 business days after the day the notice is given.

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Perfected purchase money security interest in both proceeds and new value

- (3) If a person has a purchase money security interest in an account as proceeds of inventory that has a lower priority than a non-purchase money security interest under subsection (1):
- (a) the person is taken to have a purchase money security interest in both the proceeds of the inventory and in the new value mentioned in paragraph (1A)(a); and
 - (b) the purchase money security interest in the new value is taken to be perfected by the registration that perfected the purchase money security interest in the proceeds; and
 - (c) the new value is taken to be an account for the purposes of this Act (except for the purposes of this section or paragraph 12(3)(a) (account transferee's interest taken to be security interest)).
- (4) However, if the new value mentioned in paragraph (3)(c) would be an account for the purposes of this Act in the absence of that paragraph, the paragraph does not prevent the new value from being an account for the purposes of this section or paragraph 12(3)(a).

65 Possession of goods shipped by a common carrier

For the purposes of this Division, if goods are shipped by common carrier to a grantor, or to a person designated by the grantor, the grantor does not obtain possession of the goods until the grantor, or a third party at the request of the grantor, obtains actual possession of the goods or a document of title to the goods, whichever is earlier.

Division 4—Priority of security interests in transferred collateral

66 Application of this Division

- (1) This Division sets out the priority between 2 security interests (a transferor-granted interest and a transferee-granted interest) if:
- (a) a grantor transfers collateral (the *transferred collateral*) to a transferee; and
 - (b) immediately before the transfer, a security interest (the *transferor-granted interest*) is attached to the collateral; and
 - (c) the transferee grants (whether before or after the transfer) a security interest (the *transferee-granted interest*) in the transferred collateral; and
 - (d) neither the transferor-granted interest nor the transferee-granted interest is currently perfected by control.

Note 1: If either or both of the interests are currently perfected by control under paragraph 21(2)(c), section 57 applies.

Note 2: If the priority between a transferor-granted interest and a transferee-granted interest is not covered by this section, then section 55 applies.

Note 3: For attachment and perfection in relation to transferred collateral, see section 34.

Note 4: For a grantor's rights in relation to transferring collateral, see section 79.

- (2) This Division does not prevent a secured party from perfecting a security interest in any way in order to have priority over another security interest.

67 Priority when transferor-granted interest has been continuously perfected

The transferor-granted interest has priority if:

- (a) it was perfected immediately before the transfer; and
- (b) it has been continuously perfected since the transfer.

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68 Priority when there is a break in the perfection of the transferor-granted interest

- (1) The transferor-granted interest in the transferred collateral has priority (except as mentioned in subsection (2)) if:
- (a) the transferred collateral is not registered with a serial number (see subsection (4)); and
 - (b) the interest was perfected by registration immediately before the transfer; and
 - (c) the interest becomes unperfected; and
- Note: See subsection 34(3) for one situation in which a security interest may become unperfected following a transfer of collateral.
- (d) the interest is later re-perfected; and
 - (e) a notice is given (whether before or after the interest is re-perfected as mentioned in paragraph (d)) to all other secured parties who have a registration that describes the transferred collateral; and
 - (f) the notice is given in accordance with subsection (5); and
 - (g) the interest has been continuously perfected since it was re-perfected as mentioned in paragraph (d).
- (2) However, the transferee-granted interest has priority if:
- (a) subsection (1) applies in relation to the transferor-granted interest; and
 - (b) the transferee-granted interest is perfected immediately before the transferor-granted security is re-perfected as mentioned in paragraph (1)(d); and
 - (c) the transferee acquires the collateral without knowledge that the acquisition constitutes a breach of the security agreement that provides for the transferor-granted interest; and
 - (d) the transferee-granted interest secures performance of an obligation to make a payment, or any other obligation, incurred by the transferee before:
 - (i) the transferor-granted interest is re-perfected as mentioned in paragraph (1)(d); and
 - (ii) the notice is given under paragraph (1)(e);

but only to the extent of the payment or other obligation.

- (3) Subsection (2) applies despite section 58 (priority of secured obligations).
- (4) For the purposes of this section, the transferred collateral is registered with a serial number at a particular time only if a search of the register by reference to that time and by reference only to the serial number of the collateral is capable of disclosing the registration.
- (5) A notice is given in accordance with this subsection if:
 - (a) the notice is in the approved form; or
 - (b) the notice:
 - (i) states that the secured party expects to perfect a security interest in the transferred collateral; and
 - (ii) contains a description of the transferred collateral; and
 - (iii) sets out the effect of subsections (1) and (2).

Division 6—Priority of other interests

73 Priority between security interests and declared statutory interests

Interests arising under a law etc. in the ordinary course of business

- (1) An interest (the **priority interest**) in collateral has priority over a security interest in the collateral if:
 - (a) the priority interest arises (by being created, arising or being provided for):
 - (i) under a law of the Commonwealth, a State or a Territory, unless the person who owns the collateral in which the priority interest is granted agrees to the interest; or
 - (ii) by operation of the general law; and
 - (b) the priority interest arises in relation to providing goods or services in the ordinary course of business; and
 - (c) the person who holds the priority interest provided those goods or services; and
 - (d) no law of the Commonwealth, a State or a Territory provides for the priority between the priority interest and the security interest; and

Example: A law of the Commonwealth, a State or a Territory to which subsection (2) applies is a law that provides for the priority between the priority interest and the security interest.

- (e) the person who holds the priority interest acquired the interest without actual knowledge that the acquisition constitutes a breach of the security agreement that provides for the security interest.

Note: The priority interest is a kind of interest excluded from the definition of **security interest** (see subsection 12(2) and paragraphs 12A(1)(b) and (c)).

Statutory interests declared by law

- (2) The priority between an interest in collateral (the **statutory interest**) that arises, by being created, arising or being provided for, under a law of the Commonwealth, a State or a Territory (the **relevant jurisdiction**) and a security interest in the same collateral is to be determined in accordance with that law if, and only if:
- (a) that law declares that this subsection applies to statutory interests of that kind; and
 - (b) the statutory interest arises after the declaration comes into effect.

Note: The statutory interest is a kind of interest excluded from the definition of **security interest** (see subsection 12(2) and paragraph 12A(1)(b)).

- (3) However, for the purposes of subsection (2), as it applies to a law of the Commonwealth:
- (a) the Minister may, by an instrument made under subsection (4), make the declaration required by paragraph (2)(a); and
 - (b) the priority mentioned in subsection (2) may be determined in accordance with that instrument.
- (4) The Minister may make a legislative instrument containing a declaration, or determining priority, or both, for the purposes of subsection (3).
- (5) Subsection (2) is subject to subsection (1).

Rights to payment in connection with specifically identified land

- (6) An interest (the **priority interest**) in collateral has priority over a security interest in the collateral if the priority interest is an interest of a kind mentioned in paragraph 13B(1)(c) (certain rights to payment in respect of land).

Interests arising under the general law

- (7) The priority between an interest in collateral (the **general law interest**) that arises by operation of the general law and a security

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interest in the same collateral is to be determined in accordance with an instrument made under subsection (8) if, and only if:

- (a) no law of the Commonwealth (other than this Act and that instrument) provides for the priority between the general law interest and the security interest; and
 - (b) the instrument provides that this subsection applies to general law interests of that kind; and
 - (c) the general law interest arises after the instrument comes into effect.
- (8) The Minister may make a legislative instrument for the purposes of subsection (7).
- (9) Subsection (7) is subject to subsection (1).

Note: This section does not apply to priorities in relation to interests that arise before the registration commencement time (within the meaning of section 306). Priorities in relation to such interests are unaffected by this Act (see section 312).

74 Execution creditor has priority over unperfected security interest

- (1) The interest of an execution creditor in collateral has priority over a security interest in the same collateral if, at the time covered by subsection (4):
- (a) either:
 - (i) there is no registration in respect of the security interest; or
 - (ii) if there is such a registration—there is no security agreement providing for the security interest that covers the collateral in accordance with subsection 20(2); and
 - (b) the security interest is not perfected.

Note: Subsection 20(2) would, among other things, cover a security agreement only if it included a description of collateral (by item or kind) sufficient to enable the collateral to be identified.

- (2) To avoid doubt, an execution creditor does not include a landlord who exercises a right of distress.

- (3) This section applies despite any other section in this Part.

Time of seizure or execution

- (4) This subsection covers the following times:
- (a) if the collateral is seized under a process of execution—the time of seizure;
 - (b) in any other case—the time when:
 - (i) an order is made by a court in respect of a judgment in relation to the execution creditor; or
 - (ii) a garnishee order is made in relation to the execution creditor.

75 Priority of security interests held by ADIs

To avoid doubt, a perfected security interest, held by an ADI, in an ADI account with the ADI has priority over any other perfected security interest in the ADI account.

Note 1: A security interest that is held by an ADI in an ADI account is perfected by control (see paragraph 21(2)(c) and section 25).

Note 2: This provision does not affect any right of set-off the grantor might have in relation to the account (a right of set-off is a kind of interest excluded from the definition of *security interest*: see paragraph 12A(1)(d)).

76 Priority of security interests in returned goods

Security interest held by account transferee

- (1) A perfected security interest in goods that has reattached to the property under subsection 37(1) has priority over a security interest in the goods that is granted by the operation of subsection 38(1) to a transferee of an account.

Note: Section 37 deals with security interests that reattach when goods are returned. Section 38 provides for a security interest in an account to arise automatically when goods are returned.

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Security interest granted by buyer or lessee

- (3) A security interest (the **priority interest**) in goods that is granted by a person who acquires an interest in the property has priority over a security interest in the goods that reattaches under section 37, or is granted by the operation of section 38, if:
- (a) the priority interest attaches before the recovery time within the meaning of section 37 or 38; and
 - (b) immediately before the recovery time within the meaning of section 37 or 38, the priority interest is perfected.

77 Priority of certain security interests if there is no foreign register

Scope

- (1) This section applies to a security interest (the **priority interest**) in an account, financial property or an intermediated security if the law of the jurisdiction that governs the perfection, and the effect of perfection or non-perfection, of the priority interest does not provide for the public registration or recording of the priority interest, or a notice relating to the priority interest.

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

Security interests in accounts

- (2) A priority interest in an account has priority, in proceedings in an Australian court, over another interest in the account (whether or not the other interest is a security interest) if the priority interest is perfected by registration under this Act before the other interest attaches to the account.

Security interests in financial property and intermediated securities

- (3) A priority interest in personal property that is financial property or an intermediated security has priority, in proceedings in an Australian court, over another interest in the personal property (whether or not the other interest is a security interest) if:

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- (a) the priority interest is perfected by registration under this Act before the other interest attaches to the personal property; and
- (b) when the other interest arises in the personal property:
 - (i) the personal property is located in Australia; and
 - (ii) the secured party does not have possession or control of the personal property.

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

Relationship with sections 239 and 240

- (4) Subsections (2) and (3) apply in proceedings in an Australian court even if the law of another jurisdiction applies in the proceedings in relation to a security interest in an account or financial property under subsection 239(2) or 240(4) or (5).

Part 2.7—Restrictions on some dealings in collateral

Division 1—Introduction

78 Guide to this Part

This Part deals with security agreements and account contracts that prohibit or restrict dealings in collateral (including collateral consisting of accounts). Such dealings may be in the form of transfers or the creation of new security interests.

Collateral may be dealt with despite such a restriction or prohibition. In the case of a dealing in an account resulting in the creation of a security interest, the rights of the secured party are generally subject to the terms of the account contract and in some circumstances modifications to the account contract may be effective against the secured party.

This Part also provides for the rights of an account debtor to be protected in some ways in the event of a dealing in the account resulting in the creation of a security interest.

Division 2—Dealings in collateral generally

79 Dealings prohibited by security agreements

Scope

- (1) This section applies to any of the following dealings in collateral that is the subject of a security interest:
 - (a) a transfer of the collateral;
 - (b) any other dealing in the collateral, if the dealing results in the creation of another security interest in the collateral.

Dealing not prevented

- (2) The dealing is not prevented only because a provision in the security agreement for the security interest prohibits the dealing or declares the dealing to be a default.

Note: See section 32 in relation to security interests in proceeds that arise as a result of a transfer.

- (3) Subject to subsection (2), however, such a dealing does not prejudice the rights of the secured party under the security agreement or otherwise, including the right to treat the dealing as an act of default.

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Division 3—Dealings in accounts

80 Scope of this Division

This Division applies to the following dealings in an account:

- (a) a transfer of the account;
- (b) any other dealing in the account, if the dealing results in the creation of a security interest in the account.

Note: The transfer of an account gives rise to a security interest in the account, whether or not the transfer, in substance, secures payment or performance of an obligation.

81 Restrictions in account contracts

Scope

- (1) This section applies to a dealing in the following accounts to which this Division applies:
 - (a) an account that is the proceeds of inventory;
 - (b) an account that arises from granting a right (other than a right granted under a construction contract), or providing services, in the ordinary course of a business of granting rights or providing services of that kind (whether or not the account debtor is the person to whom the right is granted or the services are provided).

Effect of restrictions

- (2) The dealing is not prevented only because a term in the account contract restricts or prohibits the dealing.
- (3) A term of the account contract restricting or prohibiting such a dealing is unenforceable against any person other than the account creditor.
- (4) However, the dealing does not prejudice the rights of the account debtor to damages for breach of the account contract.

81A Dealings in accounts—restrictions on rights of secured party

Restrictions on rights of secured party

- (1) If this Division applies to a dealing in an account, the rights of the secured party arising as a result of the dealing are subject to:
- (a) the terms of the account contract, and any equity, defence, remedy or claim arising in relation to the contract (including a defence by way of a right of set-off); and
 - (b) any other equity, defence, remedy or claim of the account debtor against the account creditor (including a defence by way of a right of set-off) that accrues before the first time when payment by the account debtor to the account creditor no longer discharges the obligation of the account debtor under subsection 81B(6) to the extent of the payment.

Note: The secured party may be a receiver.

- (2) Subsection (1) does not apply if the account debtor makes an enforceable agreement not to assert defences to claims arising out of the account contract.

Modification of contract

- (3) If this Division applies to a dealing in an account, unless the account debtor has otherwise agreed, a modification of the account contract is effective against the secured party if:
- (a) the account debtor and the account creditor have acted honestly in modifying the contract; and
 - (b) the modification is made in a commercially reasonable way; and
 - (c) the modification does not have a material adverse effect on:
 - (i) the secured party's rights under the contract; or
 - (ii) the account creditor's ability to perform the contract.

Note: For *modification*, see section 10.

- (4) Subsection (3) applies:

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- (a) to the extent that a right to payment in favour of the secured party has not been fully earned by performance; and
 - (b) even if there has been notice of the dealing to the account debtor.
- (5) If a modification of the account contract is effective under subsection (3), the secured party obtains rights that correspond to the rights of the account creditor under the contract as modified.
- (6) Nothing in subsections (3) to (5) affects the validity of a term in the agreement for the dealing if the term provides that a modification of the account contract that is effective under subsection (3) is a breach of contract by the account creditor.

81B Dealings in accounts—protection of rights of account debtor

Adverse effect on account debtor's ability to perform contract

- (1) A dealing in an account to which this Division applies is ineffective to the extent that the dealing would make performance of the account contract more onerous than if the dealing had not occurred.
- (2) However, subsection (1) does not apply to the extent that the account debtor consents to the dealing.

Payments by account debtor after dealing

- (3) If this Division applies in relation to a dealing in an account, the secured party or the account creditor may give the account debtor a written notice to make payments to the secured party of any amount owing to the account creditor under the account contract.

Note: Under section 144, a security interest in an account that secures payment or performance of an obligation may be enforced by notice under this section, or by seizure of the proceeds of the account from the grantor (the account creditor).

- (4) A notice under subsection (3) must:
- (a) identify the account contract; and

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- (b) if given by the secured party—include proof of the dealing;
and
- (c) state that the amount owing must be paid to the secured party
before the later of:
 - (i) the end of 10 business days after the day the notice is
received; or
 - (ii) the end of the day the amount becomes due and payable.

Note: The period specified in subparagraph (4)(c)(i) may be extended by a
court order under section 293.

- (5) If the secured party gives a notice to the account debtor under
subsection (3), the secured party must give a copy of the notice to
the account creditor:
 - (a) before the end of 5 business days after the day the notice
under subsection (3) is given; or
 - (b) if the account creditor has given a written notice to the
secured party specifying a shorter period to apply for the
purposes of this subsection—before the end of that period.

Note: The period specified in paragraph (5)(a) may be extended by a court
under section 293.

- (6) After a dealing in an account to which this Division applies, the
following payments discharge the obligation of the account debtor
to the extent of the payment:
 - (a) a payment made to the account creditor under the account
contract before the end of the period for payment stated in a
notice under subsection (3);
 - (b) a payment made to the secured party in accordance with a
notice under that subsection, whether before or after the end
of the period for payment stated in the notice.

Chapter 3—Specific rules for certain security interests

Part 3.1—Guide to this Chapter

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This Chapter contains specific rules for certain security interests.

Part 3.2 contains some specific rules relating to agricultural interests (such as security interests in crops and livestock).

Part 3.3 deals with security interests in accessions to personal property.

Part 3.4 deals with security interests in personal property that loses its identity by being processed or commingled.

Part 3.2—Agricultural interests

83 Guide to this Part

This Part includes rules on 3 topics:

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

Other provisions of this Act that deal with agricultural interests are subsections 31(4), (5) and (6) (meaning of *proceeds* of crops and livestock) and Division 5 of Part 4.4 (about enforcement of security interests in crops and livestock).

84 Relationship between security interest in crops and interest in land

Effect of security interest in crops on lessor or mortgagee of land

- (1) A security interest in crops does not prejudicially affect the rights of a lessor or mortgagee of land on which the crops are growing if:
 - (a) those rights existed at the time the security interest was created; and

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- (b) the lessor or mortgagee has not consented in writing to the creation of the security interest.

Effect of sale etc. of land on perfected security interest in crops

- (2) Subject to subsection (1), a perfected security interest in crops is not prejudicially affected by a subsequent sale, lease or mortgage of, or other encumbrance on, the land on which the crops are growing.

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

Security interest in crops while they are growing

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

Security interest in the products of livestock

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

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

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

85 Priority of crops

A perfected security interest (the *priority interest*) that is granted by a grantor in crops or the proceeds of crops has priority over any other security interest that is granted by the same grantor in the same crops or proceeds if:

- (a) the priority interest is granted for value; and
- (b) the priority interest is granted to enable the crops to be produced; and
- (c) either:

- (i) the security agreement providing for the priority interest is made while the crops are growing; or
- (ii) the crops are planted during the period of 6 months after the day the security agreement providing for the priority interest is made.

86 Priority of livestock

A perfected security interest (the *priority interest*) that is granted by a grantor in livestock or the proceeds of livestock has priority over any other security interest (other than a purchase money security interest) that is granted by the same grantor in the same livestock or proceeds if:

- (a) the priority interest is granted for value; and
- (b) the priority interest is granted to enable the livestock to be fed or developed; and
- (c) either:
 - (i) the livestock are held by the grantor at the time the security agreement providing for the priority interest is made; or
 - (ii) the livestock are acquired by the grantor during the period of 6 months after the day the security agreement providing for the priority interest is made.

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Part 3.3—Accessions

87 Guide to this Part

This Part deals with security interests in accessions to personal property.

A security interest in goods that become an accession to other goods remains attached to the accession.

The Part sets out the priority between an interest (whether or not a security interest) in an accession and the goods to which the accession is affixed.

A security interest arising in an accession before it is affixed to goods has priority over a security interest in the goods as a whole. However, there are exceptions relating to interests in the whole created after the accession is affixed and before the security interest in the accession is perfected.

A security interest arising in an accession after it is affixed will ordinarily have a lower priority than an existing interest in the other goods (unless, for example, the holder of the existing interest agrees otherwise) and to a later interest in the other goods that arises before the interest in the accession is perfected.

88 Security interest in goods—attachment to accession

A security interest in goods that become an accession to other goods remains attached to the accession.

Note: However, a person might take an interest in the accession free of the security interest because of another provision of this Act.

89 Default rule—interest in accession has priority

Except as otherwise provided in this Act, a security interest in goods that is attached at the time when the goods become an accession has priority over a claim to the goods as an accession made by a person with an interest in the whole.

90 Priority interest in whole—before security interest in accession is perfected

The interest of any of the following persons has priority over a security interest in goods that is attached at the time when the goods become an accession:

- (a) a person who acquires for value an interest in the whole at or after the time the goods become an accession, but before the security interest in the accession is perfected;

Note: This paragraph applies to a person acquiring an interest in the whole goods from another person no matter when the other person acquired an interest in the goods.

- (c) a person who holds a perfected security interest in the whole that secures the making of a payment, or the performance of any other obligation, to the extent that the debtor incurs the obligation to make the payment, or perform the other obligation, at or after the time the goods become an accession, but before the security interest in the accession is perfected;
- (d) a person with a perfected security interest in the whole who acquires the right to retain the whole in satisfaction of the obligation secured at or after the time the goods become an accession, but before the security interest in the accession is perfected.

91 Priority interest in whole—security interest in accession attaches after goods become accession

A security interest in goods that attaches after the goods become an accession has a lower priority than the interest of:

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- (a) a person who has an interest in the other goods at the time when the goods become an accession and who:
 - (i) has not consented to the security interest in the accession; and
 - (ii) has not disclaimed an interest in the accession; and
 - (iii) has not entered into an agreement under which another person is entitled to remove the accession; and
 - (iv) is otherwise entitled to prevent the grantor from removing the accession; or
- (b) a person who acquires an interest in the whole after the goods become an accession, but before the security interest in the accession is perfected.

92 Secured party must not damage goods when removing accession

A secured party who is entitled to remove an accession under section 123 (seizure of collateral) must remove the accession from the whole in a manner that causes no greater damage to the other goods, or that puts the person in possession of the whole to no greater inconvenience, than is necessarily incidental to the removal of the accession.

93 Reimbursement for damage caused in removing accessions

- (1) A person, other than the grantor, who has an interest in the other goods at the time the goods become an accession is entitled to reimbursement for any damage to that person's interest in the other goods caused by the removal of the accession.
- (2) Any reimbursement payable under subsection (1) does not include reimbursement for a reduction in the value of the property caused by the absence of the accession or by the necessity of the replacement of the accession.

94 Refusal of permission to remove accession

A person entitled to reimbursement under section 93 may refuse permission to remove the accession until the secured party has given adequate security for the reimbursement.

95 Secured party must give notice of removal of accession

Notice required to be given by secured party

- (1) A secured party who is entitled to remove an accession from the whole must give notice of the secured party's intention to remove the accession to each of the following persons in accordance with subsections (2) and (3):
 - (a) the grantor;
 - (b) a secured party with a security interest in the accession that has a higher priority.
- (2) The secured party must give a notice to a person:
 - (a) at least 10 business days before the day the accession is removed; or
 - (b) if the person has given a written notice to the secured party specifying a smaller number of days to apply for the purposes of this section—at least that number of days before the accession is removed.
- (3) A notice must contain the following:
 - (a) the name of the secured party giving the notice;
 - (b) a description of the accession and of the other goods;
 - (c) a statement of the obligation owed to the secured party, and the value of the accession if the accession were removed from the other goods;
 - (d) a statement of intention to remove the accession, unless the obligation secured by the security interest in the accession is discharged, or the value of the accession is paid, before the end of the period to which subsection (2) applies.
- (4) The notice may be given in the approved form.

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When notice is not required

- (5) The secured party is not required to give a notice to a person under subsection (1) if, after the default giving rise to the entitlement, the person gives written consent to the secured party to remove the accession without receiving a notice.
 - (6) The secured party is not required to give a notice to any person under subsection (1) if:
 - (a) the secured party believes on reasonable grounds that the accession will decline substantially in value if it is not disposed of immediately after the default; or
 - (b) the cost of expenses for the retention of the accession that are secured against the accession is disproportionately large in relation to its value.
- Note: In addition, a secured party is not required to give a notice in any of the circumstances set out in section 138 (when certain enforcement notices are not required).
- (7) A person is not entitled to a notice under subsection (1) in relation to an accession to goods only because the person has an interest in another accession to the same goods.

96 When person with an interest in the whole may retain accession

A person, other than the grantor, who has an interest in the whole of goods that under this Act has a lower priority than a security interest in an accession, may retain the accession if:

- (a) the obligation to the secured party with a security interest that has priority over all other security interests in the accession is performed; or
- (b) the secured party mentioned in paragraph (a) is paid the value of the accession at the time of payment, if the accession were to be removed from the goods.

97 Court order about removal of accession

A court may, on the application of a person entitled to receive a notice under section 95 (notice of removal of an accession), make an order:

- (a) postponing the removal of the accession; or
- (b) determining the amount payable to the secured party under section 96 for the retention of the accession.

Note: For which courts have jurisdiction, and for transfers between courts, see Part 6.2.

Part 3.4—Processed and commingled goods

98 Guide to this Part

This Part deals with security interests in goods if the goods are processed into a product, or commingled into a mass. However, this Part does not deal with accessions (for security interests in accessions, see Part 3.3).

A security interest in goods that are processed into a product remains attached to the product. A security interest in goods that are commingled into a mass remains attached to the grantor's share in the mass.

This Part sets out certain perfection, priority and enforcement rules that apply to security interests in processed and commingled goods.

The general rules in this Act cover matters in relation to those security interests that are not specifically dealt with in this Part.

99 Meaning of *processed* and *commingled* goods

- (1) Goods are *processed* if:
- (a) the goods are manufactured, processed or assembled into a product; and
 - (b) the identity of the goods is lost in the product.

Example 1: Resin, and woodchips, that are combined by a manufacturing process to become chipboard.

Example 2: Two automotive parts that are welded together to become part of a motor car engine.

- (2) Goods are *commingled* if:
- (a) the goods are mixed with other goods into a mass; and
 - (b) the identity of the goods is lost in the mass.

Example 1: Wheat that is mixed with other wheat.

Example 2: Oil of a particular type or grade that is mixed with other oil of the same type or grade.

- (3) Without limiting subsection (1) or (2), the identity of goods is lost in a product or mass if it is not commercially practical to restore the goods to their original state.

100 Processed and commingled goods—attachment

- (1) A security interest in goods that are processed into a product remains attached to the product.
- (2) A security interest in goods that are commingled into a mass remains attached to the grantor's share of the mass.
- (3) If the security interest in goods is a purchase money security interest, the security interest that remains attached to the product or mass under subsection (1) or (2) is still a purchase money security interest.

Note: A person might take an interest in the product or mass free of the security interest because of the operation of another provision of this Act (see Part 2.5).

101 Processed and commingled goods—perfection of security interest

For the purposes of this Act (other than Part 2.5):

- (a) the perfection of a security interest in goods that are processed into a product perfects the security interest attached to the product; and
- (b) the perfection of a security interest in goods that are commingled into a mass perfects the security interest attached to the grantor's share of the mass.

Note: Part 2.5 deals with taking personal property free of security interests.

Section 102

102 Processed goods—priority and enforcement of security interests

Priority

- (1) Two or more security interests in the same goods that have been processed into a product have the priority between each other that they would have had if the goods had not been processed into a product.

Note: For general rules about priority between security interests, see Part 2.6.

Maximum amount recoverable

- (2) The maximum amount recoverable on enforcement, against a product, of a security interest in goods, or 2 or more security interests in the same goods, that have been processed into the product is the market value of the goods at that time.

103 Commingled goods—priority and enforcement of security interests

Priority

- (1) Two or more security interests in the same goods that have been commingled into a mass have the priority between each other that they would have had if the goods had not been commingled into a mass.

Note: For general rules about priority between security interests, see Part 2.6.

Maximum amount recoverable

- (2) The maximum amount recoverable on enforcement, against a mass, of a security interest in goods, or 2 or more security interests in the same goods, that have been commingled into a mass is an amount that bears the same proportion to the value of the mass as the grantor's share of the mass bears to the mass as a whole.

Enforcement by seizure

- (3) A security interest in goods, or 2 or more security interests in the same goods, that have been commingled into a mass may be enforced only against an amount of the mass that bears no more than the same proportion to the mass as the grantor's share of the mass bears to the mass as a whole.

Chapter 4—Enforcement of security interests

Part 4.1—Guide to this Chapter

107 Guide to this Chapter

This Chapter deals with enforcement of security interests in personal property.

Some security interests are excluded entirely from this Chapter (for example, certain deemed security interests, National Credit Code security interests and certain security interests in personal property of a corporation). See Part 4.2 for these exclusions.

For most security interests covered by this Chapter, there are rules that apply to all enforcement actions and that cannot be contracted out of (whether or not enforcement is carried out under this Chapter). These rules are in:

- (a) Division 2 of Part 4.3 (general enforcement principles); and
- (b) provisions of this Chapter designated as “mandatory enforcement rules”.

The default position for most security interests is that the parties to the security agreement may otherwise contract out of the application of this Chapter.

Contracting out is not permitted if collateral is intended to be used predominantly for personal, domestic or household purposes.

This Chapter does not affect any rights and remedies that the parties to a security agreement have, apart from this Act, against each other.

There are special enforcement rules for certain types of collateral.

Part 4.2—Scope of this Chapter: excluded security interests

108 Guide to this Part

This Part sets out certain security interests to which this Chapter does not apply at all.

The following security interests are excluded from this Chapter entirely:

- (a) deemed security interests that do not secure payment or performance of an obligation;
- (b) security interests under the National Credit Code;
- (c) security interests in personal property of a corporation while the property is controlled by a receiver, or a receiver and manager;
- (d) some security interests taken by pawnbrokers.

Enforcement of all other security interests is subject to this Chapter.

109 Security interests to which this Chapter does not apply

Deemed security interests

- (1) This Chapter does not apply to security interests that are provided for by the following:
 - (a) a transfer of an account that does not secure payment or performance of an obligation;
 - (b) a PPS lease that does not secure payment or performance of an obligation;
 - (c) a commercial consignment that does not secure payment or performance of an obligation.

Section 109

National Credit Code securities

- (2) This Chapter does not apply to a security interest in personal property to which the National Credit Code applies.

Security interests in personal property subject to certain Corporations Act controllers

- (3) This Chapter does not apply to a security interest in personal property of a corporation while a person is a controller of the property in either of the following capacities:
- (a) receiver;
 - (b) receiver and manager.

Note 1: See Part 5.2 of the *Corporations Act 2001* for the powers, functions and duties of receivers, and other controllers, of the property of corporations.

Note 2: If a secured party becomes a controller of personal property by seeking to enforce its own security interest in the property, the secured party does not enforce that interest in the capacity of a receiver, or a receiver and manager.

- (4) Each of the following terms, in relation to property of a corporation, has the same meaning as in the *Corporations Act 2001*:
- (a) ***controller***;
 - (b) ***receiver***;
 - (c) ***receiver and manager***.

Pawnbroker securities

- (5) This Chapter does not apply to a security interest taken by a pawnbroker if all of the following are satisfied:
- (a) the pawnbroker holds a licence or is otherwise expressly authorised (for example, by registration) by a law of a State or Territory to carry on a pawnbroking business (however described in that law);

Section 109

- (b) the taking of the interest is authorised by that licence or authorisation, and is not in contravention of that law of the State or Territory;
- (c) the interest is taken in the ordinary course of the pawnbroker's business as a pawnbroker;
- (d) at the time the interest is taken, the market value of the payment or other obligation secured by the interest is less than or equal to:
 - (i) \$10,000; or
 - (ii) if a greater amount is prescribed by regulations made for the purposes of subsection 47(1)—that amount;
- (e) at the time the interest is taken, the pawnbroker believes, and it is actually the case, that the market value of the collateral is less than or equal to:
 - (i) \$10,000; or
 - (ii) if a greater amount is prescribed by regulations made for the purposes of paragraph 47(2)(c)—that amount;
- (f) the collateral is not of a kind that the regulations provide may, or must, be described by serial number in a registration.

Part 4.3—Enforcement of security interests

Division 1—Introduction

110 Guide to this Part

This Part sets out rules that apply to enforcement of security interests in personal property.

Division 2 sets out the general enforcement principles that apply to all enforcement actions and which cannot be excluded by contract.

Important rules in Division 2 include the following:

- (a) this Act does not derogate from rights that parties to a security agreement have against each other, apart from this Act;
- (b) a general standard of honesty and commercial reasonableness applies to enforcement actions;
- (c) contracting out of this Chapter is not permitted if collateral is predominantly intended for personal, domestic or household use;
- (d) the rights of third parties under this Chapter are not generally affected by contracting out by the parties to a security agreement;
- (e) a secured party with higher priority can take possession of seized collateral from another secured party;
- (f) a person who takes collateral on disposal by a secured party takes the collateral free of the interests of the grantor and that secured party;
- (g) property received from enforcement against collateral must be distributed in a specified order.

Division 3 contains rules about when and how a secured party may seize collateral.

Section 111

Division 4 deals with redemption of collateral, or the reinstatement of security agreements, before disposal or retention of the collateral.

Division 5 deals with the disposal of collateral by a secured party after seizure of the collateral. This Division contains a specific mandatory enforcement rule.

Division 6 deals with the retention of collateral by a secured party after seizure of the collateral. This Division also contains some specific mandatory enforcement rules.

Division 7 contains rules about miscellaneous matters in relation to enforcement of a security interest in collateral.

111 Meaning of *mandatory enforcement rule*

In this Act, each of the following provisions is a ***mandatory enforcement rule***:

- (a) a provision of Division 2 of this Part;
- (b) section 131 (obtaining market value when disposing of collateral);
- (c) section 133 (retaining collateral—objection);
- (d) section 134 (retaining collateral—proof of interest);
- (e) section 135 (retaining collateral—court order).

Division 2—General enforcement principles

112 Rights and remedies of parties to security agreements generally

This Act does not derogate in any way from the rights and remedies the following parties to a security agreement have, apart from this Act, against each other in relation to a default under the security agreement:

- (a) the debtor;
- (b) the grantor;
- (c) the secured party.

Example: A secured party may have rights, apart from this Act, against a grantor if the property received from enforcement of a security interest is insufficient to meet the secured obligation.

113 Rights and duties—honest and commercially reasonable exercise

- (1) All rights, duties and obligations that arise in the enforcement of a security interest must be exercised or discharged:
 - (a) honestly; and
 - (b) in a commercially reasonable manner.
- (2) A person does not act dishonestly merely because the person acts with knowledge of the interest of some other person.

114 Contracting out of enforcement under this Chapter

- (1) Subject to this section, the parties to a security agreement may, by express agreement in writing, contract out of the application of this Chapter, or a provision of it.
- (2) The parties may not contract out of a mandatory enforcement rule.

Note: See section 111 for the mandatory enforcement rules.
- (3) A provision of a security agreement or other instrument that contravenes subsection (2) is void to the extent that it purports to contract out of a mandatory enforcement rule.

No contracting out—collateral intended to be used predominantly for personal, domestic or household purposes

- (4) The parties to a security agreement that provides for a security interest in collateral that is intended, at the time of entry into the agreement, to be used predominantly for personal, domestic or household purposes may not contract out of the application of this Chapter, or any provision of it.

Contracting out—effect on third parties

- (5) If the parties to a security agreement contract out of a provision, the provision continues to the extent that it gives rights to, and imposes obligations in relation to, persons who are not parties to the security agreement.

Example: Parties to a security agreement contract out of the obligation of the secured party under section 139 to provide a statement of account to the grantor. Another secured party with a security interest in the collateral may nevertheless require the first-mentioned secured party to provide a statement of account if section 139 applies.

- (6) Despite subsection (5), if the parties to a security agreement contract out of section 126 (redeeming collateral), the provision does not give any person (whether or not the person is a party to the agreement) a right to redeem collateral under section 126.

Waiver of right to notices

- (7) A person (including a secured party, but not including the grantor) who is entitled to receive a notice from a secured party under one or more provisions in this Chapter may, by agreement with the secured party, waive the right to receive that notice.

115 Dealing with collateral under this Chapter

- (1) In exercising rights and remedies provided by this Chapter, a secured party may deal with collateral only to the same extent as the grantor would be entitled to so deal with the collateral.
- (2) However, subsection (1) does not apply:

Section 116

- (a) if the secured party had title to the collateral immediately before starting to exercise any right or remedy provided under this Chapter; or
- (b) to the extent that it would otherwise prevent the secured party from dealing with the collateral by way of transfer because a transfer by the grantor would be prohibited or declared to be a default under a security agreement.

Note: See section 79 (dealings prohibited by security agreements).

116 Effect of recovering judgment or issuing execution

The fact that a secured party has recovered judgment, or issued execution, against a grantor in relation to collateral does not extinguish the security interest in the collateral.

117 Cumulative rights and remedies under this Chapter

The rights and remedies provided by this Chapter are cumulative.

118 Seizure by higher priority parties—notice

Scope

- (1) This section applies if, at any time while collateral is seized by a secured party (the *enforcing party*) for the purposes of enforcement, another secured party (the *higher priority party*) has a security interest in the collateral that has a higher priority under this Act.

Notice requiring enforcing party to give possession of collateral to higher priority party

- (2) The higher priority party may give a written notice to the enforcing party, requiring the enforcing party to give the higher priority party possession of the seized collateral.

Note: If a person has a perfected security interest in the collateral that ranks higher than that of the enforcing party, and the person does not give a notice under this section, the person retains a security interest in the collateral.

- (3) The higher priority party may give a notice to the enforcing party under subsection (2) only if both of the following are satisfied:
- (a) the higher priority party would be entitled to seize the collateral (in the higher priority party's own right), had the enforcing party not first seized the collateral;
 - (b) the higher priority party has not waived its right to give a notice under subsection (2) by agreement with the enforcing party.
- (4) An enforcing party who is given a notice under subsection (2) must comply with the notice before the end of:
- (a) the period of 5 business days after the day the notice is received; or
 - (b) such longer period as is reasonable in the circumstances.

Note: The period specified in this subsection may also be extended by a court under section 293.

- (5) A higher priority party who is given possession of collateral other than goods under this section is taken to have complied with the requirements of subsection 122(1) (about seizing collateral other than goods) in relation to the seizure of the collateral.

Payment of enforcing party's expenses

- (6) A higher priority party who is given possession of collateral under this section must, subject to subsections (7) and (8), pay the enforcing party the amount of any reasonable expenses paid or incurred by the enforcing party, in relation to the enforcement of the security interest in the collateral.
- (7) A higher priority party must pay an amount of expenses under subsection (6) only to the extent that, before the higher priority party disposes of the collateral and any proceeds of the collateral sufficient to meet the expenses, the enforcing party gives the higher priority party evidence showing that the enforcing party incurred the amount.
- (8) The amount payable under subsection (6) is the lesser of the following amounts:

Section 119

- (a) the amount mentioned in that subsection;
 - (b) the amount of any proceeds from the higher priority party's disposal of the collateral.
- (9) A higher priority party must pay an amount of expenses under subsection (6) before the end of 20 business days after the day the higher priority party disposes of the collateral.
- Note: The period specified in this subsection may be extended by a court under section 293.
- (10) The amount under subsection (6) is a debt due to the enforcing party.
- (11) The enforcing party may apply to a court to recover the amount of the debt, and the court may grant the application.
- Note: For which courts have jurisdiction, and for transfers between courts, see Part 6.2.
- (12) Two secured parties may contract out of the right of one of the secured parties to receive an amount under this section.

119 Disposing of collateral free of interests

- (1) If a secured party exercises its right to dispose of collateral (whether under section 128 or otherwise), a person who takes the collateral as a result of the disposal does so free of all of the following interests in the collateral:
- (a) the interest of the grantor;
 - (b) the security interest of the secured party who disposed of the collateral;
 - (c) all security interests in the collateral that have a lower priority than the security interest of that secured party.
- Note: If a person has a perfected security interest in the collateral that ranks higher than that of the secured party, the person retains a security interest in the collateral.
- (2) Subsection (1) applies in relation to a disposal of collateral (other than a disposal by a secured party purchasing the collateral) even if the requirements of this Chapter have not been complied with.

120 Distribution of property received from enforcement

Scope

- (1) This section applies if any property is received by or on behalf of a secured party as a result of enforcing a security interest in collateral.
- (2) This section does not prevent the operation of another law of the Commonwealth, or a law of a State or Territory, to the extent that the law requires the property to be applied towards one or more obligations to persons that do not hold security interests (or any other interests) in the collateral before being applied towards any (or all) of the obligations mentioned in subsection (3).

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

Order of application

- (3) The property must be applied in the following order:
 - (a) obligations to persons holding interests (other than security interests) in the collateral that have a higher priority (whether under this Act or otherwise) than the interest of the secured party;

Note: The higher priority interests mentioned in this paragraph might be interests excluded by section 12A from the definition of *security interest*.
 - (b) reasonable expenses incurred in relation to the enforcement of security interests against the collateral, to the extent that the expenses are secured by the security interests;

Note: Reasonable expenses in relation to the enforcement of a security interest are taken to be secured by the security interest unless the parties agree otherwise (see section 137).
 - (c) obligations to persons holding security interests in the collateral that have a higher priority (whether under this Act or otherwise) than the interest of the secured party;

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- (d) obligations to the secured party that are secured by the security interest in the collateral;
 - (e) obligations to persons holding interests or security interests in the collateral that have a lower priority (whether under this Act or otherwise) than the interest of the secured party;
 - (f) to the grantor.
- (4) The property must be applied towards interests mentioned in paragraph (3)(a), (c) or (e) in the order of their priority (whether under this Act or otherwise).
- (5) This section applies in relation to a security interest in collateral even if a person takes the collateral free of the security interest under section 119.
- (6) The application of property in accordance with subsection (3) discharges an obligation secured by an interest in the collateral to the extent of the property applied.
- (7) To avoid doubt, any amount paid by the higher priority party to an enforcing party in accordance with section 118 is, for the purposes of this section, an expense incurred by the higher priority party in relation to the enforcement of the security interest in the collateral.
- (8) A secured party is not liable to an action, suit or proceeding in relation to an application of property in accordance with this section if:
- (a) the secured party applied the property honestly; and
 - (b) the secured party applied the property in a commercially reasonable manner.

Division 3—Seizing collateral

121 Seizing collateral—general rules

A secured party may seize collateral, by any method permitted by law, if there is a default under the security agreement.

Note: A secured party who takes possession of collateral as a result of seizure does not perfect the security interest in the collateral: see paragraph 21(2)(b).

122 Seizing collateral—property other than goods

- (1) For the purposes of this Act, unless subsection (2) applies, a secured party may seize collateral other than goods under section 121 only by giving a notice, stating that the giving of the notice constitutes seizure of the collateral, to the following persons:
 - (a) the grantor;
 - (b) if the property is a licence:
 - (i) the licensor; or
 - (ii) the licensor's successor.
- (2) Collateral other than goods may be seized by another method, if so agreed between:
 - (a) the parties to the security agreement; or
 - (b) if the property is a licence—the parties to the security agreement together with the licensor or the licensor's successor.

123 Seizing collateral—perfection by possession or control

- (1) On default under a security agreement, a secured party whose security interest in the collateral is perfected by possession or control may seize the collateral under section 121 by giving a notice to the grantor.
- (2) To avoid doubt, this section applies whether the secured party has perfected the security interest only by possession or control, or by another method as well.

Section 124

124 Seizing collateral—obligation to dispose or retain

- (1) A secured party who seizes collateral under section 121 must:
 - (a) dispose of the collateral in accordance with Division 5; or
 - (b) take action to retain the collateral in accordance with Division 6.
- (2) Before disposing of or taking action to retain the collateral, the secured party is, subject to the security agreement that covers the collateral, entitled to a reasonable period in which:
 - (a) to secure, store and value the collateral; and
 - (b) to determine how to deal with the collateral.
- (3) The secured party may delay disposing of, or taking action to retain, the whole or part of the collateral beyond the reasonable period mentioned in subsection (2). However, the delay must:
 - (a) if the security agreement providing for the security interest allows for the delay—be in accordance with the security agreement; or
 - (b) otherwise—be reasonable in the circumstances.

125 Seizing collateral—taking apparent possession

- (1) A secured party may seize collateral under section 121 by taking apparent possession of the collateral if:
 - (a) the collateral cannot be readily moved from a grantor's premises; or
 - (b) adequate storage facilities are not readily available for the collateral.

Note: A secured party who takes apparent possession of collateral under this subsection does not perfect the security interest in the collateral: see paragraph 21(2)(b).

- (2) A secured party who takes apparent possession of collateral may dispose of the collateral under section 128 on the grantor's premises. However, the secured party must not cause the grantor any greater cost or inconvenience than is necessarily incidental to the disposal.

Division 4—Redeeming collateral and reinstating security agreement

126 Redeeming collateral

- (1) This section applies, in relation to a secured party enforcing a security interest in collateral, before any of the following has occurred:
 - (a) the secured party has disposed of the collateral, whether under section 128 or otherwise;
 - (b) the secured party has entered into a contract to dispose of the collateral, whether under section 128 or otherwise;
 - (c) the secured party has become entitled to retain the collateral, whether under section 136 or otherwise.
- (2) While this section applies, any other person with a security interest in the collateral, or the grantor, may redeem the collateral:
 - (a) by paying the amounts required to discharge the obligations, or by performing the obligations, secured by security interests in the collateral; and
 - (b) by paying the amount of any expenses in relation to the enforcement of the security interest, the payment of which is secured by the security interest.

Note: Reasonable expenses in relation to the enforcement of a security interest are taken to be secured by the security interest unless the parties agree otherwise (see section 137).
- (3) However, a person must not redeem collateral under subsection (2) if the person agrees in writing after the default not to do so.
- (4) The grantor's right to redeem the collateral has priority over any other person's right to redeem the collateral.

127 Reinstating security agreement

- (1) This section applies, in relation to a secured party enforcing a security interest in collateral, before any of the following has occurred:
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Chapter 4 Enforcement of security interests

Part 4.3 Enforcement of security interests

Division 4 Redeeming collateral and reinstating security agreement

Section 127

- (a) the secured party has disposed of the collateral, whether under section 128 or otherwise;
 - (b) the secured party has entered into a contract to dispose of the collateral, whether under section 128 or otherwise;
 - (c) the secured party has become entitled to retain the collateral, whether under section 136 or otherwise.
- (2) While this section applies, the grantor may reinstate the security agreement by:
- (a) paying the following amounts:
 - (i) amounts in arrears (disregarding amounts in arrears as a result of an acceleration clause in the security agreement);
 - (ii) the amount of any expenses, in relation to the enforcement of the security interest, the payment of which is secured by the security interest; and
 - (b) remedying any other default as a result of which the secured party proposes to dispose of, or retain, the collateral.
- Note: For subparagraph (a)(ii), reasonable expenses in relation to the enforcement of a security interest are taken to be secured by the security interest unless the parties agree otherwise (see section 137).
- (3) A security agreement may be reinstated only once during the period in which the security agreement is in force.

Division 5—Disposing of collateral (including by purchasing collateral)

128 Disposing of collateral—general rule

A secured party may dispose of collateral if the secured party has seized the collateral in the exercise of a right to seize the collateral on default under the security agreement (whether under section 121 or otherwise).

Note 1: A secured party who proposes to dispose of collateral must give notice of the disposal (see section 129).

Note 2: A secured party may dispose of collateral by purchasing the collateral (see section 130).

Note 3: The person who takes the collateral as a result of the disposal does so free of certain security interests (see section 119).

129 Disposing of collateral—notice

- (1) Unless subsection (5) of this section or section 138 applies, a secured party who proposes to dispose of collateral (whether under section 128 or otherwise) must give a notice, in accordance with this section, to:
 - (a) unless the grantor has, in writing, waived the right to receive a notice under this section—the grantor; and
 - (b) unless another secured party with a security interest in the collateral that has a higher priority has, under subsection 114(7), waived the right to receive a notice under this section—that secured party.
- (2) A notice must:
 - (a) contain the name of the secured party giving the notice; and
 - (b) contain a description of the collateral; and
 - (c) state that the secured party proposes to dispose of the collateral, unless an obligation is performed, or an amount is paid, to satisfy the obligation secured by the security interest in the collateral, on or before the day specified in accordance with subsection (3); and

Section 129

- (d) if the notice states that an amount is to be paid to satisfy the obligation secured by the security interest—specify:
 - (i) the amount to be paid; or
 - (ii) if the amount cannot be specified—the method by which the amount to be paid will be calculated; and
- (e) state that the notice is given for the purposes of this section; and
- (f) contain any other matter required by the regulations for the purposes of this subsection.

Note: The period specified in paragraph (c) may be extended by a court under section 293.

- (3) For the purposes of paragraph (2)(c), the day specified in a notice given to a person:
 - (a) must be at least 10 business days after the day the notice is given; or
 - (b) if the person has given a written notice to the secured party specifying a shorter period to apply for the purposes of this section—before the end of that period.
- (4) The notice may be given in the approved form.

When notice is not required

- (5) The secured party is not required to give a notice to any person under subsection (1) if:
 - (a) the secured party believes on reasonable grounds that the secured party was induced to enter into the relevant security agreement by fraud on the part of the debtor or the grantor; or
 - (b) the secured party believes on reasonable grounds that there would be a material decline in the value of the collateral if it were disposed of after the end of the period that would apply if notice were given; or
 - (c) the secured party believes on reasonable grounds that the expense of preserving the collateral is disproportionately large in relation to its value; or
 - (d) the collateral is foreign currency.

130 Disposing of collateral—methods of disposal

Methods of disposal

- (1) A secured party may dispose of collateral under section 128:
 - (a) by private or public sale (including auction or closed tender);
or
 - (b) by lease, if the security agreement so provides; or
 - (c) if the collateral is intellectual property—by licence.

Leases or licences

- (2) For the purposes of this Act, if collateral is disposed of by lease or licence, the disposal occurs at the time the lease or licence is entered into.
- (3) The power to dispose of collateral by a lease or licence must be exercised in accordance with the terms and conditions of the security agreement.

Purchase of collateral by secured party

- (4) A secured party may purchase collateral only if the disposal of the collateral is by public sale (including auction or closed tender).

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

Whole or part disposal

- (5) A secured party may, under section 128, dispose of the whole or part of the collateral.

Note: The secured party must apply any property received from a disposal (whether under this Division or otherwise) in accordance with section 120.

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Power to transfer title

- (6) A secured party entitled to dispose of collateral under section 128 may take any steps necessary to reflect a transfer of title resulting from the disposal.

131 Disposing of collateral—requirement to obtain market value

- (1) A secured party who disposes of collateral (whether under section 128 or otherwise) owes a duty, to any other person with a security interest in the collateral immediately before the disposal, and to the grantor, to exercise all reasonable care:
- (a) if the collateral has a market value at the time of disposal—to obtain at least that market value; or
 - (b) otherwise—to obtain the best price that is reasonably obtainable at the time of disposal, having regard to the circumstances existing at that time.

Note: The obligation under this section is a mandatory enforcement rule (see section 111).

- (2) Subsection (1) does not apply to a secured party in relation to collateral while the secured party is a controller of the collateral.

Note: This is because section 420A of the *Corporations Act 2001* requires a controller exercising a power of sale to obtain market value for the property sold.

Division 6—Retaining collateral

132 Retaining collateral—notice

Giving notice of proposed retention

- (1) A secured party who proposes to retain collateral after default under a security agreement must, unless section 138 applies, give a notice of the proposal, in accordance with this section, to:
 - (a) the grantor; and
 - (b) any other secured party that has a security interest in the collateral perfected by registration or possession.
- (2) The secured party must give the notice to a person:
 - (a) at least 10 business days before the day the first steps are taken to retain the collateral; or
 - (b) if the person has given a written notice to the secured party specifying a shorter period to apply for the purposes of this section—before the end of that period.

Note: The period specified in paragraph (a) may be extended by a court under section 293.

- (3) The notice must:
 - (a) contain the name of the secured party giving the notice; and
 - (b) contain a description of the collateral; and
 - (c) state that the secured party proposes to retain the collateral, unless an amount is paid, or another obligation is performed, as mentioned in paragraph (d), on or before a specified day (being a day that is at least 10 business days after the day the notice is given); and
 - (d) state:
 - (i) the amount to be paid or, if the amount cannot be specified, the method by which the amount to be paid will be calculated; or
 - (ii) otherwise—the obligation to be performed; and
 - (e) contain details of rights of objection under section 133; and

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- (f) contain the address to which a notice of objection may be given under section 133; and
 - (g) contain any other matter required by the regulations for the purposes of this subsection.
- (4) The notice must be given in the approved form.

133 Retaining collateral—objection

- (1) This section applies if a secured party gives a notice under section 132 to a person mentioned in that section.

Note: This section is a mandatory enforcement rule (see section 111).

- (2) Before the end of the day specified in accordance with paragraph 132(3)(c), the person may give the secured party a notice (the *notice of objection*) objecting to the retention.

Note: The secured party may request the person to provide proof of the person's interest under section 134.

- (3) The secured party may not retain the collateral if the secured party is given a notice of objection in accordance with subsection (2), unless:
- (a) the person giving the notice of objection is requested under section 134 to provide proof of a matter and fails to do so within the period mentioned in that section; or
 - (b) a court makes an order that the objection is ineffective (see section 135).

134 Retaining collateral—proof of interest

A secured party who, in accordance with subsection 133(2), is given a notice of objection by a person may request the person, before the end of 10 business days after the day the request is made, to provide proof:

- (a) if the person is not the grantor—of the person's interest in the collateral; or
- (b) in any case—that the person would be adversely affected by the secured party retaining the collateral.

Note 1: This section is a mandatory enforcement rule (see section 111).

Note 2: The period specified in this section may be extended by a court under section 293.

135 Retaining collateral—court order

- (1) A secured party who, in accordance with subsection 133(2), is given a notice of objection by a person may apply to a court for an order that the objection is ineffective.
- (2) The court may make the order if it is satisfied that:
 - (a) the person gave the notice for a purpose other than protecting a security interest in the collateral or any amount likely to be received from enforcement against the collateral; or
 - (b) the market value of the collateral is less than the total amount of any payments owed to the secured party and any reasonable expenses that would be involved in enforcement against the collateral.

Note: This section is a mandatory enforcement rule (see section 111).

136 Retaining collateral free of interests

When secured party may retain collateral

- (1) A secured party may retain collateral if the secured party has seized the collateral in the exercise of a right to seize the collateral on default under the security agreement (whether under section 121 or otherwise).
- (2) However, the secured party may retain the collateral only if:
 - (a) the secured party gives one or more notices in accordance with section 132 to retain the collateral; and
 - (b) either:
 - (i) no notice of objection is given to the secured party in accordance with subsection 133(2); or
 - (ii) if a notice of objection is given to the secured party under that subsection—paragraph 133(3)(a) or (b) applies in relation to the notice; and

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- (c) the payment or other obligation mentioned in the notice given under section 132 is not made or performed on or before the day specified in the notice.
- (3) A secured party entitled to retain collateral may, if the secured party does not hold title to the collateral, take any steps necessary to reflect the transfer of title resulting from the retention.

Collateral retained free of interests

- (4) A secured party who retains collateral takes the collateral free of all of the following interests in the collateral:
 - (a) the interest of the grantor;
 - (b) the security interest of the secured party who retains the collateral;
 - (c) all security interests that have a lower priority than the security interest of that secured party.

Protection of those who acquire retained collateral

- (5) A person takes collateral free of the interests referred to in subsection (4) if:
 - (a) a secured party is required to give one or more notices in relation to the collateral in accordance with section 132; and
 - (b) the secured party has not done so; and
 - (c) the person acquires the collateral from the secured party for new value; and
 - (d) the person has no knowledge that the requirements of section 132 have not been complied with.
- (6) Subsection (5) applies in relation to a security interest referred to in paragraph (4)(c) whether or not a registration with respect to the security interest is effective.

Extinguishment of obligation owed to the secured party

- (7) If a secured party (the **retaining secured party**) takes collateral under this section free of the interests referred to in subsection (4):

- (a) the debt or other obligation secured by the security interest held by the retaining secured party is extinguished; but
- (b) paragraph (4)(c) does not have the effect that a debt or other obligation secured by another security interest in the collateral is extinguished, if the other security interest has a lower priority than the security interest of the retaining secured party.

Division 7—Miscellaneous enforcement matters

137 Security for enforcement expenses

A security interest is taken to secure reasonable expenses in relation to the enforcement of the security interest, unless the parties agree otherwise.

138 When certain enforcement notices are not required

A secured party is not required to give a notice to a person under section 129, 132, 139, 142, 144B or 144K if:

- (a) after having made reasonable attempts, the secured party has failed to locate the person; or
- (b) for the grantor—after a default under the security agreement, the grantor waives in writing the grantor’s right to receive the notice; or
- (c) for another person (including another secured party but not including the grantor)—the person (at any time) waives in writing the person’s right to receive the notice; or
- (d) for another secured party:
 - (i) the security interest of the other secured party is not perfected by registration or possession; and
 - (ii) the secured party who would otherwise be required to give a notice has no knowledge of the other secured party’s security interest; or
- (e) in any case—on an ex parte application in relation to the person, a court is satisfied that a notice is not required for any other reason.

Note: For which courts have jurisdiction, and for transfers between courts, see Part 6.2.

139 Enforcement against collateral—statement of account

Statement of account—enforcement complete

- (1) Unless section 138 applies, a secured party must, on request by any other person with a security interest in the collateral, or the grantor, give the person (or grantor) a written statement of account, if the first-mentioned secured party has completed its enforcement against the whole of the collateral (whether under this Chapter or otherwise).
- (2) A statement of account under subsection (1) must be given to a person before the end of:
 - (a) the period of 20 business days after the day the person requests the statement; or
 - (b) such longer period as is reasonable in the circumstances.

Note: The period specified in this subsection may also be extended by a court under section 293.

- (3) A statement of account under subsection (1) must show:
 - (a) in the case of a disposal by lease or licence:
 - (i) the total amount expected to be received by the secured party under the terms of the lease or licence; or
 - (ii) if the total amount cannot be specified—the method by which the amount expected to be received will be calculated; and
 - (b) in any other case—the total amount received or to be received from the enforcement against the collateral during the period:
 - (i) starting when the secured party seized the collateral; and
 - (ii) ending at the time the secured party completes its enforcement against the collateral; and
 - (c) in any case—the amount of expenses relating to the enforcement; and
 - (d) any amounts paid to other secured parties; and
 - (e) the balance owing by the secured party to the grantor, or by the debtor to the secured party, as the case may be.

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Statement of account—enforcement incomplete

- (4) A secured party who has not completed its enforcement against the whole of the collateral before the end of the 6 month period starting on the day after the collateral is seized must, in accordance with subsections (5) and (6), give a written statement of account for each period of 6 months after seizing the collateral, until the enforcement against the whole of the collateral is completed.
- (5) The statement of account for a 6 month period must be given to any other person with a security interest in the collateral, or the grantor, if the other person (or the grantor) requests the statement for that period.
- (6) A statement of account under subsection (4) must be given to a person before the end of:
- (a) the period of 20 business days after the day the person requests the statement; or
 - (b) such longer period as is reasonable in the circumstances.
- Note: The period specified in this subsection may also be extended by a court under section 293.
- (7) A statement of account under subsection (4) must:
- (a) state that the secured party has not completed its enforcement against the whole of the collateral; and
 - (b) show the total amount received from the enforcement during the period:
 - (i) starting when the secured party seized the collateral; and
 - (ii) ending at the time the statement is given; and
 - (c) show the amount of expenses relating to the enforcement for that period.

Part 4.4—Special enforcement rules for certain types of collateral

Division 1—Introduction

140 Guide to this Part

This Part sets out special enforcement rules for certain types of collateral.

Division 2 contains rules about the enforcement of a security interest if the same obligation is secured by the security interest and an interest in land.

Division 3 contains rules about the enforcement of security interests in market-traded collateral.

Division 4 contains rules about the enforcement of security interests in accounts and negotiable instruments.

Division 5 contains rules about the enforcement of security interests in crops and livestock.

Division 6 contains rules about the enforcement of security interests in accessions.

Division 2—Security interests and land law

141 Obligations secured by interests in personal property and land

Scope

- (1) This section applies if:
 - (a) the same obligation is secured by:
 - (i) a security interest in personal property; and
 - (ii) an interest in land; and
 - (b) either:
 - (i) the secured party's security interest in the personal property has the highest priority; or
 - (ii) every other secured party with a security interest in the personal property that has a higher priority has agreed in writing to the secured party's making a decision under this section.

Note: The interest in land might be a kind of interest excluded from the definition of *security interest* by section 12A, or from the definition of *personal property* by section 13B.

Decision by secured party

- (2) The secured party may:
 - (a) make a decision to enforce the security interest in the personal property under this Chapter; or
 - (b) make a decision to enforce the security interest in the personal property in the same way as the interest in the land may be enforced under the land law.
- (3) In making a decision under subsection (2), the secured party must act reasonably and only take into account the following matters:
 - (a) the respective values of the personal property and the land;
 - (b) whether there is any connection between, and the nature of any connection between, the personal property and the land;
 - (c) whether the land and the personal property are both located in the same State or Territory;

- (d) such other matters as are relevant to the efficient enforcement of the security interest and the interest in the land.

Decision to enforce the security interest under this Chapter

- (4) Enforcing the security interest in the personal property under this Chapter, in accordance with a decision under paragraph (2)(a), does not limit the secured party's rights, remedies and duties with respect to the land.

Meaning of land law

- (5) In this Act:

land law, in relation to an obligation mentioned in paragraph (1)(a), means those provisions of a law of a State or Territory, or of the general law, that relate to the enforcement of the interest in land that secures the obligation.

142 Enforcing security interests in accordance with land law decisions

Scope

- (1) This section applies if:
- (a) a secured party makes a decision (under paragraph 141(2)(b)) to enforce the security interest in the personal property in the same way as the interest in the land may be enforced under the land law; and
 - (b) unless section 138 applies, the secured party gives a notice in accordance with subsection (2) to the following persons:
 - (i) the grantor;
 - (ii) a secured party with a security interest in the personal property that is perfected immediately before the decision under paragraph 141(2)(b) is made;
 - (iii) any person who, by the time the secured party gives the notice, has notified the secured party in writing that the person claims an interest in the personal property.

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- (2) A notice is given in accordance with this subsection if:
- (a) the notice is in the approved form; or
 - (b) the notice:
 - (i) contains a description of the personal property to which the notice relates; and
 - (ii) sets out the effect of this section.

How security interest is to be enforced

- (3) The secured party may enforce the security interest in the same way, with any necessary modification, as the interest in the land may be enforced under the land law.
- (4) Subject to this section, and with any necessary modification, law in the same terms as that of the land law applies under this Act for the purposes of the enforcement of the security interest.

Example: The secured party has the same rights, remedies and duties in relation to the enforcement of the security interest in the personal property as the secured party has in relation to the enforcement of the interest in the land.

Note: The effect of this subsection is not to adopt the land law as such, but to apply law to the same effect as the land law (with any necessary modification, and subject to this section).

- (5) The regulations may modify the law that applies by virtue of subsection (4) in order to facilitate its application to the enforcement of security interests in the personal property.

Note: For *modification*, see section 10.

Application of Chapter

- (6) The only provisions of this Chapter that apply to the enforcement of the security interest in the personal property are the following:
- (a) section 120 (distribution of property received from enforcement);
 - (b) section 138 (when certain enforcement notices are not required);
 - (b) section 141 and this section.

- (7) In addition:
- (a) the decision of the secured party (the *first secured party*) under paragraph 141(2)(b) does not limit the rights of any other secured party (the *other secured party*) who has a security interest in the personal property (whether granted before or after the first secured party's security interest); and
 - (b) the other secured party has standing in proceedings taken by (or on behalf of) the first secured party in enforcing the first secured party's security interest under this section; and
 - (c) the other secured party may apply to a court for the conduct of a judicially supervised sale for the purposes of enforcing the first secured party's security interest under this section; and
 - (d) the court may grant the application.

Note: For which courts have jurisdiction, and for transfers between courts, see Part 6.2.

Exercise of powers etc. under applied law

- (8) The Minister may make an agreement with the appropriate Minister of a State or Territory in relation to the exercise or performance of a power, duty or function (not being a power, duty or function involving the exercise of judicial power) by an authority of the State or Territory for the purposes of the law that applies by virtue of subsection (4).
- (9) If such an agreement is in force, the power, duty or function may or must be exercised or performed accordingly.
- (10) The Minister may make an agreement with the appropriate Minister of a State or Territory for the variation or revocation of an agreement made under this section in relation to the State or Territory.
- (11) If an agreement under subsection (8) or (10) is made in writing, the agreement is not a legislative instrument.

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This section does not affect land laws

- (12) To avoid doubt, nothing in this section is intended to modify a land law, or to affect its operation.

Division 3—Market-traded collateral

143 Enforcement of security interests in market-traded collateral

- (1) Subject to subsection (2), this Chapter does not apply to the enforcement of a security interest in an investment instrument or an intermediated security issued by a body corporate or other person that is listed (within the meaning of the *Corporations Act 2001*).
- (2) The following provisions of this Chapter apply to the enforcement of such a security interest:
 - (a) section 112 (which deals with the rights and remedies of parties to security agreements generally), to the extent that it relates to section 113, 116 or 120;
 - (b) section 113 (which requires rights and duties to be exercised honestly and in a commercially reasonable manner);
 - (c) subsection 114(2) (which is about mandatory enforcement rules), to the extent that it relates to section 113, 116 or 120;
 - (d) section 116 (which deals with the effect of recovering judgment or issuing execution);
 - (e) section 120 (distribution of property received from enforcement of a security interest).

Division 4—Enforcement of security interests in accounts and negotiable instruments

144 Enforcement of security interests in accounts

- (1) This section applies if:
- (a) an obligation is secured by a security interest in an account; and
 - (b) a person (the *account debtor*) owes an amount to the grantor on the account; and
 - (c) there is a default under the security agreement.

Note 1: If there are 2 or more account debtors, this section applies to each debtor separately in relation to the amount owing by that debtor.

Note 2: A secured party may be prevented from taking action under this section by a higher priority party (see section 144B).

- (2) The secured party may enforce the security interest by doing either or both of the following:
- (a) giving the account debtor a written notice under subsection 81B(3) to pay the amount (or any remaining amount owing) to the secured party;
 - (b) seizing any proceeds of the account to which the secured party is entitled under section 32.

Note: The secured party is entitled to receive payments from the account debtor in discharge of the debt from 10 business days (or an extended period under section 293) after a notice is given to the account debtor under subsection 81B(3).

144A Enforcement of security interests in negotiable instruments

- (1) This section applies if:
- (a) an obligation is secured by a security interest in a negotiable instrument; and
 - (b) a person (the *negotiable instrument issuer*) owes an amount on the negotiable instrument; and
 - (c) there is a default under the security agreement.

Section 144A

Note 1: If there are 2 or more negotiable instrument issuers, this section applies to each issuer separately in relation to the amount owing by that issuer.

Note 2: A secured party may be prevented from taking action under this section by a higher priority party (see section 144B).

(2) The secured party may enforce the security interest by doing either or both of the following:

- (a) giving the negotiable instrument issuer a written notice to pay the amount (or any remaining amount owing) to the secured party;
- (b) seizing any proceeds of the negotiable instrument to which the secured party is entitled under section 32.

(3) A notice under paragraph (2)(a) must:

- (a) identify the negotiable instrument; and
- (b) include proof of the basis on which the secured party is entitled to require the negotiable instrument issuer to make payment under the negotiable instrument to the secured party; and
- (c) state that the amount must be paid to the secured party before the later of:
 - (i) the end of 10 business days after the day the notice is received; or
 - (ii) the end of the day the amount becomes due and payable.

Note: The period specified in subparagraph (3)(c)(i) may be extended by a court order under section 293.

(4) If the secured party gives a notice to the negotiable instrument issuer under paragraph (2)(a), the secured party must give a copy of the notice to the grantor:

- (a) before the end of 5 business days after the day the notice under that paragraph is given; or
- (b) if the grantor has given a written notice to the secured party specifying a shorter period to apply for the purposes of this subsection—before the end of that period.

Note: The period specified in paragraph (4)(a) may be extended by a court under section 293.

Section 144B

- (5) The following payments discharge the obligation of the negotiable instrument issuer to the extent of the payment:
- (a) a payment made to the grantor before the end of the period for payment stated in a notice under paragraph (2)(a);
 - (b) a payment made to the secured party in accordance with a notice under that paragraph before the end of the period for payment stated in the notice.

**144B Enforcement against accounts and negotiable instruments—
notice to higher priority parties**

- (1) Unless section 138 applies, a secured party (the *enforcing party*) who proposes to take action under subsection 144(2) or 144A(2) in relation to a security interest in collateral that is an account or a negotiable instrument must give a written notice to any other secured party (a *higher priority party*) with a security interest in the collateral that has a higher priority.
- (2) The notice must:
- (a) contain the name of the secured party giving the notice; and
 - (b) contain a description of the collateral; and
 - (c) state that the enforcing party proposes to take action under subsection 144(2) or 144A(2), and describe the proposed action; and
 - (d) state the address to which a notice may be given under subsection (3) of this section; and
 - (e) be given to each higher priority party:
 - (i) at least 10 business days before the earliest day the action is to be taken; or
 - (ii) if a higher priority party has given a written notice to the enforcing party specifying a shorter period to apply for the purposes of this subsection—before the end of that period.

Note: The period specified in subparagraph (2)(e)(i) may be extended by a court under section 293.

- (3) A higher priority party who is given a notice under subsection (1) may, before the enforcing party takes any action under subsection 144(2) or 144A(2), give a written notice to the enforcing party informing the enforcing party of the higher priority party's proposal to take action under the applicable subsection. If the higher priority party gives such a notice, the enforcing party is not entitled to take action under that subsection.

Division 5—Seizure and disposal or retention of crops and livestock

144C Meaning of *take* and *water source*

In this Act:

take fish includes:

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

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

water source means:

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

144D Seizure and disposal or retention of crops

- (1) Without limiting section 121 (seizing collateral—general rules), for the purposes of seizing collateral under that section that is crops, or the proceeds of crops, the secured party may:
 - (a) take possession of the crops or the proceeds; or
 - (b) cut, gather or harvest the crops or the proceeds.
- (2) The secured party may dispose of, or retain, collateral that is crops, or the proceeds of crops, after they have been taken, cut, gathered or harvested, subject otherwise to Part 4.3 (enforcement of security interests).
- (3) For the purposes of exercising a power under subsection (1) or (2), or a related power under Part 4.3 (enforcement of security interests), the secured party may enter the land on which, or the water source in which, the crops are, or were, growing.

- (4) However, the secured party may exercise the power to enter land or a water source under subsection (3) for a purpose mentioned in subsection (1) or (2) only to the same extent as the grantor would be entitled to enter the land or water source for the same purpose.

144E Seizure and disposal or retention of livestock

- (1) Without limiting section 121 (seizing collateral—general rules), for the purposes of seizing collateral under that section that is livestock, or the proceeds of livestock, the secured party may:
- (a) take possession of the livestock or proceeds wherever it is located; or
 - (b) slaughter the livestock wherever it is located; or
 - (c) take livestock that is fish; or
 - (d) extract products from livestock (for example, by shearing sheep to extract wool).
- Note: A security interest may attach to a livestock product (for example, the wool of a sheep) as original collateral as mentioned in subsection 84A(2), or as proceeds.
- (2) The secured party may dispose of, or retain, collateral that is livestock, or the proceeds of livestock, after it has been taken, slaughtered or extracted, subject otherwise to Part 4.3 (enforcement of security interests).
- (3) For the purposes of exercising a power under subsection (1) or (2), or a related power under Part 4.3 (enforcement of security interests), the secured party may enter the land on which, or the water source in which, the livestock or proceeds is located.

Division 6—Accessions

144F Right to remove accession

Subject to this Division, a secured party is entitled to remove collateral that is an accession in order to exercise an entitlement to seize the collateral under section 121.

144G Damaging goods when removing accession

The secured party must remove the accession from the whole in a manner that causes no greater damage to the other goods, or that puts the person in possession of the whole to no greater inconvenience, than is necessarily incidental to the removal of the accession.

144H Reimbursement for damage caused in removing accessions

- (1) A person, other than the grantor, who has an interest in the whole at the time the goods become an accession is entitled to reimbursement for any damage to that person's interest in the other goods caused by the removal of the accession.
- (2) Any reimbursement payable under subsection (1) does not include reimbursement for a reduction in the value of the property caused by the absence of the accession or by the necessity of the replacement of the accession.

144J Refusal of permission to remove accession

A person entitled to reimbursement under section 144H may refuse permission to remove the accession until the secured party has given adequate security for the reimbursement.

144K Notice of removal of accession

Notice required to be given by secured party

- (1) The secured party must give notice of the secured party's intention to remove the accession to each of the following persons in accordance with subsections (2) and (3):
 - (a) the grantor;
 - (b) a secured party with a security interest in the accession that has a higher priority.
- (2) Unless section 138 applies or subsection (5) or (6) of this section apply, the secured party must give a notice to a person:
 - (a) at least 10 business days before the day the accession is removed; or
 - (b) if the person has given a written notice to the secured party specifying a lesser number of days to apply for the purposes of this section—at least that number of days before the accession is removed.
- (3) The notice must contain the following:
 - (a) the name of the secured party giving the notice;
 - (b) a description of the accession and of the other goods;
 - (c) a statement of the obligation owed to the secured party, and the value of the accession if the accession were removed from the other goods;
 - (d) a statement of intention to remove the accession, unless the obligation secured by the security interest in the accession is discharged, or the value of the accession is paid, before the end of the period specified by subsection (2).
- (4) The notice may be given in the approved form.

When notice is not required

- (5) The secured party is not required to give a notice to a person under subsection (1) if, after default under the security agreement, the

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person gives written consent to the secured party to remove the accession without receiving a notice.

- (6) The secured party is not required to give a notice to any person under subsection (1) if:
- (a) the secured party believes on reasonable grounds that the accession will decline substantially in value if it is not disposed of immediately after default; or
 - (b) the cost of expenses for the retention of the accession that are secured against the accession is disproportionately large in relation to its value.
- (7) A person is not entitled to a notice under subsection (1) in relation to an accession to goods only because the person has an interest in another accession to the same goods.

144L When person with an interest in the whole may retain accession

A person, other than the grantor, who has an interest in the whole of goods that under this Act is subordinate to a security interest in an accession, may retain the accession if:

- (a) the obligation to the secured party with a security interest that has priority over all other security interests in the accession is performed; or
- (b) the secured party mentioned in paragraph (a) is paid the value of the accession at the time of payment, if the accession were to be removed from the goods.

144M Court order about removal of accession

A court may, on the application of a person entitled to receive a notice under section 144K (notice of removal of accession), make an order:

- (a) postponing the removal of the accession; or
- (b) determining the amount payable to the secured party under section 144L for the retention of the accession.

Note: For which courts have jurisdiction, and for transfers between courts,
see Part 6.2.

Chapter 5—Personal Property Securities Register

Part 5.1—Guide to this Chapter

145 Guide to this Chapter

This Chapter provides for the establishment and maintenance of a register with respect to personal property securities and certain prescribed personal property.

Part 5.2 deals with the establishment of the register and what it contains.

Registrations consist of *financing statements*, and are amended by the registration of *financing change statements*. Part 5.3 deals with the registration of these statements, including the data to be included and the issue of verification statements confirming their registration.

Part 5.4 contains rules about the timing of registrations and when a registration becomes ineffective, including the defects that make a registration ineffective.

Part 5.5 is about accessing the register to search for registered data and third party data.

Part 5.5A is about conditions on access to data through the register. In addition, the Part enables the provision, through the register (as a portal), of non-registered data about personal property from third parties.

Part 5.6 deals with the amendment of registrations after a demand for amendment is made.

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Part 5.7 deals with removal of data from the register and the correction of registration errors.

Part 5.8 provides for fees for registration and searching the register, the review of registration decisions and annual reports.

Part 5.9 establishes the offices of the Registrar of Personal Property Securities and the Deputy Registrar.

Part 5.2—Establishment of the register

146 Guide to this Part

This Part sets up the Personal Property Securities Register.

The Registrar of Personal Property Securities is required to establish and maintain the register, and ensure that it is kept operational. However, the Registrar can refuse access to the register, and suspend its operation, in certain circumstances.

The register contains the following data:

- (a) data with respect to security interests, and related data;
- (b) data with respect to personal property prescribed by the regulations.

147 Personal Property Securities Register

- (1) The Registrar must establish and maintain a register to be known as the Personal Property Securities Register.
- (2) Data in the register is the property of the Commonwealth.
- (3) The Registrar may keep the register in any form that he or she considers appropriate.
- (4) The Registrar must ensure that the register is operational at all times except while it is suspended under subsection (5).
- (5) The Registrar may suspend the operation of the register:
 - (a) if the Registrar considers that it is not practical to provide access to the register—by:
 - (i) refusing access to the register in whole or in part; or

- (ii) otherwise suspending the operation of the registrar in whole or in part; or
 - (b) in any other circumstances—in whole or in part, in accordance with regulations made for the purposes of this paragraph.
- (6) After a period of suspension under subsection (5), or after any other period during which access to the register is not available, the Registrar may restore the data in the register as in effect at any day and time the Registrar considers appropriate.
- (7) If the Registrar suspends the operation of the register under subsection (5), in whole or in part, the Registrar must publish details of the suspension, the restoration of the register under subsection (6) and the period of the suspension in a website maintained by the Registrar.

Note: The office of the Registrar of Personal Property Securities is established under Part 5.9.

148 What the register contains

The register is to contain the following data:

- (a) data in registered financing statements (as amended by any registered financing change statements) with respect to security interests;
- (b) data (if any) prescribed by regulations made for the purposes of this paragraph in relation to registrations, or possible registrations;
- (c) data in registered financing statements (as amended by any registered financing change statements) with respect to personal property, being personal property that is prescribed by regulations made for the purposes of this paragraph.

Note: Access to non-registered data held by third parties may be provided to persons accessing the register (see Part 5.5A).

Part 5.3—Registration

149 Guide to this Part

A person may apply to the Registrar to register a financing statement, or a financing change statement, with respect to a security interest or certain personal property.

A registration may perfect a security interest, which may give the secured party an advantage under this Act in enforcing the interest.

A person must not make an application with respect to a security interest unless the person believes on reasonable grounds that the security interest is, or will be, held by a person stated in the application to be a secured party.

This Part also deals with verification statements, which verify the registration of financing statements and financing change statements.

The Registrar is responsible for giving verification statements to secured parties, who must give notice of the statements to grantors.

Publication may be used as an alternative to giving verification statements.

150 Registration—on application

- (1) A person may apply to the Registrar to register a financing statement with respect to:
 - (a) a security interest; or
 - (b) personal property prescribed by regulations made for the purposes of paragraph 148(c).
- (2) A person may apply to the Registrar to register a financing change statement to amend a registered financing statement.

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Note: For the registration of a financing change statement to enforce an amendment demand, see section 179.

- (3) The Registrar must register the financing statement or financing change statement in accordance with the application, but only if:
- (a) the application is in the approved form; and
 - (b) the fee (if any) determined under section 190 has been paid.

Note 1: Section 161 authorises the description of collateral by a registration before or after a security agreement is made covering the collateral, or a security interest has attached to the collateral.

Note 2: The Registrar must give a verification statement to each secured party after the registration of a financing statement or a financing change statement (see section 156).

Note 3: The requirement to pay a fee is satisfied if an arrangement for its payment has been approved under subsection 190(4).

151 Registration—belief about security interest

Requirements for collateral to secure obligation etc.

- (1) A person must not apply to register a financing statement, or a financing change statement, that describes collateral, unless the person believes on reasonable grounds that the person described in the statement as the secured party is, may be, or may become, a secured party in relation to the collateral (otherwise than by virtue of the registration itself).

Civil penalty: 50 penalty units.

Note: See Part 6.3 (Enforcement of civil penalty provisions).

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

Example 2: A person applies to register a financing statement that describes collateral as “fruit”. It is sufficient to comply with this subsection if the applicant believes on reasonable grounds that the secured party

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described in the statement will take a security interest in apples (see paragraph (b) of the definition of *description* in section 10).

- (2) If a financing statement, or a financing change statement, that describes collateral has been registered on the application of a person, the person must, within the period covered by subsection (3), apply to register a financing change statement to amend the registration to end its effect with respect to the collateral, if:
- (a) the person described in the statement as the secured party has never, since the statement was registered, been a secured party in relation to the collateral (other than by virtue of the registration itself); and
 - (b) there are no reasonable grounds (or there are no longer any reasonable grounds) for the belief mentioned in subsection (1).

Civil penalty: 50 penalty units.

Note: See Part 6.3 (Enforcement of civil penalty provisions).

- (3) The period covered by this subsection is as soon as practicable, or 5 business days, whichever is earlier, after:
- (a) if there never have been, since the statement was registered, reasonable grounds for the belief mentioned in subsection (1)—the day the financing statement, or financing change statement, was registered; or
 - (b) if there are no longer any reasonable grounds for that belief—the day when there stopped being reasonable grounds for the belief.

Note: The period of 5 business days may be extended by a court under section 293.

Damages for contravention of requirements

- (5) For the purposes of section 271 (but without limiting that section):
- (a) compliance with subsection (1) or (2) is taken to be an obligation imposed on a person who applies, or is required to

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apply, for the registration of a financing statement or a financing change statement; and

- (b) any person with an interest in personal property described in the financing statement or financing change statement is taken to be a person to whom that obligation is owed; and
- (c) a contravention of subsection (1) or (2) is taken to be a failure to discharge that obligation.

Note: Section 271 gives a right to recover damages for any loss or damage in relation to such a failure.

Registration unaffected by contravention

- (6) However, if a person applies for a registration of a financing statement or a financing change statement in contravention of subsection (1), and the statement is registered accordingly, the contravention does not affect the validity or effectiveness of the registration.

Registrations with respect to security interests only

- (7) This section only applies in relation to a registration with respect to a security interest.

152 Registration—location of personal property and interested persons outside Australia

A financing statement, or a financing change statement, may be registered whether or not:

- (a) the personal property to which the statement relates is located in Australia; or
- (b) any person who owns or has rights in that property is located in Australia.

Note: For when personal property is located in Australia, see section 235. For when bodies corporate, bodies politic or individuals are located in Australia, see section 235.

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153 Registration—financing statements with respect to security interests

- (1) A financing statement with respect to a security interest (including such a financing statement as amended by the registration of a financing change statement) consists of the data in the following table:

Note: For data that is to be registered in relation to certain personal property prescribed by the regulations, see section 154.

Financing statements with respect to security interests		
Item	Data about:	Details of data
1	The secured party	The details prescribed by regulations made for the purposes of this item, in relation to each secured party, of: <ul style="list-style-type: none">(a) the secured party; or(b) a person nominated by the secured party, before the initial registration of the financing statement, who has authority to act on behalf of the secured party in relation to the registration.
2	The grantor	The following details: <ul style="list-style-type: none">(a) if the grantor is an individual, and regulations made for the purposes of item 4 require the collateral to be described by serial number—no grantor’s details;(b) for a grantor who is an individual, other than a partner in a partnership—the grantor’s surname, given names and date of birth, as evidenced in accordance with regulations made for the purposes of this paragraph, and no other details;(c) for a grantor that is a body corporate, other than a partner in a partnership—the details prescribed by regulations made for the purposes of this paragraph;(d) for a grantor that is a partner in a partnership:<ul style="list-style-type: none">(i) if the interest in the collateral secured (or to be secured) is the grantor’s net interest in the partnership—the details that would be

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Financing statements with respect to security interests

Item	Data about:	Details of data
		<p>required under paragraph (b) or (c), as evidenced by any regulations made for the purposes of those paragraphs, if the grantor were not a partner; or</p> <p>(ii) in any other case—the details prescribed by regulations made for the purposes of this subparagraph;</p> <p>(e) for a grantor that is a body politic—the details prescribed by regulations made for the purposes of this paragraph.</p> <p>Note: Details of multiple grantors can only be registered in the case of joint grantors.</p>
3	Giving of notices	<p>The following:</p> <p>(a) an address (including an email address or fax number) for the giving of notices to the secured party (or secured parties) relating to the registration;</p> <p>(b) details of any identifier provided for the giving of notices to the secured party (or secured parties).</p> <p>Note: For identifiers, see section 289.</p>
4	The collateral and proceeds	<p>A description of the collateral, and any proceeds, in accordance with the following rules:</p> <p>(a) the collateral and any proceeds must be described in accordance with regulations made for the purposes of this paragraph;</p> <p>(b) the regulations may prescribe whether or not more than one item or kind of collateral or proceeds may be described as required by paragraph (a).</p> <p>Note: The regulations may, for example, require collateral or proceeds to be described by nominating a particular specified class and may also require or allow the collateral or proceeds to be described further by item or kind in specified ways.</p>
5	The end time for registration	<p>For all the collateral described in the statement, an end time for the registration no later than the following time:</p>

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Financing statements with respect to security interests

Item	Data about:	Details of data
		(a) if the grantor (or each grantor, in the case of multiple grantors mentioned in subsection (2)) is an individual—the end of the day 7 years after the registration time; (b) in any other case: (i) if the collateral is described as all present and after-acquired property, or as all present and after-acquired property except specified items or kinds of property—the end of the day 25 years after the registration time; or (ii) if the collateral is otherwise described—the end of the day 7 years after the registration time.
6	Any matter prescribed by regulations made for the purposes of this item	Details of the matter required or permitted to be prescribed by such regulations, whether or not the matter also comes under any of the other items in this table.

- (2) A registration can be made in relation to more than one grantor in relation to collateral from whom a security interest in the collateral is (or is to be) taken if, and only if, the security interest is (or is to be) granted jointly by each grantor.

154 Registration—financing statements with respect to prescribed personal property

A financing statement with respect to personal property prescribed by regulations made for the purposes of paragraph 148(c) (including such a financing statement as amended by the registration of a financing change statement) consists of the data in the following table:

Financing statements with respect to prescribed property

Item	Data about:	Details of data
1	The person who owns or has an interest in the property	Details of the person, as prescribed by the regulations.
2	The property	The following: (a) a description of the property in accordance with regulations made for the purposes of this paragraph; (b) a statement of the reason why the property is registered.
3	Any matter prescribed by the regulations	Details of the matter prescribed by the regulations, whether or not the matter also comes under any of the other items in this table.

155 Meanings of *verification statement* and *registration event*

In this Act:

verification statement means a written statement in the approved form:

- (a) verifying the registration of a financing statement or a financing change statement (each of which is a ***registration event***) with respect to a security interest, other than a financing change statement registered under section 185 (removal of old data) or 186 (incorrectly removed data); and
- (b) including other data (if any), including third party data (see section 176C), approved by the Registrar for that form in relation to the registration event, a secured party, a grantor, or collateral.

156 Verification statements—Registrar to give to secured parties

- (1) The Registrar must ensure that a verification statement in relation to a registration event is given to the following persons:
 - (a) a person registered as a secured party in the registration immediately before the time of the registration event;

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- (b) a person registered as a secured party in the registration immediately after the time of the registration event.

Note: This section does not apply in relation to a registration event if the Registrar publishes a verification statement in relation to the event under section 158.

- (2) If a registration event involves the amendment of a registration to change an address (including an email address or a fax number) for the giving of notices to a secured party, the Registrar must ensure that the verification statement is given to the secured party at both the previously registered address and the address as changed.
- (3) If a registration event involves the amendment of a registration to omit a secured party, the Registrar must ensure that the verification statement in relation to the event is given to the secured party at the previously registered address for the secured party.

157 Verification statements—secured parties to give notice to grantors

Requirement to provide verification statement

- (1) A person (the **statement holder**) who is, under section 156, given a verification statement in relation to a registration event concerning a registration, must ensure that a notice of the statement, in the approved form, is given to each person covered by subsection (1A) as soon as reasonably practicable after the registration event.
- (1A) The persons covered by this subsection are:
- (a) unless paragraph (b) applies—the following persons:
 - (i) a person registered as a grantor in the registration immediately before the time of the registration event;
 - (ii) a person registered as a grantor in the registration immediately after the registration event; or
 - (b) if the grantor is an individual, and the collateral is required by regulations made for the purposes of item 4 of the table in subsection 153(1) to be described in the registration by serial number—the following persons:

- (i) if the statement holder has entered into a security agreement in relation to the collateral—the grantor;
 - (ii) if it is anticipated that the statement holder will enter into a security agreement in relation to the collateral—the anticipated grantor.
- (1B) If, when an anticipated security agreement mentioned in subparagraph (1A)(b)(ii) is entered into, an actual grantor under the agreement is not the same person as the anticipated grantor, the statement holder must also, as soon as practicable after the security agreement is entered into, ensure that the notice required under subsection (1) is given to the actual grantor.
- (2) Without limiting subsection (1), the approved form for notice of a verification statement:
 - (a) may authorise specified data in the verification statement not to be included in the notice; but
 - (b) must otherwise require the data in the verification statement to be included in the notice.

Exception—waiver of right to receive notice

- (3) The statement holder is not required to ensure that a person is given a notice under subsection (1) or (1B) in relation to a registration event if:
 - (a) the person is not an individual; and
 - (b) the person has, by written notice to the statement holder, waived the right to receive a notice under this section in relation to such events.

Contravention of requirement

- (4) If the statement holder contravenes a requirement under subsection (1) or (1B) to ensure that a notice is given to an individual, the contravention constitutes an act or practice involving interference with the privacy of the individual for the purposes of section 13 of the *Privacy Act 1988*.

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- Note 1: These acts or practices may be the subject of complaints under section 36 of that Act.
- Note 2: If a statement holder fails to discharge an obligation under this section, an action for damages may be available under section 271.

158 Verification statements—publication as alternative

- (1) The Registrar may publish, in a way prescribed by the regulations, a single verification statement in relation to a number of registration events if:
- (a) the events affect a number of persons registered as secured parties (whether before or after the events); and
 - (b) the Registrar considers that it would be inconvenient for verification statements to be given to each registered (or formerly registered) secured party.
- Example: For the purposes of paragraph (a), an example of registration events affecting a number of persons registered as secured parties is a number of transfers of security interests between persons registered as secured parties (whether registered before or after the transfer).
- (2) Sections 156 and 157 do not apply in relation to a registration event if the Registrar publishes a verification statement in relation to the event under this section.

Part 5.4—When a registration is effective

159 Guide to this Part

This Part deals with the timing of registration. The precise timing of a registration may be significant in determining the priority to be given to a security interest in the collateral (see section 55).

This Part also deals with when a registration is effective and registration defects that may cause it to become ineffective.

A registration is effective from the registration time until the earliest of:

- (a) the registered end time; or
- (b) an amendment time; or
- (c) the time when the registration stops being available for search in the register.

A registration is only ineffective because of a defect if there is a seriously misleading defect in data relating to the registration, or one of a number of particular defects set out in section 165 exists.

If a security interest in certain property becomes unperfected, the secured party may be obliged to take steps to end the effect of the registration.

160 Meaning of *registration time* and *amendment time*

- (1) In this Act, ***registration time***, in relation to a registration, means the moment when the data in the registration becomes available for search in the register.

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- (2) In this Act, ***amendment time***, for an amendment to a registration, means the moment when the data in the amended registration becomes available for search in the register.

Note 1: A written search result is evidence of a registration and of the registration time or amendment time in relation to a registration or an amendment to a registration (see section 174).

Note 2: A registration may stop being effective even if it is available for search in the register (for example, because of a defect—see section 164).

161 Registration time—security agreements and interests

Personal property may be described in a registration with respect to a security interest before or after:

- (a) a security agreement is made covering the property; or
- (b) a security interest attaches to the property.

162 Registration time—transfers

A financing statement, or a financing change statement, may be registered to reflect the transfer of a security interest, or of collateral, before or after the transfer.

163 Effective registration

- (1A) A registration with respect to a security interest that describes particular collateral is effective only with respect to collateral as so described.

Note: Collateral must be described in a registration in accordance with the regulations (see table item 4 in subsection 153(1)).

- (1) A registration with respect to a security interest that describes particular collateral, in relation to a secured party, is effective with respect to that collateral from the registration time for the security interest until the earliest of the following times:
- (a) the end time (if any) registered for the collateral;
 - (b) if the registration is amended to omit the collateral description—the amendment time;

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- (c) the time when the description of the collateral in the registration stops being available for search in the register (by reference to the registration time) in respect of the secured party.

Note: For the registration time for collateral, see section 160.

- (2) This section is subject to sections 164, 165 and 166 (defects in registration).

164 Defects in registration—general rule

- (1) A registration with respect to a security interest that describes particular collateral is ineffective because of a defect in the register if, and only if, there exists:
 - (a) a defect mentioned in section 165; or
 - (b) any other defect in any data relating to the registration, if the defect is seriously misleading, other than a defect of a kind prescribed by regulations made for the purposes of this paragraph.
- (2) In order to establish that a defect is seriously misleading, it is not necessary to prove that any person was actually misled by it.
- (3) A registration that describes particular collateral is not ineffective only because the registration is ineffective with respect to other collateral described in the registration.

165 Defects in registration—particular defects

For the purposes of paragraph 164(1)(a), a defect in a registration that describes particular collateral exists at a particular time if any of the following circumstances exist:

- (a) in a case in which the collateral is required by the regulations to be described by serial number in the register—no search of the register by reference to that time, and by reference only to the serial number of the collateral, is capable of disclosing the registration;

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- (b) in a case in which the collateral is not required by the regulations to be described by serial number in the register—no search of the register by reference to that time, and by reference only to the grantor’s details (required to be included in the registered financing statement under section 153), is capable of disclosing the registration;
- (d) in any case—circumstances in relation to the data related to the registration that are prescribed by the regulations.

166 Defects in registration—temporary effectiveness

Scope

- (1) This section applies if:
 - (a) one of the following defects in a registration that describes particular collateral arises at a particular time (the *defect time*):
 - (i) a defect mentioned in paragraph 165(a);
 - (ii) a defect mentioned in paragraph 165(b), other than a defect resulting from a change of the grantor in relation to the collateral;
 - (iii) a defect mentioned in paragraph 165(d), unless the regulations made for the purposes of that paragraph provide that this section does not apply in the circumstances; and
 - (b) the defect does not arise only because of an irregularity, omission or error in a financing statement or a financing change statement.

Example: A defect mentioned in paragraph 165(a) may occur if there is a change in the serial number under which collateral is required to be described in the register. For example, a patent may be required to be described by serial number (a Patent Application Number or a Patent Number). The Patent Application Number may be changed to a Patent Number when the patent is registered on the patents register.

Note: A change of the grantor may occur if the collateral described in the registration is transferred. In this case, the secured party’s security interest may be temporarily perfected for a certain period (see section 34).

Registration is temporarily unaffected by the defect

- (2) Despite sections 164 and 165, the defect does not make the registration ineffective for the period starting at the defect time and ending at the earliest of the following times:
- (a) the end time for the registration (as registered immediately before the defect time);
 - (b) the end of the month that is 60 months after the defect time;
 - (c) the end of 5 business days after the day the secured party acquires knowledge of the defect.

Note: The period mentioned in paragraph (c) may be extended by a court under section 293.

Registration becomes ineffective

- (3) However, the registration becomes ineffective with respect to the collateral under sections 164 and 165 because of the defect immediately after the earliest time mentioned in subsection (2), unless, at or before that time, the registration is amended to correct the defect.

167 Individual grantors—secured party required to end registration if security interest ends

Scope

- (1) This section applies in relation to a registration with respect to a security interest in collateral if all of the following are satisfied:
- (a) the grantor in relation to the registration is an individual;
 - (b) an event occurs resulting in either of the following:
 - (i) the secured party no longer holding any security interest in any of the collateral that is perfected by registration;
 - (ii) except in the case of a security interest to which subsection 12(3) applies—no actual or contingent obligations being secured by the security interest;

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- (c) the end time for the registration is on a day more than 5 business days after the earliest time that paragraph (b) applies.

Requirement to end effective registration

- (2) The secured party must, before the end of 5 business days after the day the event mentioned in paragraph (1)(b) occurs, apply to register a financing change statement under section 150 amending the registration to end its effect.

Note 1: The period specified in this subsection may be extended by a court under section 293.

Note 2: If the secured party fails to discharge the obligation under this section, an action for damages may be available under section 271.

168 Maintenance fees

- (1) The Registrar may give a secured party in respect of a registration with respect to a security interest a written notice requiring the secured party to pay the fee (determined under section 190) stated in the notice within 28 days after the notice is given in order to maintain the effectiveness of the registration.
- (2) If the fee is not paid within 28 days after the notice is given, the Registrar may register a financing change statement amending the registration to end its effect.

Note 1: The Registrar must give a verification statement to each secured party after the registration of a financing change statement (see section 156).

Note 2: Application may be made to the Administrative Appeals Tribunal for review of certain decisions of the Registrar about registration (see section 191).

Note 3: The requirement to pay a fee is satisfied if an arrangement for its payment has been approved under subsection 190(4).

Part 5.5—Accessing the register to search for data

169 Guide to this Part

This Part is about accessing the register to search for data about personal property.

Anyone may access the register to search the register for data with respect to a security interest or personal property. Searches can only be undertaken by reference to certain criteria, for example the details of a grantor, or a serial number.

A search by reference to an individual grantor's details, and the use of data obtained by a search, is only authorised if the search is undertaken for a purpose stated in this Part.

A civil penalty applies in respect of unauthorised searches, and damages may be available (under section 271). In addition, an unauthorised search may be investigated under the *Privacy Act 1988*.

The written search results may be used as evidence in a court or tribunal.

A person may apply to obtain:

- (a) copies of registered financing statements and verification statements; and
- (b) reports of certain matters relating to registered data in relation to the person.

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170 Search—general

- (1) A person may apply to the Registrar for access to the register to search for data in relation to a security interest or personal property (or both).
- (2) The Registrar must:
 - (a) give the person access to the register to search for the data, in accordance with the application; and
 - (b) if, in the application, the person requests a written search result in relation to the data—ensure that the person is able to obtain a written search result in relation to the data, in the appropriate form under section 174.
- (3) However, the Registrar may give the person access to the register to search for the data only if:
 - (a) the search is authorised under sections 171 and 172; and
 - (b) the application is in the approved form; and
 - (c) the person pays the fee determined under section 190; and
 - (d) access to the data is not prohibited by the regulations.

Note 1: Application may be made to the Administrative Appeals Tribunal for review of the Registrar's decision under this section to refuse to give a person access to the register to search for data (see section 191).

Note 2: The requirement to pay a fee is satisfied if an arrangement for its payment has been approved under subsection 190(4).

171 Search—criteria

- (1) A person may access the register to search for data by reference to the following criteria:
 - (a) a grantor's details (as required to be included, if at all, in a registered financing statement under section 153);
 - (b) a serial number by which collateral may (or must) be described in the register;
 - (c) the time of the search;
 - (d) an earlier nominated time, but only with the consent of the Registrar;

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- (da) a unique identifier allocated by the Registrar to a registered financing statement;
- (e) any other criteria prescribed by the regulations.

Note: If a registration is no longer effective, details of the registration can still be found by searching the register by reference to an earlier time when the registration was still effective (see paragraph (d)). However, data removed from the register may not be available for search by reference to an earlier time (see Part 5.7).

- (2) The Registrar must ensure that the way in which the results of a search are worked out in response to an application for the search is determined in accordance with any regulations made for the purposes of this subsection.

172 Search—by reference to details of grantor who is an individual

Scope

- (1) This section applies if a person proposes to access the register to search for data by reference to the details of a grantor (other than that person) who is an individual.

Individual grantor details—permitted searches

- (2) The following table sets out which persons (*searchers*) may access the register to search for data, and for what purpose:

Individual grantor details—permitted searches		
Item	Searchers	Purpose
1	A person (the <i>first person</i>), or another person with the first person's consent	To disclose any registration in which the first person is registered as a grantor or a secured party.
2	A secured party in relation to a registration	A purpose that relates to a security interest attached to collateral described in the registration.

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Individual grantor details—permitted searches

Item	Searchers	Purpose
3	A grantor in relation to a registration	A purpose that relates to a security interest attached to the collateral described in the registration.
4	A person	To disclose any registration in which the person is registered as a secured party.
5	A person	To disclose whether collateral to which a security interest is attached is described in a registration.
6	A person	To disclose whether or not personal property is described in a registration, if: (a) the person is considering whether to acquire an interest in the property; or (b) the person has an interest in the property.
7	A person	To establish whether to provide credit to, or obtain a guarantee or an indemnity from, a person named in the search application or a person with an interest in the personal property described in the application.
8	A person	To establish whether to provide credit to, or obtain a personal guarantee or an indemnity from an associate (within the meaning of section 11 or subsection 12(2) of the <i>Corporations Act 2001</i>) of a body corporate named in the search application or of a body corporate with an interest in the personal property described in the application.
9	A person	To establish whether to invest in, with, or through, a person named in the search application.

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Individual grantor details—permitted searches

Item	Searchers	Purpose
10	A person	To establish whether to invest in, with, or through, an associate (within the meaning of section 11 or subsection 12(2) of the <i>Corporations Act 2001</i>) of a body corporate named in the search application or of a body corporate with an interest in the personal property described in the application.
11	The Registrar	A purpose that relates to the administration of this Act.
12	A person who has taken control of the property of an individual who is insolvent under administration, within the meaning of the <i>Corporations Act 2001</i>	A purpose that relates to the searcher's control of the property.
13	An Official Receiver in Bankruptcy within the meaning of the <i>Bankruptcy Act 1966</i>	A purpose that relates to the exercise of a power, or the performance of a function, of that Official Receiver in Bankruptcy.
14	The legal personal representative of an individual (including a deceased individual)	A purpose that relates to the exercise of a power, or the performance of a function, as legal personal representative.
15	A government entity within the meaning of the <i>A New Tax System (Australian Business Number) Act 1999</i>	A purpose that relates to the exercise of a power, or the performance of a function, of that entity, unless the purpose is covered by another purpose listed in this table.
16	A government entity within the meaning of the <i>A New Tax System (Australian Business Number) Act 1999</i>	A purpose that relates to the maintenance of the law, including the prevention, detection, investigation or prosecution of contraventions of laws (whether the penalty for contravention is criminal or civil).

Section 172

Individual grantor details—permitted searches

Item	Searchers	Purpose
17	The holder of a lien or charge, or a creditor	A purpose that relates to the enforcement of the lien or charge, or the creditor's rights, as the case may be.
18	A bailiff, or sheriff, of a court of the Commonwealth, a State or a Territory	A purpose that relates to the enforcement of a court order or warrant.
19	A person	To advise another person in connection with any of the purposes referred to in this table.

Search otherwise than for authorised purpose

- (3) A searcher mentioned in an item in the table in subsection (2) must not, otherwise than for the purpose specified in the item:
- (a) access the register to search for data; or
 - (b) use data obtained as a result of accessing the register, unless the searcher has also obtained the data lawfully from another source.

Civil penalty: 50 penalty units.

Note: See Part 6.3 (Enforcement of civil penalty provisions).

- (5) For the purposes of section 195A (Registrar—investigations), the Registrar may do either or both of the following:
- (a) investigate a suspected contravention of subsection (3);
 - (b) decline to investigate, or to investigate further, a suspected contravention of subsection (3).

Recovery of damages for contravention

- (6) For the purposes of section 271:
- (a) compliance with subsection (3) is taken to be an obligation imposed on a person who accesses the register to search for data, or uses data obtained as a result of accessing the register to search for data; and

Section 173

- (b) the obligation is taken to be owed to the grantor by reference to whose details the search is undertaken; and
- (c) a contravention of subsection (3) is taken to be a failure to discharge that obligation.

Note: Section 271 gives a right to recover damages for any loss or damage in relation to such a failure.

173 Search—interference with privacy

Scope

- (1) This section applies if:
 - (a) a person obtains access to the register and searches the register for data (whether or not the access is obtained as a result of an application under section 170); and
 - (b) as a result of the search, the person obtains personal information about an individual within the meaning of that Act.

Unauthorised search or use of personal information is an interference with privacy

- (2) If the search, or the use of the personal information, is unauthorised under subsection (3) or (4), the search or use constitutes an act or practice involving interference with the privacy of the individual for the purposes of section 13 of the *Privacy Act 1988*.

Note: These acts or practices may be the subject of complaints under section 36 of that Act.

- (3) The search is unauthorised if:
 - (a) the search is not authorised under section 171; or
 - (b) the search is prohibited under subsection 172(3); or
 - (c) access to the data for a search of that kind is prohibited by regulations made for the purposes of paragraph 170(3)(d).
- (4) The use of the personal information is unauthorised (unless the data has been obtained lawfully from another source) if:

Section 174

- (a) the search is not authorised under section 171; or
- (b) the use of the personal information is prohibited under subsection 172(3); or
- (c) access to the data for a search of that kind is prohibited by regulations made for the purposes of paragraph 170(3)(d).

174 Search—written search results and evidence etc.

Search result as evidence

- (1) A written search result in the appropriate form (see subsection (3)) is admissible as evidence in a court or tribunal and is, in the absence of evidence to the contrary, proof of the matters stated in the search result.
- (2) Without limiting subsection (1), the matters that may be stated in a search result include the following:
 - (a) the registered description of collateral at a particular time;
 - (b) the time of the registration of a financing statement, any financing change statement and the end time for a registration;
 - (c) the chronological order of any of the events mentioned in paragraph (b), in relation to one or more registrations.

Appropriate form of search result

- (3) A search result is in the **appropriate form** if:
 - (a) it purports to be issued by the Registrar in the approved form; or
 - (b) it purports to be issued by one of the following:
 - (i) an officer or agency of the Commonwealth authorised by the Registrar;
 - (ii) an officer or agency of a State or Territory authorised by the Registrar; or
 - (c) it purports to be:
 - (i) issued by a person prescribed by the regulations; and

- (ii) if the Registrar approves a form for the purposes of this subparagraph—in the approved form.
- (4) The Registrar may include, or may authorise to be included, in a search result, any data, including third party data (see section 176C), determined by the Registrar in relation to a secured party, a grantor or personal property.

Evidence of transient electronic communications etc.

- (5) If a search result is covered by paragraph (b) of the definition of **writing** in section 10, evidence of the search result may be given by the production of a recording of the search result mentioned in that paragraph.

Instruments of approval

- (6) The Registrar may, by written instrument, authorise an officer or agency for the purposes of subparagraph (3)(b)(i) or (ii).
- (7) The Registrar may, by legislative instrument, determine data for the purposes of subsection (4).

175 Copies of financing statements and verification statements

On application by a person in the approved form, accompanied by the fee (if any) determined under section 190, the Registrar may give the person:

- (a) a copy of any registered financing statement (as amended by any registered financing change statement) in relation to which the person is registered as a secured party; or
- (b) a copy of a verification statement that relates to such a registered financing statement.

Note 1: Application may be made to the Administrative Appeals Tribunal for review of the Registrar's decision under this section to refuse to give a person a copy of a registered financing statement or verification statement (see section 191).

Note 2: The requirement to pay a fee is satisfied if an arrangement for its payment has been approved under subsection 190(4).

Section 176

176 Reports by Registrar

Reports about particular persons

- (1) On application by a person in the approved form, accompanied by the fee (if any) determined under section 190, the Registrar may give the person a report of matters determined under subsection (3) relating to registered data in relation to the person.

Note 1: Application may be made to the Administrative Appeals Tribunal for review of the Registrar's decision under this section to refuse to give a person a report (see section 191).

Note 2: The requirement to pay a fee is satisfied if an arrangement for its payment has been approved under subsection 190(4).

- (2) The Registrar may, at the Registrar's initiative, give a person a report of matters relating to registered data in relation to the person (whether or not the matters are determined under subsection (3)).
- (3) The Registrar may, by legislative instrument, determine matters that may be the subject of reports under this section.

Reports for the purposes of the administration of this Act

- (4) For the purposes of the administration of this Act, the Registrar may prepare a report of any matter relating to registered data.

Part 5.5A—Conditions on data access

176A Guide to this Part

Access to registered data and third party data through the register may be provided subject to conditions, including conditions about the subsequent use of the data. Damages may be available (under section 271) in respect of a contravention of conditions of access.

The Registrar may arrange with a third party (prescribed by the regulations) under this Part for the provision of access to non-registered data, held by the third party, through the register (as a portal).

For example, the Registrar may arrange with a prescribed third party to provide users of the register with data held by the third party that relates to vehicles. As a result, third party data concerning a vehicle may be provided on a verification statement or search result that relates to that vehicle, whether or not the data is specifically requested.

176B Access to registered data—conditions

Scope

- (1) This section applies if a person applies for:
 - (a) the registration of a financing statement or a financing change statement (under section 150); or
 - (b) access to the register to search for data (under section 170); or
 - (c) a copy of a registered financing statement or verification statement (under section 175).

Section 176B

Registered data conditions

- (2) The person may be required to comply with conditions (***registered data conditions***) in relation to registered data received as a result of the application, as part of the approved form for the application.

Note: For approved forms, see section 302.

- (3) ***Registered data conditions*** includes, but is not limited to, conditions relating to the use of registered data.
- (4) The person's compliance with the registered data conditions may be required whether or not:
- (a) the application relates to personal property that is the subject of registered data; or
 - (b) in the case of an application for access to the register to search for data—the person is applying for access to the register to search for registered data; or
 - (c) in the case of an application for a copy of a registered financing statement—the applicant also applies for a copy of a verification statement in relation to the financing statement.

Recovery of damages for contravention

- (5) For the purposes of section 271:
- (a) compliance with the registered data conditions as required under subsection (2) of this section is taken to be an obligation imposed on the person by this Act; and
 - (b) the obligation is taken to be owed to the Commonwealth; and
 - (c) a contravention of a registered data condition is taken to be a failure to discharge that obligation.

Note: Section 271 gives a right to recover damages for any loss or damage relating to such a failure.

- (6) If the person (the ***applicant***) applies on behalf of another person (the ***principal***):
- (a) both the applicant and the principal may be required, by the approved form for the application, to comply with the registered data conditions; and

- (b) an obligation is taken to be imposed under subsection (5) on both the applicant and the principal, in each of their personal capacities, to comply with the registered data conditions.

176C Access to third party data

Agreement with third parties

- (1) The Registrar may make an arrangement with a person (the **third party**) prescribed by regulations made for the purposes of this section to enable:
 - (a) data (**third party data**) held by the third party with respect to personal property to be included in verification statements; and
 - (b) access to the register to be given to applicants under section 170 (search—general) to search for third party data; and
 - (c) third party data to be included in search results under section 174; and
 - (d) applications for registration under section 150, for access to the register under section 170 or for copies of registered financing statements or verification statements under section 175 to be subject to conditions (**third party data conditions**) relating to third party data obtained as a result of such applications.

Example: An arrangement between the Registrar and a third party to enable third party data relating to vehicles to be included in verification statements and search results.

- (2) **Third party data** does not include personal information, within the meaning of the *Privacy Act 1988*, about an individual.
- (3) **Third party data conditions** includes, but is not limited to, conditions relating to the use of the third party data.

Section 176C

Use of third party data

- (4) A person may be required to comply with third party data conditions, as part of the approved form for application, if the person applies:
- (a) for the registration of a financing statement or a financing change statement (under section 150); or
 - (b) for access to the register to search for data (under section 170); or
 - (c) for a copy of a registered financing statement or verification statement (under section 175).

Note: For approved forms, see section 302.

- (5) A person's compliance with third party data conditions may be required whether or not:
- (a) the application relates to personal property that is the subject of the third party data; or
 - (b) in the case of an application for access to the register to search for data—the person is applying for access to the register to search for the third party data; or
 - (c) in the case of an application for a copy of a registered financing statement—the applicant also applies for a copy of a verification statement in relation to the financing statement.

Recovery of damages for contravention

- (6) For the purposes of section 271:
- (a) compliance with the third party data conditions as required under subsection (4) of this section is taken to be an obligation imposed on the person by this Act; and
 - (b) the obligation is taken to be owed to the third party; and
 - (c) a contravention of one of the third party data conditions is taken to be a failure to discharge that obligation.

Note: Section 271 gives a right to recover damages for any loss or damage relating to such a failure.

Section 176C

- (7) If a person (the *applicant*) makes an application mentioned in subsection (4) on behalf of another person (the *principal*):
- (a) both the applicant and the principal may be required, by the approved form for the application, to comply with the third party data conditions; and
 - (b) an obligation is taken to be imposed under subsection (6) on both the applicant and the principal, in each of their personal capacities, to comply with the third party data conditions.

Section 177

Part 5.6—Amendment demands

177 Guide to this Part

A secured party may be given an amendment demand for the amendment of a registration (an amendment includes an amendment to end the effect, or to remove, the registration).

An amendment demand may be given by a grantor, or by another person who has an interest in the collateral, or who is a former grantor. The demand is authorised if:

- (a) the secured party holds no security interest in any collateral described in the registration; or
- (b) the secured party holds no security interest in particular collateral described in the registration in which the grantor or other person has, or had, an interest.

If the secured party does not comply with an amendment demand, on application by the grantor or other person, the Registrar must register a financing change statement to give effect to the demand unless:

- (a) having regard to any written submissions of the secured party, the Registrar believes on reasonable grounds that the demand is not authorised; or
- (b) a court declares the demand not to be authorised.

In any case, the Registrar must register a financing change statement to give effect to an amendment demand if a court declares that the demand is authorised.

178 Amendment demands—general

Who may make an amendment demand?

- (1) Any of the following persons are eligible to make a demand under this Part (an **amendment demand**) for an amendment of a registration:
- (a) the grantor;
 - (b) a person other than the grantor who has an interest in the collateral described in the registration;
 - (c) a person who has been, but is no longer, the grantor of a security interest in respect of which the registration is made.

What amendment demands are authorised?

- (2) An amendment demand in relation to a registration is **authorised** under this section only if:
- (a) it is made by a person who is eligible under subsection (1); and
 - (b) column 1 of an item of the following table applies to the secured party; and
 - (c) column 2 of that item describes the amendment demanded.

What amendment demands are authorised?

	Column 1	Column 2
Item	Circumstances of secured party	Amendment demanded
1	The secured party holds no security interest that is perfected by the registration.	An amendment to end the effectiveness of the registration (including an amendment to remove the registration).
2	Except in the case of a security interest to which subsection 12(3) applies—no actual or contingent obligation is secured by a security interest in respect of which the registration is made.	An amendment to end the effectiveness of the registration (including an amendment to remove the registration).

Section 179

What amendment demands are authorised?

	Column 1	Column 2
Item	Circumstances of secured party	Amendment demanded
3	The secured party holds no security interest in particular collateral described in the registration in which the eligible person has, or had, an interest.	An amendment to omit the collateral.

Examples of authorised amendment demands are as follows:

- (a) if the security interest is extinguished—the amendment in column 2 of item 1;
- (b) if there is no (or is no longer) a security agreement in force between the grantor and the secured party—the amendment in column 2 of item 1;
- (c) if all obligations under the security agreement have been performed—the amendment in column 2 of item 2;
- (d) if the secured party has agreed to release particular collateral described in the registration from coverage by the security agreement—the amendment in column 2 of item 3;
- (e) if the registered collateral description includes an item or kind of property that is not (or is no longer) collateral under the security agreement—the amendment in column 2 of item 3.

Amendment demands by individuals

- (3) A secured party must not require payment for compliance with an amendment demand by an individual.
- (4) A term of a contract or agreement is void to the extent that it purportedly:
 - (a) prevents or restricts the making of an amendment demand by an individual; or
 - (b) requires a payment in contravention of subsection (3).

179 Amendment demands—how made

A person may make an amendment demand in relation to a registration by giving the secured party a notice in the approved form.

Section 180

Note: For how to give the notice to a person registered as a secured party, see subsection 287(2). That subsection allows for notice to be given by publication on the internet in certain circumstances.

180 Amendment demands—withdrawal

- (1) A person who has made an amendment demand may withdraw the demand by notice, in the approved form, given to the secured party at any time before a financing change statement is registered to give effect to the demand.

Note: For how to give the notice to a person registered as a secured party, see subsection 287(2). That subsection allows for notice to be given by publication on the internet in certain circumstances.

- (2) If, before giving notice withdrawing an amendment demand under subsection (1), the person withdrawing the demand had applied under subsection 181(2) to register a financing change statement to give effect to the demand:
- (a) the person must give a copy of the notice withdrawing the amendment demand to the Registrar; and
 - (b) the application to register a financing change statement is taken to be withdrawn.

181 Amendment demands—application to register financing change statement

Scope

- (1) This section applies if:
- (a) a person has given notice of an amendment demand in relation to a registration to a secured party in accordance with section 179; and
 - (b) the secured party has not, within 5 business days after the notice is given, applied to register a financing change statement to give effect to the amendment demand; and
 - (c) the person has not withdrawn the amendment demand under section 180.

Section 181

Application to register financing change statement

- (2) The person may apply to the Registrar to register a financing change statement to give effect to the amendment demand.
- (3) The application must be made in the approved form, including (without limiting section 302 (approved forms)):
 - (a) a copy of the notice of amendment demand; and
 - (b) any relevant associated correspondence with the secured party.

Note: A person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the *Criminal Code* and section 182 of this Act).

Notice to secured party and opportunity to make submissions

- (4) Unless the application is refused under subsection (5), the Registrar must give written notice of the application to the secured party, including:
 - (a) a copy of the application and the documents accompanying the application under subsection (3); and
 - (b) a statement inviting the secured party to show cause why the Registrar should not register a financing change statement in accordance with the application, by written submissions made to the Registrar within 10 business days after the notice is given; and
 - (c) a statement to the effect that the period specified in paragraph (b) may be extended if the secured party:
 - (i) before the end of that period, applies to the Registrar under subsection 182A(4) for an extension; or
 - (ii) applies to a court under section 293 for such an extension.

Note: For how to give the notice to a person registered as a secured party, see subsection 287(2). That subsection allows for notice to be given by publication on the internet in certain circumstances.

Frivolous, vexatious or misleading applications

- (5) The Registrar may, by written notice to the person, refuse the application if the Registrar considers that the application is, in a material particular:
- (a) frivolous, vexatious or misleading; or
 - (b) manifestly in error.

Note: Applications may be made to the Administrative Appeals Tribunal for review of a decision by the Registrar under this subsection to refuse an application to register a financing change statement (see section 191).

182 False or misleading statements or information—civil penalty

- (1) A person is liable to a civil penalty if:
- (a) the person makes a statement, or gives information (whether orally, in a document or in any other way), in, or in connection with, an application under section 181 to register a financing change statement to give effect to an amendment demand; and
 - (b) the person does so knowing that the statement or information:
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the statement or information is misleading.

Civil penalty: 600 penalty units.

- (2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the statement or information is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

- (3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the statement did not omit any matter or thing without which the statement or information is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

Section 182A

182A Amendment demands—registration of financing change statement

Scope

- (1) This section applies if:
 - (a) a person makes an application in accordance with section 181 to register a financing change statement to give effect to an amendment demand; and
 - (b) the application is not refused under subsection 181(5); and
 - (c) the person has not withdrawn the amendment demand under section 180; and
 - (d) no copy of an application to a court under section 182B in relation to the amendment demand has been given to the Registrar.
- (2) This section stops applying if, and when, a copy of an application made to a court under section 182B in relation to the amendment demand is given to the Registrar.

Main rule—obligation to register financing change statement

- (3) As soon as practicable after the end of the period of 10 business days after notice of the application is given to the secured party under subsection 181(4), the Registrar must register the financing change statement, subject to subsections (4) and (5).

Note: Applications may be made to the Administrative Appeals Tribunal for review of a decision by the Registrar under this subsection to register a financing change statement (see section 191).

- (4) The period specified under subsection (3) may, on written application by the secured party made before the end of the specified period, be extended by the Registrar if the Registrar reasonably considers the extension to be justified.

Note: The period specified in subsection (3), as extended (if at all) under subsection (4), may also be extended by a court under section 293.

Exception—amendment not authorised

- (5) The Registrar must not register the financing change statement if the Registrar believes on reasonable grounds that the amendment is not authorised under section 178, having regard to the following information:
- (a) information in the application under section 181;
 - (b) information in any written submissions by the secured party in accordance with the invitation in the notice of the application given under subsection 181(4);
 - (c) any related information that the Registrar considers relevant.

Note: Applications may be made to the Administrative Appeals Tribunal for review of a decision by the Registrar under this subsection to refuse to register a financing change statement (see section 191).

182B Amendment demands—court orders

Application for court order

- (1) The following persons may apply to a court, in accordance with subsections (2) and (3), for an order in relation to an amendment demand:
- (a) the secured party;
 - (b) the person who gave the amendment demand.
- Note: For which courts have jurisdiction, and for transfers between courts, see Part 6.2.
- (2) The application must be made:
- (a) after the end of 5 business days after the day the notice of the amendment demand is given to the secured party under section 179; and
 - (b) in a case in which, before the application to the court is made, notice of an application to register a financing change statement to give effect to the amendment demand was given to the security party under subsection 181(4)—before the end of:

Section 182B

- (i) 10 business days after the day the notice under subsection 181(4) was given; or
 - (ii) if that period is extended by the Registrar under subsection 182A(4), or by a court under section 293—the extended period.
- (3) A copy of the application must be given to the Registrar:
- (a) as soon as practicable after the application is made; or
 - (b) in the case mentioned in paragraph (2)(b)—before the end of the applicable period mentioned in subparagraph (2)(b)(i) or (ii).

Right to appear

- (4) The following persons have a right to appear before the court on an application under this section:
- (a) the secured party in relation to the amendment demand;
 - (b) another person with an interest in the collateral described in the registration.

Note: The Registrar also has the power to intervene in the proceeding (see section 218).

Court order

- (5) On an effective application under this section, a court may make the following orders:
- (a) an order declaring whether or not the amendment demand is authorised under section 178;
 - (b) any other order that the court thinks fit.

Action by Registrar

- (6) If the court makes an order declaring that the amendment demand is authorised, the Registrar must register a financing change statement to give effect to the demand.

Note: The Registrar must give a verification statement to each secured party after the registration of a financing change statement (see section 156).

Section 182C

- (7) If the court makes an order declaring that the amendment demand is not authorised, the Registrar must refuse any application (or further application) under section 181 for the registration of a financing change statements to give effect to:
- (a) the amendment demand; or
 - (b) an amendment demand of any similar kind specified by the court in the order.

182C Amendment demands—effect of removal of data from register

Data removed from the register because of the registration under this Part of a financing change statement to give effect to an amendment demand must not be made available for search in the register by reference to any time before (or after) the time of removal, if the Registrar so decides.

Note 1: Incorrectly removed data may be restored under section 186.

Note 2: Applications may be made to the Administrative Appeals Tribunal for review of a decision by the Registrar under this subsection not to make data available for search in the register (see section 191).

Part 5.7—Removal of data and correction of registration errors

183 Guide to this Part

The Registrar may remove data in certain situations, for example if its retention is contrary to the public interest.

The Registrar may also remove old data, restore removed data and correct errors or omissions made by the Registrar.

184 Removal of data—general grounds

- (1) The Registrar may (at his or her initiative) register a financing change statement to remove data (including an entire registration) from the register if the Registrar is satisfied that:
 - (a) the application to register the data was frivolous or vexatious, the data is offensive, or the retention of the data in the register is contrary to the public interest; or
 - (b) without limiting paragraph (a), the application to register the data was made for an improper purpose; or
 - (c) the removal of the data is required or permitted by the regulations made for the purposes of this paragraph; or
 - (d) the application to register the data was not made in the approved form; or
 - (da) the removal is required by a court order; or
 - (e) the removal is required urgently:
 - (i) in the public interest; or
 - (ii) for reasons prescribed by regulations made for the purposes of this subparagraph.

Note 1: The Registrar must give a verification statement to each secured party after the data is removed (see section 156).

Section 185

Note 2: Application may be made to the Administrative Appeals Tribunal for review of the Registrar's decision to remove data from the register under paragraph (a), (b) or (c) (see section 191).

- (2) Data removed from the register under this section must not be made available for search in the register by reference to any time before (or after) the time of removal:
- (a) in relation to data removed under paragraph (1)(a), (b) or (c)—if the Registrar so decides for the purposes of this paragraph; and
 - (b) in relation to data removed under paragraph (1)(d)—if the Registrar so decides for the purposes of this paragraph;
 - (c) in relation to data removed under paragraph (1)(e)—in all cases.

Note: Application may be made to the Administrative Appeals Tribunal for review of the Registrar's decision under paragraph (a) (see section 191).

- (3) If subsection (2) applies in relation to data removed from the register, this Act otherwise applies as if the data is not, and never has been, included in the register.

Note: Data incorrectly removed by the Registrar may be restored under section 186.

185 Removal of data—registration ineffective for 7 years or more

The Registrar may (at his or her initiative) register a financing change statement to remove data (including an entire registration) with respect to a security interest from the register to reflect the fact that the registration has been ineffective under section 163 for 7 years or more.

186 Restoration of data incorrectly removed by the Registrar

- (1) The Registrar may (at his or her initiative) register a financing change statement to restore data to the register (including an entire registration) if it appears to the Registrar that the Registrar incorrectly removed the data from the register.

Section 187

- (2) If data is restored to the register under subsection (1), for the purposes of this Act the data is taken never to have been removed from the register.

187 Records of removed data

The removal of data from the register under this Act does not prevent the Registrar from keeping a record of the removed data in whatever form the Registrar considers appropriate.

188 Correction of registrations—errors made by the Registrar

- (1) The Registrar may (at his or her initiative) register a financing change statement to amend a registration to correct an error or omission made by the Registrar.
- (2) If a registration is corrected under subsection (1), this Act applies as if the error or omission had never been made.

Note 1: The Registrar must give a verification statement to each secured party after the registration of a financing change statement (see section 156).

Note 2: Application may be made to the Administrative Appeals Tribunal for review of the Registrar's decision to register a financing change statement (see section 191).

188A Correction of registrations—migrated data

- (1) The Registrar may (at the Registrar's own initiative) register a financing change statement to amend or remove a registration to correct an error or omission arising from the registration of a financing statement, or the failure to register a financing statement, under section 333 (registration with respect to migrated data).

Note: The Registrar may also correct the registration of migrated data under section 334 in some limited circumstances.

- (2) If a registration is corrected under subsection (1), this Act applies as if the error or omission had never been made.

Section 188A

- Note 1: The Registrar must give a verification statement to each secured party after the registration of a financing change statement (see section 156).
- Note 2: Applications may be made to the Administrative Appeals Tribunal for review of the Registrar's decision to register a financing change statement under subsection (1) (see section 191).

Part 5.8—Fees, administrative review and annual reports

189 Guide to this Part

This Part provides for fees for registration and searching the register, the review of registration decisions and the obligation of the Registrar to prepare annual reports on the operation of this Act.

190 Registration and search fees

Determination of fees and arrangements

- (1) The Minister may, by legislative instrument, determine fees for the purposes of this Act.
- (2) The Minister may, by a legislative instrument made under subsection (1), determine the kinds of arrangements for the payment of fees under the instrument that may be approved under subsection (4).
- (3) If this Act requires the payment of a determined fee for a particular purpose, without limiting subsection (6), that requirement is satisfied if an arrangement for its payment has been approved under subsection (4).

Approval of arrangements

- (4) The Registrar may approve an arrangement (of a kind determined under subsection (2)) in relation to the payment of fees by a person for the purposes of this section on application by the person in the approved form, accompanied by the fee (if any) determined under subsection (1).

Miscellaneous

- (5) The fees determined under subsection (1) must not be such as to amount to taxation.
- (6) The amount of a fee, except a fee to maintain a registration (determined for the purposes of section 168), is a debt due to the Commonwealth, and may be recovered by the Commonwealth by application to a court.
- (7) The Registrar may waive or refund payment of the whole or part of a fee that would otherwise be payable, or has been paid, by a person under this Act:
 - (a) if the Registrar is satisfied that the person became liable for the fee as a result of error or inadvertence on the part of the Registrar; or
 - (b) if the Registrar is satisfied that:
 - (i) the person became liable for the fee as a result of error or inadvertence on the part of an individual; and
 - (ii) payment of the fee would cause undue hardship to the person; or
 - (c) if the Registrar is satisfied that:
 - (i) the person became liable for the fee as a result of error or inadvertence on the part of the person; and
 - (ii) the person took reasonable steps to avoid or mitigate the risk of such error or inadvertence; or
 - (d) in any other circumstances prescribed by regulations made for the purposes of this paragraph.
- (8) The Registrar may make a waiver or refund under subsection (7) on the Registrar's own initiative or on the application of a person in the approved form.

Note 1: If a fee to maintain a registration is not paid within 28 days, the Registrar may end the effective registration of the collateral (see section 168).

Note 2: For which courts have jurisdiction, and for transfers between courts, see Part 6.2.

Section 191

Note 3: Applications may be made to the Administrative Appeals Tribunal for review of the Registrar's decision in relation to the waiver or refund of a fee (see section 191).

191 Review of decisions

An application may be made to the Administrative Appeals Tribunal for review of the following decisions made by the Registrar:

- (d) a decision to refuse to give a person access to the register to search for data, under section 170;
- (e) a decision to refuse to give a person a copy of a registered financing statement in relation to which the person is registered as a secured party, or of a verification statement, under section 175;
- (f) a decision to refuse to give a person a report relating to registered data in relation to the person, under subsection 176(1);
- (g) a decision to refuse an application to register a financing change statement to give effect to an amendment demand, under subsection 181(5);
- (h) a decision to register a financing change statement to give effect to an amendment demand, under subsection 182A(3);
- (ha) a decision not to register a financing change statement to give effect to an amendment demand, under subsection 182A(4);
- (hb) a decision that data removed from the register is not to be made available for search in the register, under section 182C;
- (k) a decision to register a financing change statement to restore incorrectly removed data to the register, under section 186;
- (l) a decision to register a financing change statement to amend a registration to correct an error or omission made by the Registrar, under section 188;
- (la) a decision to register a financing change statement to amend or remove a registration to correct an error or omission arising from a registration with respect to migrated data, under section 188A;

- (m) a decision to register a financing change statement to remove migrated data from the register, under subsection 334(2);
- (n) a decision to refuse to waive or to refund payment of a fee, under subsection 190(7);
- (o) a decision to waive or to refund payment of part of a fee, under subsection 190(7).

192 Annual reports

- (1) The Registrar must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on the operation of this Act during that financial year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

- (2) The Registrar must include in the report:
 - (a) details of each occasion on which access to the register was refused, or the operation of the register was otherwise suspended, during the financial year under subsection 147(5); and
 - (b) any information necessary to demonstrate that fees determined under subsection 190(1) do not amount to taxation.

Part 5.9—Registrar of Personal Property Securities

193 Guide to this Part

This Part establishes the offices of the Registrar of Personal Property Securities and the Deputy Registrar.

Both are appointed by the Minister and engaged under the *Public Service Act 1999*.

The Part also includes provision for the delegation of the Registrar's powers.

194 Registrar—establishment of office

- (1) There is to be a Registrar of Personal Property Securities.
- (2) The Registrar is to be:
 - (a) engaged under the *Public Service Act 1999*; and
 - (b) appointed as Registrar of Personal Property Securities by the Minister by written instrument.
- (3) The office of the Registrar of Personal Property Securities is not a public office for the purposes of the *Remuneration Tribunal Act 1973*.

195 Registrar—functions and powers

- (1) The Registrar has the functions given under this Act or any other Act.
- (2) The Registrar has power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions.

195A Registrar—investigations

- (1) The Registrar may conduct an investigation into any matter for the purpose of performing his or her functions.
- (2) If the Registrar believes on reasonable grounds that a person has information that is relevant to an investigation under subsection (1), the Registrar may, by written notice given to the person, require the person to give any such information to the Registrar, within the period and in the way specified in the notice.
- (3) The period specified in a notice under subsection (2) must be at least 14 days after the notice is given.
- (4) A person contravenes this subsection if:
 - (a) the person has been given a notice under subsection (2); and
 - (b) the person fails to comply with the notice.

Civil penalty: 50 penalty units.

Note: See Part 6.3 (Enforcement of civil penalty provisions).

- (5) A notice under subsection (2) of this section must set out the effect of the following provisions:
 - (a) subsection (4) of this section;
 - (b) section 137.1 of the *Criminal Code* (giving false or misleading information).
- (6) Despite subsection (2), the Registrar cannot give a notice under that subsection to:
 - (a) the Commonwealth, a State or a Territory; or
 - (b) an officer or agency of the Commonwealth, a State or a Territory.

196 Registrar—acting appointments

- (1) The Minister may, by written instrument, appoint a person engaged under the *Public Service Act 1999* to act as the Registrar:
 - (a) during a vacancy in the office of Registrar (whether or not an appointment has previously been made to the office); or

Section 197

- (b) during any period, or during all periods, when the Registrar:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.
- (2) Anything done by, or in relation to, a person purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Note: For general provisions about appointments, see also sections 20 and 33A of the *Acts Interpretation Act 1901*.

197 Registrar—delegation

- (1) The Registrar may, by written instrument, delegate all or any of his or her functions or powers to:
 - (a) a person engaged under the *Public Service Act 1999*; or
 - (b) another person determined by the Registrar, by written instrument, for the purposes of this section.

Note: The Registrar may determine a particular person or a class of persons under paragraph (b), and may apply the determination in relation to particular matters or classes of matters (see subsection 33(3A) of the *Acts Interpretation Act 1901*).

- (2) A delegate must, if required by the instrument of delegation, perform a delegated function, or exercise a delegated power, under the direction or supervision of:
 - (a) the Registrar; or
 - (b) a Deputy Registrar; or
 - (c) a person engaged under the *Public Service Act 1999*.

Note: For further provisions relating to delegations, see sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

- (3) This section does not apply in relation to any of the Registrar's powers under the Regulatory Powers Act to which Part 6.3 of this Act (enforcement of civil penalty provisions) applies.

Note: For the delegation of powers in relation to Part 6.3 of this Act, see section 221 (civil penalty provisions), 221A (infringement notices), 222 (enforceable undertakings) and 223 (injunctions).

198 Registrar—resignation

- (1) The Registrar may resign by writing signed by him or her and given to the Minister.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

199 Registrar—termination

- (1) The Minister may terminate the appointment of the Registrar by written instrument.
- (2) The appointment of the Registrar is terminated if the Registrar stops being engaged under the *Public Service Act 1999* for any reason.

200 Deputy Registrar—establishment of office

- (1) There is to be at least one Deputy Registrar of Personal Property Securities (a *Deputy Registrar*).
- (2) A Deputy Registrar is to be:
- (a) engaged under the *Public Service Act 1999*; and
 - (b) appointed as a Deputy Registrar of Personal Property Securities by the Minister by written instrument.
- (3) The office of Deputy Registrar of Personal Property Securities is not a public office for the purposes of the *Remuneration Tribunal Act 1973*.

Section 201

201 Deputy Registrar—functions and powers

- (1) Subject to any direction by the Registrar, a Deputy Registrar has all the functions and powers of the Registrar, except the powers of delegation under section 197.
- (2) A function or power of the Registrar, when performed or exercised by a Deputy Registrar, is taken to have been performed or exercised by the Registrar.
- (3) The performance of a function, or the exercise of a power, of the Registrar by a Deputy Registrar does not prevent the performance of the function, or the exercise of the power, by the Registrar.
- (4) If the performance (or exercise) of a function or power by the Registrar is dependent on the opinion, belief or state of mind of the Registrar in relation to a matter, that function or power may be performed (or exercised) by a Deputy Registrar on his or her opinion, belief or state of mind in relation to that matter.
- (5) If the operation of a provision of this Act or another Act is dependent on the opinion, belief or state of mind of the Registrar in relation to a matter, that provision may operate on the opinion, belief or state of mind of a Deputy Registrar in relation to that matter.

202 Deputy Registrar—resignation

- (1) A Deputy Registrar may resign by writing signed by him or her and given to the Minister.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

203 Deputy Registrar—termination

- (1) The Minister may terminate the appointment of a Deputy Registrar by written instrument.

Section 203

- (2) The appointment of a Deputy Registrar is terminated if the Deputy Registrar stops being engaged under the *Public Service Act 1999* for any reason.

Chapter 6—Judicial proceedings and civil penalty provision enforcement

Part 6.1—Guide to this Chapter

204 Guide to this Chapter

This Chapter deals with the role of the courts in proceedings that relate to security interests in personal property. It also deals with the enforcement of civil penalty provisions.

Part 6.2 is about judicial proceedings generally.

Part 6.3 applies Parts 4 to 7 of the Regulatory Powers Act, to enable the enforcement of contraventions of civil penalty provisions under this Act by civil penalties, infringement notices, enforceable undertakings or injunctions.

Part 6.2—Judicial proceedings generally

Division 1—Introduction

205 Guide to this Part

This Part is about judicial proceedings in a court with respect to matters arising under this Act or in relation to a security agreement or a security interest.

Jurisdiction is conferred on the Federal Court, the Federal Circuit and Family Court of Australia (Division 1), the Federal Circuit and Family Court of Australia (Division 2) and courts of States and Territories. PPS matters can be transferred between courts in accordance with procedures set out in this Part.

The Registrar may intervene in judicial proceedings.

206 Scope of this Part

- (1) This Part deals with the jurisdiction of a court with respect to a matter (a **PPS matter**):
 - (a) arising under a provision of this Act authorising an application to be made to a court; or
 - (b) otherwise arising in relation to this Act, other than a matter in respect of which the Federal Court or the Federal Circuit and Family Court of Australia (Division 2) has jurisdiction under the *Administrative Decisions (Judicial Review) Act 1977*; or
 - (c) otherwise arising in relation to a security agreement or a security interest.
- (2) This Part operates to the exclusion of:
 - (a) the *Jurisdiction of Courts (Cross-vesting) Act 1987*; and
 - (b) section 39B of the *Judiciary Act 1903*.

Chapter 6 Judicial proceedings and civil penalty provision enforcement

Part 6.2 Judicial proceedings generally

Division 1 Introduction

Section 206

- (3) This Part does not limit the operation of the provisions of the *Judiciary Act 1903* other than section 39B.
- (4) Without limiting subsection (3), this Part does not limit the operation of subsection 39(2) of the *Judiciary Act 1903* in relation to matters arising under this Act.
- (5) Nothing in this Part affects any other jurisdiction of any court.
- (6) This Part does not apply to matters arising under Part 6.3 (Enforcement of civil penalty provisions).

Division 2—Conferral of jurisdiction

207 Jurisdiction of courts

Jurisdiction is conferred on a court mentioned in an item in the following table with respect to a PPS matter, subject to the limits on the court's jurisdiction (if any) specified in the item:

Jurisdiction of courts		
Item	Court on which jurisdiction is conferred	Limits of jurisdiction
1	The Federal Court	No specified limits.
1A	The Federal Circuit and Family Court of Australia (Division 1)	No specified limits.
2	The Federal Circuit and Family Court of Australia (Division 2)	The court does not have jurisdiction to award an amount for loss or damage that exceeds: (a) \$750,000; or (b) if another amount is prescribed by the regulations—that other amount.
3	A superior court, or lower court, of a State or Territory	The court's general jurisdictional limits, including (but not limited to) limits as to locality and subject matter, to the extent that the Constitution permits.

208 Cross-jurisdictional appeals

The following table has effect:

Chapter 6 Judicial proceedings and civil penalty provision enforcement

Part 6.2 Judicial proceedings generally

Division 2 Conferral of jurisdiction

Section 208

Cross-jurisdictional appeals

Item	Unless expressly provided by a law of the Commonwealth, a State or a Territory, an appeal with respect to a PPS matter does not lie from a decision of ...	to any of the following courts:
1	the Federal Court	(a) the Federal Circuit and Family Court of Australia (Division 1); (b) the Federal Circuit and Family Court of Australia (Division 2); (c) a court of a State; (d) a court of a Territory.
2	the Federal Circuit and Family Court of Australia (Division 1)	(a) the Federal Court; (b) the Federal Circuit and Family Court of Australia (Division 2); (c) a court of a State; (d) a court of a Territory.
3	the Federal Circuit and Family Court of Australia (Division 2)	(a) a court of a State; (b) a court of a Territory.
4	a court of a State (other than a State Family Court)	(a) the Federal Court; (b) the Federal Circuit and Family Court of Australia (Division 1); (c) the Federal Circuit and Family Court of Australia (Division 2); (d) a court of another State; (e) a court of a Territory; (f) a State Family Court of the same State.
5	a court of the Australian Capital Territory	(a) the Federal Court; (b) the Federal Circuit and Family Court of Australia (Division 1); (c) the Federal Circuit and Family Court of Australia (Division 2); (d) a court of a State; (e) a court of another Territory.

Cross-jurisdictional appeals

Item	Unless expressly provided by a law of the Commonwealth, a State or a Territory, an appeal with respect to a PPS matter does not lie from a decision of ...	to any of the following courts:
6	a court of the Northern Territory	(a) the Federal Court; (b) the Federal Circuit and Family Court of Australia (Division 1); (c) the Federal Circuit and Family Court of Australia (Division 2); (d) a court of a State; (e) a court of another Territory.
7	a court of an external Territory	(a) the Federal Circuit and Family Court of Australia (Division 1); (b) Federal Circuit and Family Court of Australia (Division 2); (c) a court of a State; (d) a court of another Territory (whether internal or external).
8	a State Family Court	(a) the Federal Court; (b) the Federal Circuit and Family Court of Australia (Division 2); (c) the Supreme Court of the same State; (d) a court of another State; (e) a court of a Territory.

209 Courts to act in aid of each other

In PPS matters, all of the following must severally act in aid of, and be auxiliary to, each other:

- (a) courts on which jurisdiction is conferred under this Part;
- (b) officers of, or under the control of, those courts.

Section 210

Division 3—Transfers between courts

210 Application of this Division

Scope

- (1) This Division applies if all the following conditions are satisfied:
- (a) a proceeding with respect to a PPS matter is pending, or has come, before a court (the *transferring court*) on which jurisdiction is conferred under this Part in relation to the matter;
 - (b) jurisdiction is also conferred on another court (the *receiving court*) under this Part with respect to either of the following (the *transfer matter*):
 - (i) the entire proceeding;
 - (ii) an application in the proceeding;
 - (c) the receiving court has the power to grant the remedies sought before the transferring court in relation to the transfer matter.

Transfers to which other legislation applies

- (2) This Division does not apply to a transfer between the courts mentioned in an item in the following table, except as provided by paragraph 211(2)(b):

Transfers to which other legislation applies		
Item	Transferring court	Receiving court
1	The Federal Court	The Federal Court
2	The Federal Court	The Federal Circuit and Family Court of Australia (Division 2)
3	The Federal Circuit and Family Court of Australia (Division 1)	The Federal Circuit and Family Court of Australia (Division 2)
4	The Federal Circuit and Family Court of Australia (Division 2)	The Federal Court or the Federal Circuit and Family Court of Australia (Division 1)

- Note 1: Paragraph 211(2)(b) gives the Federal Circuit and Family Court of Australia (Division 2) the power to transfer a matter to the Federal Court with a recommendation that the Federal Court transfer the matter to a superior court other than the Federal Court.
- Note 2: Transfers mentioned in the table are covered by other legislation as follows:
- (a) for a transfer mentioned in item 1—section 32AC of the *Federal Court of Australia Act 1976*;
 - (b) for a transfer mentioned in item 2—section 32AB of the *Federal Court of Australia Act 1976*;
 - (c) for a transfer mentioned in item 3—section 52 of the *Federal Circuit and Family Court of Australia Act 2021*;
 - (d) for a transfer mentioned in item 4—sections 149 and 153 of the *Federal Circuit and Family Court of Australia Act 2021*.

211 Exercise of transfer power

General rule

- (1) If section 212 (which deals with the criteria for transfers) is satisfied, the transferring court may transfer to the receiving court:
 - (a) the transfer matter; and
 - (b) if the transferring court considers it necessary or convenient—any related application (or all related applications) in the proceeding.

Cross-jurisdictional transfers between lower courts and superior courts

- (2) However, if the transferring court is a lower court, and the transferring court considers that section 212 is satisfied in relation to the transfer of a matter mentioned in subsection (1) of this section to a receiving court that is a superior court other than the relevant superior court:
 - (a) the transferring court does not have the power to transfer the matter to that receiving court; but
 - (b) the transferring court may:
 - (i) transfer the matter to the relevant superior court; and

Section 212

- (ii) give the relevant superior court a recommendation that the matter be transferred to that receiving court by the relevant superior court.

- (3) In this Act:

lower court means:

- (a) the Federal Circuit and Family Court of Australia (Division 2); or
- (b) a court of a State or Territory that is not a superior court.

relevant superior court, in relation to a lower court, means:

- (a) if the lower court is the Federal Circuit and Family Court of Australia (Division 2)—the Federal Court; or
- (b) if the lower court is a court of a State or Territory—the Supreme Court of the State or Territory.

superior court means:

- (a) the Federal Court; or
- (aa) the Federal Circuit and Family Court of Australia (Division 1); or
- (b) a Supreme Court of a State or Territory; or
- (d) a State Family Court.

212 Criteria for transfers between courts

General

- (1) The transferring court may make a transfer under section 211 only if it appears to the transferring court, taking into account the considerations covered by subsection (2), that:
 - (a) the transfer matter arises out of, or is related to, another proceeding pending, or that has come, before a receiving court; or
 - (b) it is otherwise in the interests of justice that the transfer matter be determined by a receiving court.

Relevant considerations

- (2) The considerations covered by this subsection include, but are not limited to, the following:
- (a) the principal location, or place of business, of the parties in relation to the transfer matter;
 - (b) where the event (or events) that are the subject of the transfer matter took place;
 - (c) the desirability of related proceedings being heard in the same State or Territory;
 - (d) any relevant recommendation received under subsection 211(2);
 - (e) the suitability (taking into account the considerations mentioned in paragraphs (a) to (d) and any other consideration) of having the transfer matter determined by the receiving court.

213 Initiating transfers between courts

A court may make a transfer under section 211:

- (a) on the application of a party made at any stage; or
- (b) at the court's own initiative.

214 Documents and procedure

If a transferring court transfers a proceeding or application to another court under section 211:

- (a) the Registrar (or other proper officer) of the transferring court must give the Registrar (or other proper officer) of the other court all documents filed in the transferring court in respect of the proceeding or application, as the case may be; and
- (b) the other court must proceed as if:
 - (i) the proceeding or application had been originally instituted or made in the other court; and
 - (ii) the same proceedings had been taken in the other court as were taken in the transferring court.

Section 215

215 Conduct of transferred proceedings

- (1) Subject to any applicable rules of court, a court must, in dealing with a PPS matter transferred to the court under section 211, apply rules of evidence and procedure that:
 - (a) are applied in any superior court; and
 - (b) the court considers appropriate to be applied in the circumstances.
- (2) If a proceeding with respect to a PPS matter is transferred under section 211 from a transferring court to another court, the other court must deal with the proceeding as if, subject to any order of the transferring court, the steps that had been taken for the purposes of the proceeding in the transferring court (including the making of an order), or similar steps, had been taken in the other court.

216 Entitlement to practise as barrister or solicitor

Scope

- (1) This section applies if a proceeding with respect to a PPS matter in a transferring court is transferred to another court under section 211.

Right to appear

- (2) A person who is entitled to practise as a legal practitioner (however described) in the transferring court has the same entitlements to practise in relation to the matters covered by subsection (3) in the other court that the person would have if the other court were a federal court exercising federal jurisdiction.
- (3) This subsection covers the following matters:
 - (a) the PPS matter;

- (b) any other proceeding out of which the PPS matter arises or to which the PPS matter is related, if the other proceeding is to be determined together with the PPS matter.

217 Limitation on appeals

An appeal does not lie from a decision of a court:

- (a) in relation to the transfer of a proceeding under section 211;
or
- (b) as to which rules of evidence and procedure are to be applied under subsection 215(1).

Division 4—Registrar's role in judicial proceedings

218 Intervention in judicial proceedings

- (1) The Registrar may, on behalf of the Commonwealth, intervene in a proceeding in a court with respect to a PPS matter.
- (2) If the Registrar intervenes in the proceeding:
 - (a) the Registrar is taken to be a party to the proceeding; and
 - (b) subject to this Act, the Registrar has all the rights, duties and liabilities of such a party; and
 - (c) without limiting paragraph (b), the Registrar may appear and be represented by a legal practitioner (however described).

219 Initiation of judicial proceedings

Scope

- (1) This section applies if the Registrar considers it to be in the public interest for a person to bring and carry on a proceeding in a court for the recovery of damages with respect to a PPS matter.

Initiation of proceedings by Registrar

- (2) The Registrar may, on behalf of the Commonwealth, cause the proceeding to be begun and carried on in the person's name.
- (3) If the person is not a constitutional corporation, the Registrar must obtain the person's written consent to the exercise of the Registrar's power under subsection (2).

219A Court order about giving effect to a PPS order

If a court makes an order (a **PPS order**) with respect to a PPS matter that directly or indirectly requires the Registrar to do something, or to refrain from doing something, the Registrar may apply to the court for an order about how to give effect to the PPS order.

Part 6.3—Enforcement of civil penalty provisions

220 Guide to this Part

This Part applies Parts 4 to 7 of the Regulatory Powers Act.

Under Part 4 of that Act, on application by the Registrar or a Deputy Registrar, a relevant court can order the payment of a civil penalty for a contravention of a civil penalty provision.

Under Part 5 of that Act, the Registrar or a Deputy Registrar can issue an infringement notice for an alleged contravention of a civil penalty provision.

Under Part 6 of that Act, the Registrar or a Deputy Registrar can accept and enforce an undertaking relating to compliance with a civil penalty provision.

Under Part 7 of that Act, on application by the Registrar or a Deputy Registrar, a relevant court can grant an injunction restraining a person from contravening a civil penalty provision or requiring a person to comply with a civil penalty provision.

220A Application of Regulatory Powers Act

- (1) The Regulatory Powers Act applies to this Act as in force at the start of the day on which the *Personal Property Securities Amendment (Framework Reform) Act 2023* receives the Royal Assent.
- (2) Amendments of the Regulatory Powers Act made after that time do not apply to this Act.

Section 221

221 Civil penalty provisions

Enforceable civil penalty provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, each of the following persons is an authorised applicant in relation to the civil penalty provisions of this Act:
- (a) the Registrar;
 - (b) a Deputy Registrar.
- (2A) The Registrar may, in writing, delegate the Registrar's powers under Part 4 of the Regulatory Powers Act in relation to the civil penalty provisions of this Act to an SES employee, or acting SES employee, in the Australian Financial Security Authority.
- (2B) A person exercising powers under a delegation under subsection (2A) must comply with any directions of the Registrar.

Relevant court

- (3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:
- (a) the Federal Court;
 - (b) the Federal Circuit and Family Court of Australia (Division 2);
 - (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Extension to external Territories

- (4) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to Norfolk Island and such other external Territories (if any) as are prescribed by the regulations for the purposes of section 7 of this Act.

221A Infringement notices

Provisions subject to an infringement notice

- (1) A civil penalty provision of this Act is subject to an infringement notice under Part 5 of the Regulatory Powers Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

Infringement officer

- (2) For the purposes of Part 5 of the Regulatory Powers Act, each of the following persons is an infringement officer in relation to the civil penalty provisions of this Act:
- (a) the Registrar;
 - (b) a Deputy Registrar.
- (3) The Registrar may, in writing, delegate the Registrar's powers under Part 5 of the Regulatory Powers Act in relation to the civil penalty provisions of this Act to an SES employee, or acting SES employee, in the Australian Financial Security Authority.
- (4) A person exercising powers under a delegation under subsection (3) must comply with any directions of the Registrar.

Relevant chief executive

- (5) For the purposes of Part 5 of the Regulatory Powers Act, the Registrar is the relevant chief executive in relation to the civil penalty provisions of this Act.
- (6) The Registrar may, in writing, delegate to an SES employee, or acting SES employee, in the Australian Financial Security

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Authority the Registrar's powers under Part 5 of the Regulatory Powers Act as the relevant chief executive in relation to the civil penalty provisions of this Act.

- (7) A person exercising powers under a delegation under subsection (6) must comply with any directions of the Registrar.

Extension to external Territories

- (8) Part 5 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to Norfolk Island and such other external Territories (if any) as are prescribed by regulations made for the purposes of section 7 of this Act.

222 Enforceable undertakings

Enforceable provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 6 of the Regulatory Powers Act.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

Authorised person

- (2) For the purposes of Part 6 of the Regulatory Powers Act, each of the following persons is an authorised person in relation to the civil penalty provisions of this Act:
- (a) the Registrar;
 - (b) a Deputy Registrar.
- (2A) The Registrar may, in writing, delegate the Registrar's powers under Part 6 of the Regulatory Powers Act in relation to the civil penalty provisions of this Act to an SES employee, or acting SES employee, in the Australian Financial Security Authority.
- (2B) A person exercising powers under a delegation under subsection (2A) must comply with any directions of the Registrar.

Relevant court

- (3) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:
- (a) the Federal Court;
 - (b) the Federal Circuit and Family Court of Australia (Division 2);
 - (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Extension to external Territories

- (4) Part 6 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to Norfolk Island and such other external Territories (if any) as are prescribed by the regulations for the purposes of section 7 of this Act.

223 Injunctions

Enforceable provisions

- (1) A civil penalty provision of this Act is enforceable under Part 7 of the Regulatory Powers Act.

Note: Part 7 of the Regulatory Powers Act allows a provision to be enforced by obtaining an injunction.

Authorised person

- (2) For the purposes of Part 7 of the Regulatory Powers Act, each of the following persons is an authorised person in relation to the civil penalty provisions of this Act:
- (a) the Registrar;
 - (b) a Deputy Registrar.
- (3) The Registrar may, in writing, delegate the Registrar's powers under Part 7 of the Regulatory Powers Act in relation to the civil penalty provisions of this Act to an SES employee, or acting SES employee, in the Australian Financial Security Authority.

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- (4) A person exercising powers under a delegation under subsection (3) must comply with any directions of the Registrar.

Relevant court

- (5) For the purposes of Part 7 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:
- (a) the Federal Court;
 - (b) the Federal Circuit and Family Court of Australia (Division 2);
 - (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Additional powers

- (6) If, under subsection 121(1) of the Regulatory Powers Act, a relevant court grants an injunction restraining a person from engaging in conduct in contravention of a civil penalty provision of this Act, that injunction may also restrain the person from engaging in conduct of a similar kind.

Extension to external Territories

- (7) Part 7 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to Norfolk Island and such other external Territories (if any) as are prescribed by regulations made for the purposes of section 7 of this Act.

Chapter 7—Operation of laws

Part 7.1—Guide to this Chapter

232 Guide to this Chapter

This Chapter deals with how this Act interacts with other laws.

Part 7.2 deals with the interaction of Australian and foreign laws relating to security interests.

Part 7.3 deals with the constitutional operation of this Act.

Part 7.4 deals with the interaction of this Act with other Commonwealth laws and with State and Territory laws.

Part 7.2—Governing law rules

233 Guide to this Part

The rules in this Part determine whether the law of Australia or the law of another jurisdiction governs a transaction concerning a security interest in collateral or proceeds.

The determination of the appropriate governing rules depends on the type of security interest concerned and the location of the grantor or the collateral or proceeds.

234 Scope of this Part

General rule

- (1) In proceedings in an Australian court, the law of the jurisdiction specified by this Part in relation to a security interest governs the validity, perfection and effect of perfection or non-perfection of the security interest.

Preservation of contractual obligations

- (2) However, this Part does not affect the law that governs contractual obligations (including any obligations arising under a security agreement).

234A Governing laws—attachment and perfection

- (1) A security interest is taken to be attached to collateral under the law of a jurisdiction other than the Commonwealth if the security interest has a status under that law that is functionally equivalent to the status the security interest would have if it were attached to such collateral under this Act.

Note: For when a security interest is attached under this Act, see section 19.

Section 234B

- (2) A security interest is taken to be perfected under the law of a jurisdiction other than the Commonwealth if the security interest has a status under that law that is functionally equivalent to the status the security interest would have if it were perfected under this Act.

Note: For when a security interest is perfected under this Act, see section 21.

- (3) A reference in this Part to the effect of perfection or non-perfection of a security interest in the collateral includes a reference to rules about:
- (a) taking the collateral free of the security interest; and
 - (b) the priority of the security interest.

Note: For rules under this Act about taking personal property free of a security interest, see Part 2.5. For rules under this Act about priority, see Part 2.6.

234B Governing laws—law relating to conflict of laws

In this Part, a reference to the law of a jurisdiction is taken to be a reference to the internal law of that jurisdiction excluding the law relating to the conflict of laws.

235 Meaning of *located*

Location of personal property

- (1) Personal property is ***located*** in the particular jurisdiction in which the personal property is situated.

Note: Investment instruments registered as mentioned in subsection 1070A(4) of the *Corporations Act 2001* are taken to be situated where the relevant register is kept.

Location of a person

- (3) A body corporate is ***located*** in the jurisdiction in which the body corporate is incorporated.
- (4) A body politic is ***located*** in the jurisdiction of the body politic.

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- (5) An individual is *located* at the individual's principal place of residence.

Location within Australia

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

Location within a foreign country that has a federal character

- (7) For the purposes of this Act, in the application of this section in relation to a foreign country that is divided into territorial units that have their own rules of law about security interests (distinct from those that apply to the foreign country generally):
- (a) the *jurisdiction* in which personal property is located under subsection (1), or in which an individual is located under subsection (5), is the jurisdiction of the territorial unit in which the property, or the individual's principal place of residence, is situated; and
 - (b) a reference to the law of that jurisdiction is a reference to the law of that territorial unit, and to the law of the foreign country as it applies in that territorial unit.

236 Commonwealth laws may provide for governing law

Despite any other provision of this Part, a law of the Commonwealth may provide that that law, or any other law of the Commonwealth, governs a security interest.

238 Governing laws—goods

Main rules

- (1) The validity of a security interest in goods is governed by the law of the jurisdiction in which the goods are located when the security interest attaches, under that law, to the goods.

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

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

Goods that are moved

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

Goods that are normally moved between jurisdictions

- (3) Despite subsections (1), (1A) and (2), the validity, perfection, and the effect of perfection or non-perfection, of a security interest in goods is governed by the law of a jurisdiction if:
- (a) the grantor is located in that jurisdiction when the security interest attaches, under that law, to the goods; and
 - (b) the goods are of a kind that is normally used in more than one jurisdiction; and
 - (c) the goods are not used predominantly for personal, domestic or household purposes.

Note: For the location of bodies corporate, bodies politic and individuals, see section 235.

Section 239

Goods entered on registers of ships

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

239 Governing laws—intangible property

Main rules

- (1) The validity of a security interest in intangible property is governed by the law of the jurisdiction in which the grantor is located when the security interest attaches, under that law, to the property.
- (2) At a particular time, the perfection, and the effect of perfection or non-perfection, of a security interest in intangible property is governed by the law of the jurisdiction in which the grantor is located at that time.

Intellectual property

- (3) In relation to a security interest in intellectual property or an intellectual property licence:
 - (a) subject to paragraph (c), the validity of the security interest is governed by the law of the jurisdiction in which the grantor is located when the security interest attaches, under that law, to the property or licence; and
 - (b) subject to paragraph (c), at a particular time, the perfection, and the effect of perfection or non-perfection, of the security interest is governed by the law of the jurisdiction in which the grantor is located at that time; and
 - (c) the following matters are governed by the law of the jurisdiction by or under which the property or licence is granted, if that law provides for the public registration or

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recording of the security interest, or of a notice relating to the security interest:

- (i) whether a successor in title to the grantor's interest in the property or licence takes it free of a security interest;
- (ii) the validity of the security interest against a transferee of the property or licence.

ADI accounts

- (4) Despite subsections (1) and (2), a security interest in an ADI account is governed by the law of the jurisdiction that governs the ADI account.

Note 1: For the priority of a security interest in an account if there is no foreign register, see section 77.

Note 2: For the location of bodies corporate, bodies politic and individuals, see section 235.

240 Governing laws—financial property

Validity rules

- (1) The validity of a security interest in financial property is governed by the law of the jurisdiction in which the grantor is located when the security interest attaches, under that law, to the property.
- (2) However, the validity of a security interest in financial property consisting of an instrument embodying the payment obligation which it represents (for example, a negotiable instrument) is governed by the law of the jurisdiction in which the instrument is located when the security interest attaches.

Perfection rules

- (3) At a particular time, the perfection, and the effect of perfection or non-perfection, of a security interest in financial property is governed by the law of the jurisdiction in which the grantor is located at that time.

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- (4) However, at a particular time, the perfection, and the effect of perfection or non-perfection, of a security interest in financial property consisting of an instrument covered by subsection (2) is governed by the law of the jurisdiction in which the instrument is located at that time.

Non-negotiable documents of title

- (5) Despite subsections (1) to (4), a security interest in a non-negotiable document of title is governed by the law of the jurisdiction in which the goods to which the document of title relates are located when the security interest attaches, under that law, to the document of title.

Note 1: For the priority of a security interest in financial property if there is no foreign register, see section 77.

Note 2: For the *location* of personal property, bodies corporate, bodies politic and individuals, see section 235.

240A Governing laws—intermediated securities

- (1) The validity of a security interest in an intermediated security is governed by the law of the jurisdiction in which the intermediary maintains the relevant securities account.
- (2) At a particular time, the perfection, and the effect of perfection or non-perfection, of a security interest in an intermediated security is governed by the law of the jurisdiction in which the intermediary maintains the relevant securities account at that time.

241 Governing laws—proceeds

- (1) The validity of a security interest in proceeds is governed by the law of the jurisdiction that governed the validity of the security interest in the collateral that gave rise to the proceeds.
- (2) At a particular time, the perfection, and the effect of perfection or non-perfection, of a security interest in proceeds is governed by the law of the jurisdiction that would otherwise under this Part, at that

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time, govern the perfection of a security interest in collateral of the same kind as those proceeds.

- (3) This section applies despite any other provision of this Part.
- (4) However, this section does not apply in relation to proceeds that are an account unless the account arises from the dealing that gave rise to the proceeds.

Note: If this section does not apply in relation to proceeds that are an account, the law governing the validity and the perfection of a security interest consisting of a transfer of the account is determined by the law of the jurisdiction in which the grantor is located (see section 239 (governing laws—intangible property)).

241A Governing laws—enforcement

Non-intangible property

- (1) The enforcement of a security interest in property other than intangible property is governed by the law of the jurisdiction where enforcement takes place.

Intangible property

- (2) The enforcement of a security interest in intangible property is governed by the law of the jurisdiction governing the priority of the security interest.

Part 7.3—Constitutional operation

Division 1—Introduction

242 Guide to this Part

This Part is about the constitutional operation of this Act in the States and Territories, and outside Australia, as follows:

- (a) this Act operates in any State that has given the Commonwealth power to legislate accordingly for the purposes of paragraph 51(xxxvii) of the Constitution;
- (b) this Act operates in any State to the extent that other constitutional powers permit its operation;
- (c) this Act operates in a Territory, and outside Australia, to the extent that it can under the Constitution.

A security interest in collateral in relation to which this Act operates under this Part has priority over a security interest in the same collateral in relation to which this Act does not operate under this Part.

Division 2—Constitutional basis

243 Constitutional basis for this Act

Operation in a referring State

- (1) It is the Commonwealth Parliament's intention that this Act should operate in a referring State to the extent that it can in accordance with:
 - (a) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)); and
 - (b) the legislative powers that the Commonwealth Parliament has because of a reference or adoption by the Parliament of the referring State under paragraph 51(xxxvii) of the Constitution.

Note: For the meaning of *referring State*, see section 244.

Operation in a non-referring State

- (2) It is the Commonwealth Parliament's intention that this Act should operate in a non-referring State to the extent that it can in accordance with the Commonwealth Parliament's legislative powers under section 51 of the Constitution (other than paragraph 51(xxxvii)), including (but not limited to) the powers relating to the matters mentioned in sections 246 to 250.

Operation in a Territory

- (3) It is the Commonwealth Parliament's intention that this Act should operate in a Territory to the extent that it can in accordance with the Commonwealth Parliament's legislative powers under:
 - (a) section 122 of the Constitution; and
 - (b) section 51 of the Constitution (other than paragraph 51(xxxvii)).

Note: This Act extends to Norfolk Island, but only extends to other external Territories if regulations are made to provide for that extension (see section 7).

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- (4) Despite subsection 22(3) of the *Acts Interpretation Act 1901*, this Act as applying in a Territory is a law of the Commonwealth.

Operation outside Australia

- (5) It is the Commonwealth Parliament's intention that this Act should operate outside Australia to the extent that it can in accordance with the Commonwealth Parliament's legislative powers under:
- (a) paragraph 51(xxix) of the Constitution; and
 - (b) the other legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)).

Note 1: For the application of Australian and foreign law in relation to a security interest, see Part 7.2.

Note 2: For the relationship between this Act and other Australian laws, see Part 7.4.

244 Meaning of *referring State*

General meaning

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

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

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

- (2) A State is a ***referring State*** even if the State's referral law provides that:

- (a) the reference to the Commonwealth of a matter covered by subsection (3) or (4) is to terminate in particular circumstances; or
- (b) the adoption of the relevant version of this Act is to terminate in particular circumstances; or
- (c) any or all of the State's amendment references have not commenced in relation to a particular kind (or kinds) of personal property (or so commence at or after the registration commencement time); or
- (d) the reference to the Commonwealth Parliament of a matter covered by subsection (3) or (4) has effect only:
 - (i) if, and to the extent that, the matter is not otherwise included in the legislative powers of the Commonwealth Parliament (otherwise than by a reference under paragraph 51(xxxvii) of the Constitution); or
 - (ii) if and to the extent that the matter is included in the legislative powers of the Parliament of the State.

Reference covering the relevant version of this Act

- (3) This subsection covers the matters to which the referred provisions relate, to the extent of making laws with respect to those matters by including the referred provisions in the relevant version of this Act.

Amendment references

- (4) This subsection covers the referred PPS matters (as defined by section 245), to the extent of making laws with respect to those matters by making express amendments of this Act in relation to each of the following kinds of personal property:
 - (a) personal property (other than fixtures and water rights);
 - (b) fixtures;
 - (c) transferable water rights.

When a State stops being a referring State

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

Section 244

- (a) in the case where the Parliament of the State has referred to the Commonwealth Parliament the matters covered by subsection (3)—that reference terminates; or
 - (b) in the case where the Parliament of the State has adopted the relevant version of this Act—the adoption terminates.
- (6) A State also stops being a *referring State* if the State’s amendment reference in relation to personal property (other than fixtures or water rights):
- (a) terminates; or
 - (b) is qualified or restricted to any degree.
- (7) However, a State does not stop being a *referring State* only because the State’s amendment reference in relation to fixtures or transferable water rights (or each of them):
- (a) terminates; or
 - (b) is qualified or restricted to any degree.

Definitions

- (8) In this section:

amendment includes the insertion, omission, repeal, substitution or relocation of words or matter.

amendment reference of a State means a reference by the Parliament of the State to the Parliament of the Commonwealth of the referred PPS matters in relation to personal property covered by paragraph (4)(a), (b) or (c).

express amendment means the direct amendment of this 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 this Act.

referral law, of a State, means the law of the State that refers the matters covered by subsection (4) to the Parliament of the Commonwealth.

referred provisions means the provisions of the relevant version of this Act, to the extent to which they deal with matters that are included in the legislative powers of the Parliaments of the States.

relevant version of this Act means:

- (a) if, at the time the State's referral law was enacted, this Act had not been enacted—this Act as originally enacted; or
- (b) otherwise—this Act as originally enacted, and as amended:
 - (i) by the *Personal Property Securities (Consequential Amendments) Act 2009* and the *Personal Property Securities (Corporations and Other Amendments) Act 2010*; or
 - (ii) by the *Personal Property Securities (Consequential Amendments) Act 2009*, the *Personal Property Securities (Corporations and Other Amendments) Act 2010* and the *Personal Property Securities (Corporations and Other Amendments) Act 2011*; or
 - (iii) from time to time, until the earliest time that any provision of the State's referral law commences.

transferable water rights, in relation to a State, means any water rights that are transferable under the general law or a law of the State by the holder of the right (whether or not the right is exclusive, and whether or not a transfer is restricted or requires consent).

water rights, in relation to a State, means any rights, entitlements or authorities, whether or not exclusive, that are 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 any right, entitlement or authority that is:

- (a) granted by or under a law of the State; and
- (b) declared by that law not to be personal property for the purposes of this Act.

Section 245

245 Meaning of referred PPS matters

- (1) In this Act, *referred PPS matters*, in relation to personal property covered by paragraph 244(4)(a), (b) or (c), 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 a State to the extent that the law makes provision with respect to:
- (a) the creation, holding, transfer, assignment, disposal or forfeiture of a right, entitlement or authority that is granted by or under a law of the State; 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 right, entitlement or authority that is granted by or under a law of the State; 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.

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

246 Non-referring State operation—overview

Operation

- (1) This Act operates in a non-referring State in relation to a security interest, or another interest, in personal property:
 - (a) while the interest in the personal property is covered by any of the following:
 - (i) section 247 (which deals with persons);
 - (ii) section 248 (which deals with activities);
 - (iii) section 249 (which deals with interests); and
 - (b) without limiting paragraph (a), to the extent that Chapter 5 (Personal Property Securities Register) applies in relation to the personal property under section 250.
- (2) To avoid doubt, subsection (1) applies to a non-referring State at a particular time even if no State is a referring State at that time.

Constitutional meaning of terms

- (3) Unless the contrary intention appears, a word or phrase used in sections 247 to 250 that is used in the Constitution has the same meaning as it has in the Constitution.

Section 247

247 Non-referring State operation—persons

- (1) This Act operates in a non-referring State, in relation to a security interest in personal property, while:
 - (a) the obligation secured by the security interest is owed by or to a person covered by subsection (3); or
 - (b) the grantor of the security interest is a person covered by subsection (3).
- (2) This Act operates in a non-referring State, in relation to an interest (other than a security interest) in personal property, while the interest is held by a person covered by subsection (3).
- (3) This subsection covers the following persons:
 - (a) a bankrupt or an insolvent;
 - (b) an Official Receiver of the estate of a bankrupt, or a registered trustee of a bankrupt, within the meaning of the *Bankruptcy Act 1966*;
 - (c) a constitutional corporation;
 - (d) the Commonwealth, or an agency of the Commonwealth.

248 Non-referring State operation—activities

- (1) This Act operates in a non-referring State in relation to a security interest, or another interest, in personal property, if the interest arises in the course of any of the following activities:
 - (a) trade or commerce with other countries, or among the States;
 - (b) activities undertaken by a constitutional corporation;
 - (c) banking, other than State banking;
 - (d) State banking extending beyond the limits of the State concerned;
 - (e) insurance, other than State insurance;
 - (f) State insurance extending beyond the limits of the State concerned;
 - (g) using postal, telegraphic, telephonic, or other like services;
 - (h) supplying goods or services to the Commonwealth, or an agency of the Commonwealth;

- (i) conduct by the Commonwealth, or an agency of the Commonwealth;
 - (j) an activity related to a fishery in Australian waters beyond territorial limits.
- (2) However, this Act stops operating under subsection (1) in a non-referring State in relation to a security interest, or another interest, in personal property, if, after the interest arises:
- (a) the interest is dealt with; and
 - (b) that dealing is not in the course of an activity to which subsection (1) applies.
- (3) Subsection (2) does not limit the operation of this Act in a non-referring State otherwise than under this section.

249 Non-referring State operation—interests

General rule

- (1) This Act operates in a non-referring State in relation to a security interest, or another interest, in personal property, if the interest includes an interest in any of the following:
- (a) a constitutional corporation;
 - (b) money borrowed on the public credit of the Commonwealth;
 - (c) an ADI account, other than an ADI account relating to State banking;
 - (d) an ADI account that relates to State banking extending beyond the limits of the State concerned;
 - (e) a policy of insurance, other than State insurance;
 - (f) a policy of State insurance extending beyond the limits of the State concerned;
 - (g) a bill of exchange or a promissory note;
 - (h) copyright, a patent of an invention or design, or a trade mark;
 - (i) a facility that provides postal, telegraphic, telephonic or other like services;
 - (j) a fishery in Australian waters beyond territorial limits;
 - (k) a lighthouse, lightship, beacon or buoy.

Section 250

Constitutional interests exclusively—severable operation

- (2) Without limiting subsection (1), this Act also has the effect it would have if this Act operated in a non-referring State in relation to a security interest, or another interest, in personal property, to the extent only that the interest were in any of the things mentioned in that subsection.

250 Non-referring State operation—inclusion of data in register

Chapter 5 of this Act (Personal Property Securities Register) operates in a non-referring State in relation to personal property.

251 Personal property taken free of security interest when Act begins to operate

A person to whom personal property is transferred takes the property free of a security interest in the property at a particular time (the *relevant time*) if:

- (a) this Act did not operate under this Part in relation to the security interest at a previous time; and
- (b) if this Act had so operated, the person would have taken the property free of the security interest under this Act (other than this section); and
- (c) at the relevant time, this Act begins to operate under this Part in relation to the security interest.

252 Priority between constitutional and non-constitutional security interests

A security interest in collateral in relation to which this Act operates under this Part has priority over a security interest in the same collateral in relation to which this Act does not operate under this Part.

Division 3—Constitutional guarantees

252A No constitutional preference to one State over another

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

252B No unjust acquisition of property

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

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

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

Part 7.4—Relationship between Australian laws

Division 1—Introduction

253 Guide to this Part

This Part deals with the interaction of this Act with other Australian laws.

This Act is not intended to exclude or limit the operation of any other law if that other law is capable of operating concurrently with this Act.

If there is an inconsistency between this Act and another law, regulations may be made to resolve the inconsistency.

Other laws prevail over this Act in certain situations, as follows:

- (a) certain specified Commonwealth laws prevail;
- (b) other laws may govern security agreements;
- (c) other laws may include restrictions on acquiring or dealing with personal property or a security interest;
- (d) State or Territory laws may exclude certain matters from coverage under this Act.

However this Act prevails over other laws in relation to certain requirements relating to the registration and form of security interests, and their assignment, attachment and perfection.

Division 2—Concurrent operation

254 Concurrent operation—general rule

- (1) This Act is not intended to exclude or limit the operation of any of the following laws (a *concurrent law*), to the extent that the law is capable of operating concurrently with this Act:
 - (a) a law of the Commonwealth (other than this Act);
 - (b) a law of a State or Territory;
 - (c) the general law.
- (2) Without limiting subsection (1), this Act is not intended to exclude or limit the concurrent operation of a concurrent law, to the extent that the law has the effect of:
 - (a) providing for whether a matter or other thing that is created, arises or is provided for under the concurrent law constitutes personal property; or
 - (b) subject to section 258, prohibiting or limiting a person creating, acquiring or dealing with personal property or a security interest in personal property; or
 - (c) without limiting paragraph (b):
 - (i) prohibiting or limiting the right of a person to hold, transfer or assign a security interest in personal property; or
 - (ii) imposing limitations or additional obligations or requirements in relation to the enforcement of a security interest in personal property; or
 - (d) subject to sections 261 and 264, requiring or enabling a person to register a security interest (within the meaning of section 261); or

Note 1: Section 261 provides that 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.

Note 2: Section 264 provides that, to the extent that the law would restrict or otherwise affect the operation of section 19 (attachment) or 21 (perfection) of this Act, the operation of the law is excluded.

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- (e) subject to section 262, requiring or enabling a person to register the assignment of a security interest (within the meaning of that section); or

Note: Section 262 provides that a failure to register the assignment under the law does not limit the effect of the assignment, the security interest or a security agreement for the security interest.

- (f) subject to section 263, requiring a security agreement for a security interest, or for an assignment of a security interest (within the meaning of that section) to be in a particular form, or to be witnessed or executed in a particular way; or

Note: Section 263 provides that a failure to comply with such a requirement does not limit the effect of the security agreement, the security interest or the assignment.

- (g) operating to extinguish (however described) a security interest in circumstances other than those provided under this Act; or

- (h) providing for, or in relation to, a matter in a way that is expressly allowed by or under this Act.

Note: The following provisions of this Act expressly allow for the operation (or the limited operation) of State and Territory laws:

- (a) section 73 (interests arising under laws of the Commonwealth, States and Territories);
- (b) section 112 (rights and remedies of parties to security agreements generally);
- (ca) section 120 (distribution of property received from enforcement);
- (d) section 208 (cross-jurisdictional appeals);
- (e) section 271 (entitlement to damages for breach of duties or obligations);
- (f) subsections 275(5) and (6) (secured party to provide certain information relating to security interest);
- (g) section 285 (service or giving of notices).

- (3) To avoid doubt, this section does not apply to a law of a State or Territory, or the general law, to the extent that there is a direct inconsistency between this Act and that law.

255 Concurrent operation—regulations may resolve inconsistency

- (1) The regulations may:
-

- (a) provide that a provision of this Act (or an instrument made under this Act) does not apply to a matter that is dealt with by a law (the *specified law*) of the Commonwealth, a State or a Territory specified by the regulations; or
 - (b) modify the operation of this Act (or an instrument made under this Act) so that no inconsistency arises between the operation of a provision of this Act or the instrument and the operation of a law (the *specified law*) of the Commonwealth, a State, or a Territory specified by the regulations.
- (2) Without limiting subsection (1), regulations made for the purposes of that subsection may provide that a provision of this Act (or an instrument made under this Act):
- (a) does not apply to:
 - (i) a specified person; or
 - (ii) a specified body; or
 - (iii) specified circumstances; or
 - (iv) a specified person or body, in specified circumstances; or
 - (b) does not prohibit an act to the extent to which the prohibition would otherwise give rise to an inconsistency with the specified law; or
 - (c) does not require a person to do an act to the extent to which the requirement would otherwise give rise to an inconsistency with the specified law; or
 - (d) does not authorise a person to do an act to the extent to which the conferral of that authority on the person would otherwise give rise to an inconsistency with the specified law; or
 - (e) does not impose an obligation on a person to the extent to which complying with that obligation would require the person to not comply with an obligation imposed on the person under the specified law; or
 - (f) authorises a person to do something for the purposes of this Act (or an instrument made under this Act) that the person:
 - (i) is authorised to do under the specified law; and

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- (ii) would not otherwise be authorised to do under this Act (or the instrument); or
 - (g) will be taken to be satisfied if the specified law is satisfied.
- (3) This section does not apply in relation to the following provisions:
- (a) paragraphs (c) and (d) of the definition of *licence* in section 10;
 - (b) paragraph (b) of the definition of *personal property* in section 10.

Note: Certain rights, entitlements and authorities under Commonwealth, State and Territory law, as declared by the relevant law, are excluded from the definitions of *personal property* and *licence* (in section 10).

Division 3—When other laws prevail

256 When other laws prevail—certain other Commonwealth Acts

If there is any inconsistency between this Act and one of the following Acts (the *other Act*), the other Act prevails to the extent of the inconsistency:

- (a) the *Payment Systems and Netting Act 1998*;
- (b) the *Cheques Act 1986*;
- (c) the *Bills of Exchange Act 1909*;
- (d) the *International Interests in Mobile Equipment (Cape Town Convention) Act 2013*.

257 When other laws prevail—security agreements

Scope

- (1) This section sets out restrictions on the extent to which a security agreement is effective according to its terms under subsection 18(1).

Operation of other laws dealing with security agreements

- (2) Subsection 18(1) is subject to each of the following laws:
 - (a) a law of the Commonwealth (other than this Act);
 - (b) a law of a State or a Territory;
 - (c) the general law.
- (3) However, a law mentioned in subsection (2) does not apply:
 - (a) to the extent (if any) to which the operation of the law is affected by Division 4 (when this Act prevails); and
 - (b) to the extent (if any) prescribed by the regulations.

Note: Division 4 restricts the operation of State and Territory laws in certain respects, for example by preventing formal requirements under those laws from affecting the validity of security interests.

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258 When other laws prevail—personal property, security interests and matters excluded from State amendment referrals

Personal property and security interests

- (1) This Act (apart from Division 4), or any instrument made under this Act, does not have an effect covered by subsection (2) to the extent to which that effect would give rise (apart from this subsection) to a direct inconsistency between this Act, or the instrument, and a law covered by subsection (3).

Note: Division 4 restricts the operation of State and Territory laws in certain respects, for example by preventing formal requirements under those laws from affecting the validity of security interests.

- (2) The following effects of a law are covered by this subsection:
- (a) prohibiting or limiting a person creating, acquiring or dealing with personal property or a security interest in personal property;
 - (b) without limiting paragraph (a):
 - (i) prohibiting or limiting the right of a person to hold, transfer or assign a security interest in personal property; or
 - (ii) imposing limitations or additional obligations or requirements in relation to the enforcement of a security interest in personal property.
- (3) The following laws are covered by this subsection:
- (a) a law of the Commonwealth (other than this Act, or an instrument made under this Act);
 - (b) a law of a referring State (while the State is a referring State);
 - (c) a law of a Territory;
 - (d) the general law.
- (4) Subsection (1) does not apply to an effect of a law to the extent (if any) prescribed by the regulations.

Matters excluded by State amendment referrals

- (5) Any provisions of this Act, or an instrument made under this Act, that would (apart from this subsection) operate, or purport to operate, to exclude or limit the operation of a law of a referring State do not operate to exclude or limit the operation of the law to the extent to which the law makes provision for a matter mentioned in paragraph 245(2)(a), (b) or (c).

Note: Subsection 245(2) provides exceptions to the scope of the matters (called PPS referred matters) in relation to which referring States have given an amendment reference to the Commonwealth (see subsection 244(4)).

- (6) Subsection (5) only applies in relation to a law of a referring State while the State is a referring State.

259 When other laws prevail—exclusion by referring State law or Territory law

Scope

- (1) This section applies if a law of a referring State, or of a Territory, declares a matter to be an excluded matter for the purposes of this section in relation to:
- (a) the whole of this Act (or an instrument made under this Act); or
 - (b) a specified provision of this Act (or an instrument made under this Act); or
 - (c) this Act (or an instrument made under this Act), other than a specified provision; or
 - (d) this Act (or an instrument made under this Act), otherwise than to a specified extent.

Matters excluded by declaration

- (2) This Act (and any instrument made under this Act), apart from Division 4 (when this Act prevails), does not apply in relation to the excluded matter to the extent provided by the declaration.

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Regulations under this Act may affect operation of declaration

- (3) Subsection (2) does not apply to the declaration to the extent (if any) prescribed by the regulations.

Division 4—When this Act prevails

261 When this Act prevails—registration requirements

Scope

- (1) This section applies if a law (the *applicable law*) of a State or Territory has the effect of requiring or enabling a person to register a security interest.

Example: A law of a State or Territory may have this effect by requiring a person to register any interest acquired by the person in a vehicle including, but not limited to, a security interest.

- (2) For the purposes of this section, a person *registers a security interest* under an applicable law if, under (or in accordance with) that law, the person registers, or otherwise discloses, any of the following:
- (a) the security interest;
 - (b) a security agreement providing for the security interest;
 - (c) collateral covered (or to be covered) by the security interest.

Failure to register under applicable law

- (3) A failure to register the security interest under the applicable law does not:
- (a) affect the validity, priority or enforceability of the security interest, or of a security agreement providing for the security interest; or
 - (b) otherwise limit the effect of the security interest, or a security agreement providing for the security interest.

Note: In other respects this Act is not intended to exclude or limit the concurrent operation of the applicable law (see section 254).

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262 When this Act prevails—assignment requirements

Scope

- (1) This section applies if a law (the ***applicable law***) of a State or Territory has the effect of requiring or enabling a person to register the assignment of a security interest.
- (2) For the purposes of this section, a person ***registers the assignment of a security interest*** under an applicable law if, under (or in accordance with) that law, the person registers, or otherwise discloses, any of the following in relation to a security interest that is (or is to be) assigned, however the assignment is described in that law:
 - (a) the assignment;
 - (b) a security agreement providing for the assignment;
 - (c) collateral covered (or to be covered) by the security interest.
- (3) An assignment of a security interest mentioned in this section includes (but is not limited to) the following, however described in the applicable law:
 - (a) the transfer of the security interest;
 - (b) the creation of the security interest;
 - (c) the devolution of the security interest from a deceased person to another person upon the death of the deceased person.

Failure to register under applicable law

- (4) A failure to register the assignment of the security interest under the applicable law does not:
 - (a) affect the validity of the assignment; or
 - (b) affect the validity, priority or enforceability of the security interest, or of a security agreement providing for the security interest; or
 - (c) otherwise limit the effect of the assignment, the security interest or of a security agreement providing for the security interest.

Note: In other respects this Act is not intended to exclude or limit the concurrent operation of the applicable law (see section 254).

263 When this Act prevails—formal requirements relating to agreements

Scope

- (1) This section applies if a law (the *applicable law*) of a State or Territory:
- (a) relates (whether expressly or by implication) to a security agreement for a security interest in collateral, or for an assignment (however described) of a security interest in collateral; and
 - (b) has the effect of requiring the security agreement:
 - (i) to be in a particular form; or
 - (ii) to be witnessed or executed in a particular way; and
 - (c) is prescribed by regulations made for the purposes of this section.

Example: A law of a State or Territory requires a security agreement to be in a particular form if the law requires the instrument evidencing the agreement to use a particular form of words, or to be executed on paper of a particular sort.

- (2) An assignment of a security interest mentioned in this section includes (but is not limited to) the following, however described in the applicable law:
- (a) the transfer of the security interest;
 - (b) the giving of the security interest;
 - (c) the devolution of the security interest from a deceased person to another person upon the death of the deceased.

Failure to comply with formal requirement under applicable law

- (3) Without limiting section 261 or 262, a failure to comply with the requirement under the applicable law does not:
- (a) affect the validity or enforceability of the security agreement;
- or

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- (b) affect the validity, priority or enforceability of the security interest; or
- (c) affect the validity of the assignment (if relevant); or
- (d) otherwise limit the effect of the security agreement, the security interest or the assignment (if relevant).

Note: In other respects this Act is not intended to exclude or limit the concurrent operation of the applicable law (see section 254).

264 When this Act prevails—attachment and perfection of security interests

To the extent that a law of a State or Territory would have the effect of restricting or otherwise affecting the operation of the following provisions, the operation of the law is excluded by force of this section:

- (a) section 19 (when a security interest attaches to personal property);
- (b) section 21 (how a security interest is perfected).

Example: If a law of a State or Territory would have the effect of requiring a security interest to be registered under the law before it is taken to attach, or to be perfected, under this Act, the operation of the law is excluded by force of this section.

Chapter 8—Miscellaneous

Part 8.1—Guide to this Chapter

265 Guide to this Chapter

This Chapter contains rules about the following:

- (a) the vesting of certain unperfected security interests (Part 8.2);
- (b) damages and compensation for contraventions of this Act (Part 8.3);
- (c) the provision of information relating to security interests (Part 8.4);
- (d) the giving of notices and rules about timing (Part 8.5);
- (e) the onus of proof in judicial proceedings, and what constitutes knowledge (Part 8.6);
- (f) approved forms and regulations (Part 8.7).

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Part 8.2—Vesting of certain unperfected security interests

266 Guide to this Part

This Part provides for the vesting of an unperfected security interest in the grantor in certain circumstances.

In the event of the bankruptcy of an individual grantor, or the winding up or the entry into administration of a body corporate grantor, a secured party's unperfected security interest vests in the grantor. However, some security interests are unaffected by this rule.

Some secured parties are entitled to damages or compensation in relation to the vesting of unperfected interests under this Part.

267 Vesting of unperfected security interests in the grantor upon the grantor's winding up or bankruptcy etc.

Scope

- (1) This section applies if:
 - (a) any of the following events occurs:
 - (i) an order is made, or a resolution is passed, for the winding up of a company or a body corporate;
 - (ii) an administrator of a company or a body corporate is appointed (whether under section 436A, 436B or 436C of the *Corporations Act 2001*, under that section as it is applied by force of a law of a State or Territory, or otherwise);
 - (iii) a restructuring practitioner for a company or a body corporate is appointed (whether under section 453B of the *Corporations Act 2001*, under that section as it is

- applied by force of a law of a State or Territory, or otherwise);
- (iiib) a company or a body corporate makes a restructuring plan (whether under Division 3 of Part 5.3B of the *Corporations Act 2001*, under that Division as it is applied by force of a law of a State or Territory, or otherwise);
 - (iv) a sequestration order is made against a person (the **bankrupt**) under the *Bankruptcy Act 1966*;
 - (v) a person (the **bankrupt**) becomes a bankrupt by force of section 55, 56E or 57 of the *Bankruptcy Act 1966*; and
- (b) a security interest granted by the body corporate, company or bankrupt is unperfected at whichever of the following times applies:
- (i) in the case of a company or body corporate that is being wound up—when, on a day, the event occurs by virtue of which the winding up is taken to have begun or commenced on that day (whether under section 513A or 513B of the *Corporations Act 2001*, under either section as applied by force of a law of a State or Territory, or otherwise);
 - (ii) in the case of a company or a body corporate to which subparagraph (a)(ii) or (iii) applies—when, on a day, the event occurs by virtue of which the day is the section 513C day for the company or body, within the meaning of the *Corporations Act 2001* (including that Act as it is applied by force of a law of a State or Territory, or otherwise);
 - (iia) in the case of a company or a body corporate to which subparagraph (a)(iia) or (iib) applies—when, on a day, the event occurs by virtue of which the day is the section 513CA day for the company or body, within the meaning of the *Corporations Act 2001* (including that Act as it is applied by force of a law of a State or Territory, or otherwise);
 - (iii) in the case of a bankrupt—when a sequestration order is made against the bankrupt under the *Bankruptcy Act*

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Act 1966, or when he or she becomes a bankrupt by force of section 55, 56E or 57 of that Act.

Note 1: For the meaning of *company*, see section 10.

Note 2: See also Division 2A of Part 5.7B of the *Corporations Act 2001*.

Security interest vested in grantor

- (2) The security interest held by the secured party vests in the grantor immediately before the event mentioned in paragraph (1)(a) occurs.

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

Title of person acquired for new value without knowledge

- (3) Subsection (2) does not affect the title of a person to personal property if:
- (a) the person acquires the personal property for new value from a secured party, from a person on behalf of a secured party, or from a receiver in the exercise of powers:
 - (i) conferred by the security agreement that provides for the security interest; or
 - (ii) implied by the general law; and
 - (b) at the time the person acquires the property, the person has no knowledge of the following (as the case requires):
 - (i) the filing of an application for an order to wind up the company;
 - (ii) the passing of a resolution to wind up the company;
 - (iii) the appointment of an administrator of the company under section 436A, 436B or 436C of the *Corporations Act 2001*;
 - (iv) the filing of an application for a sequestration order against the bankrupt under the *Bankruptcy Act 1966*;
 - (iva) the bankrupt becoming a bankrupt by force of section 55, 56E or 57 of the *Bankruptcy Act 1966*;

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- (v) the appointment of a restructuring practitioner for the company under section 453B of the *Corporations Act 2001*;
- (vi) the making of a restructuring plan by the company.

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

Effect of winding up of a sub-fund of a CCIV

- (4) Paragraph (1)(a) applies in relation to a grantor if:
 - (a) the grantor is a CCIV (within the meaning of the *Corporations Act 2001*); and
 - (b) the security interest is in personal property that is an asset of a sub-fund of the CCIV (within the meaning of that Act); and
 - (c) an order is made, or a resolution is passed, for the winding up of the sub-fund.

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

Vesting of security interest

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

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

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

Property acquired for new value without knowledge

- (2) Subsection (1) does not affect the title of a person to personal property if:
 - (a) the person acquires the personal property for new value from a secured party, from a person on behalf of a secured party, or from a receiver in the exercise of powers:
 - (i) conferred by the security agreement providing for the security interest; or
 - (ii) implied by the general law; and
 - (b) at the time the person acquires the property, the person has no knowledge of the following (as the case requires):
 - (i) the filing of an application for an order to wind up the company;
 - (ii) the passing of a resolution to wind up the company;
 - (iii) the appointment of an administrator of the company under section 436A, 436B or 436C of the *Corporations Act 2001*;
 - (iv) the filing of an application for a sequestration order against the bankrupt under the *Bankruptcy Act 1966*;
 - (v) the bankrupt becoming a bankrupt by force of section 55, 56E or 57 of the *Bankruptcy Act 1966*.

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

268 Security interests unaffected by section 267

Security interests to which vesting rule does not apply

- (1) Subsection 267(2) and section 267A (security interests vested in grantor) do not apply to the following security interests:
 - (a) a security interest provided for by any of the following transactions, if the interest does not secure the payment or performance of an obligation:
 - (i) a transfer of an account;
 - (ii) a PPS lease;
 - (iii) a commercial consignment;
 - (b) a security interest covered by subsection (2) of this section.

Note: The vesting rule in subsection 267(2) and section 267A will not apply to a security interest if perfection, and the effect of perfection or non-perfection, at the time mentioned in paragraph 267(1)(b) is governed by the law of a foreign jurisdiction: see Part 7.2.

Security interests arising from turnover trusts

- (2) This subsection covers a security interest in collateral if all of the following conditions are satisfied:
 - (a) the collateral consists of an obligation by a person (the **obligor**) to pay money to another person (the **junior creditor**);
 - (b) the obligor also owes money to a third person (the **senior creditor**);
 - (c) an agreement between the junior creditor and the senior creditor provides (in substance):
 - (i) for the postponement or subordination of the obligor's debt to the junior creditor, to the obligor's debt to the senior creditor; and
 - (ii) that any property transferred by the obligor to the junior creditor, to discharge (wholly or partly) the obligor's debt to the junior creditor, is held by the junior creditor on trust for the senior creditor;

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- (d) the security interest in the collateral arises by the operation of the agreement (with the junior creditor as grantor and the senior creditor as secured party).

269 Certain consignors and lessors entitled to damages

Scope

- (1) This section applies if either of the following security interests is vested in the grantor under section 267 or 267A:
 - (a) a security interest of a consignor under a commercial consignment (see paragraph 12(3)(b));
 - (b) a security interest of a lessor under a PPS lease (see paragraph 12(3)(c)).

Entitlement to damages and compensation

- (2) The consignor or lessor:
 - (a) is taken to have suffered damage immediately before the time the security interest vests in the grantor under section 267 or 267A (as the case requires); and
 - (b) may recover an amount of compensation from the grantor equal to the greater of the following amounts:
 - (i) the amount determined in accordance with the consignment or lease;
 - (ii) the sum of the market value of the consigned or leased property immediately before the time mentioned in paragraph 267(1)(b), and the amount of any other damage or loss resulting from the termination of the consignment or lease.

Note: The consignor or lessor may be able to prove the amount of compensation in proceedings related to the bankruptcy or winding-up of the grantor.

Part 8.3—Exercise and discharge of rights, duties and obligations

270 Guide to this Part

This Part provides a right to recover damages for a failure to discharge a duty or obligation imposed by this Act.

271 Entitlement to damages for breach of duties or obligations

- (1) If a person fails to discharge any duty or obligation imposed on the person by this Act:
 - (a) the person to whom the duty or obligation is owed; and
 - (b) any other person who can reasonably be expected to rely on performance of the duty or obligation;has a right to recover damages for any loss or damage that was reasonably foreseeable as likely to result from the failure.
- (2) Nothing in subsection (1) limits or affects any liability that a person may incur under any of the following:
 - (a) a law of the Commonwealth, a State or a Territory;
 - (b) the general law.

272 Liability for damages

Despite section 271, none of the following persons is liable to an action, suit or proceeding for damages for, or in respect of, anything done honestly, or honestly omitted to be done, in the exercise, or purported exercise, of any power conferred by this Act or the regulations:

- (a) the Commonwealth;
- (b) the Registrar, or a delegate of the Registrar;
- (c) a Deputy Registrar;
- (d) the Minister;

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- (e) a Minister of a State or Territory, or another authority of a State or Territory, in relation to the exercise or performance of a power, duty or function pursuant to an agreement made for the purposes of section 142 (enforcing security interests in accordance with land law decisions);
- (f) a member of the Registrar's staff;
- (g) a person who is acting as a member of the Registrar's staff;
- (h) a person who is authorised to perform or exercise a function or power of, or on behalf of, the Registrar.

273 Application of Act not affected by secured party having title to collateral

The fact that title to collateral is in a secured party rather than a grantor does not affect the application of any provision of this Act relating to rights, duties, obligations and remedies.

Part 8.4—Provision of information by secured parties

274 Guide to this Part

This Part enables an interested person to request a secured party who holds a security interest in collateral to provide information about the interest.

This Part sets out procedural rules for making, and complying with, such requests.

275 Secured party to provide certain information relating to security interest

Requests for information

- (1) An interested person mentioned in subsection (9) may request a secured party who holds a security interest in collateral to send or make available to the interested person, or any other person, any of the following:
 - (a) a copy of the security agreement that provides for the security interest;
 - (b) a statement in writing setting out the amount or the obligation that is secured by the security interest and the terms of payment or performance of the obligation, as at the day specified in the request;
 - (c) a written approval or correction of an itemised list of personal property attached to the request indicating in which items of property the security interest is granted, as at the day specified in the request;
 - (d) a written approval or correction of the following attached to the request, as at the day specified in the request:
 - (i) the amount or the obligation that is secured by the security interest;

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- (ii) the terms of payment or performance of the obligation.
- (2) A request made under subsection (1) must specify an address to which the information requested under that subsection must be sent or at which the information must be made available.
- (3) A request made in accordance with paragraph (1)(b), (c) or (d) must not specify a day later than 20 business days after the day the request is made.

Note: The period may be extended by a court under section 293.

Compliance with request

- (4) Subject to subsections (5) and (6), a person who receives a request made under subsection (1) must respond to the request.

Note 1: A person who receives a request but who no longer has a security interest in collateral must respond to the request in accordance with section 276.

Note 2: Section 277 deals with the time for responding to a request.

Note 3: A person who responds to a request might be prevented from denying the accuracy etc. of information provided (see section 283).

- (5) A secured party is not required to respond to a request made under subsection (1) if the information requested under that subsection must be, or has already been, made available to the person who made the request, under any of the following:
 - (a) a law of the Commonwealth, a State or a Territory;
 - (b) the general law.
- (6) A secured party is not required to respond to a request made under subsection (1) if:
 - (a) the secured party has agreed in writing with the debtor or the grantor that the secured party is not required to respond to such a request, or must not do so; or
 - (b) the response would contravene any of the following:
 - (i) a law of the Commonwealth, a State or a Territory;
 - (ii) the general law; or

- (c) the response would disclose information that is protected against disclosure by a duty of confidence, other than by the banker's duty of confidentiality.
- (8) If:
- (a) a request is made in accordance with paragraph (1)(c); and
 - (b) the secured party claims a security interest provided for by a security agreement in any of the following:
 - (i) all of the grantor's present and after-acquired property;
 - (ii) all of the grantor's present and after-acquired property except for an item or class of personal property described in the security agreement;
 - (iii) all of a specified class of personal property of the grantor;
- the secured party may indicate this instead of approving or correcting the itemised list of property.

Interested persons

- (9) For the purposes of this section, the following persons are interested persons:
- (a) the grantor in relation to the collateral in which the security interest is granted;
 - (b) a person with another security interest in the collateral mentioned in paragraph (a);
 - (c) an auditor of a grantor mentioned in paragraph (a), if the grantor is a body corporate;
 - (d) an execution creditor with an interest in the collateral;
 - (da) if a judgment is given by a court for payment of a sum of money by the grantor—the judgment creditor;
 - (e) an authorised representative of any of the above.
- (10) A secured party who receives a request made under subsection (1) that purports to be made by an interested person may act as if the person is entitled to make the request, unless the secured party has actual knowledge that the person is not entitled to make it.

Section 276

276 Obligation to disclose successor in security interest when request made

- (1) This section applies if:
 - (a) a person makes a request under subsection 275(1); and
 - (b) the person (the *previously secured party*) to whom the request was made no longer has a security interest in the collateral.
- (2) The previously secured party must respond to the request by sending, or making available, to the person making the request the name and address of:
 - (a) the immediate successor in interest; and
 - (b) the latest successor in interest (if known).

Note: Section 277 deals with the time for responding to a request.

277 Time for responding to a request

- (1) A person required to respond to a request under section 275 or 276 must respond before the end of 10 business days after the day the request is received.
- (2) Subsection (1) does not apply if the person has been exempted from responding to the request, or the time for responding to the request has been extended, under section 278.

Note: The time for responding to a request may also be affected by subsection 279(5) or section 281.

278 Application to court for exemption or extension of time to respond to requests

- (1) A person required to respond to a request under section 275 or 276 may apply to a court for an order:
 - (a) exempting the person (either wholly or partly) from responding to the request; or
 - (b) extending the time for responding to the request.

Section 279

Note: For which courts have jurisdiction, and for transfers between courts, see Part 6.2.

- (2) On application by the person for an order under paragraph (1)(a), the court may make the order if it is satisfied that, in the circumstances, it would be unreasonable for the person to respond to the request.
- (3) On application by the person for an order under paragraph (1)(b), the court may make the order if it is satisfied that, in the circumstances, it would be unreasonable for the person to respond to the request:
 - (a) within the time allowed under section 277; or
 - (b) within the time (if any) ordered by a court under section 281.

279 Persons may recover costs arising from request

- (1) A person required to respond to a request under section 275 or 276 may charge the person making the request a fee for providing information in response to the request.
- (2) A fee imposed under subsection (1) must not:
 - (a) exceed the reasonable marginal costs of providing the information; or
 - (b) be such as to amount to taxation.

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

- (3) Despite subsection (1), a grantor mentioned in paragraph 275(9)(a), or the grantor's authorised representative, who has requested information under section 275, is entitled to be provided information free of charge unless:
 - (a) that information has already been provided to the grantor or the authorised representative under section 275 or 276 in response to a request; and
 - (b) that request was made within the previous 6 months.

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

Section 280

- (4) The grantor or the authorised representative is also entitled to be provided information free of charge, despite subsection (3), if there has been a material change in the information since the information was last provided to the grantor or the authorised representative.

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

- (5) A person is not required to respond to a request under section 275 or 276 if:
- (a) the person imposes a fee under subsection (1) for providing the information; and
 - (b) the fee has not been paid; and
 - (c) an order under section 281 that the person charge a nil amount, or provide the information free of charge, has not been made.

280 Application to court for response to request etc.

- (1) A person who makes a request under section 275 may apply to a court for an order under this section if the person required to respond to the request has:
- (a) not responded to the request:
 - (i) within the time specified in section 277; or
 - (ii) within the time ordered by the court under subsection 278(3) or section 281; or
 - (b) provided an incomplete or incorrect response; or
 - (c) refused to respond to the request because of subsection 275(5) or (6).

Note: For which courts have jurisdiction, and for transfers between courts, see Part 6.2.

- (2) On application, the court may make an order requiring the person who received the request to:
- (a) respond to the request within a specified period; or
 - (b) provide a complete and correct response within a specified period.

281 Application to court in relation to costs charged

- (1) A person (the *interested person*) who has requested information under section 275 may apply to a court for an order if:
- (a) the person required to respond to the request imposes a fee under subsection 279(1) for providing the information; and
 - (b) the interested person:
 - (i) believes that the fee exceeds the reasonable marginal costs of providing the information; or
 - (ii) if the interested person is a grantor or the grantor's authorised representative—believes that the information has not already been provided to the grantor or the authorised representative in response to a request made under section 275 within the previous 6 months; or
 - (iii) if the interested person is a grantor or the grantor's authorised representative—believes that there has been a material change in the information since the information was last provided to the grantor or the authorised representative.

Note: For which courts have jurisdiction, and for transfers between courts, see Part 6.1.

- (2) If the court is satisfied that the fee imposed under subsection 279(1) exceeds the reasonable marginal costs of providing the information, the court may, on application by the interested person, make an order:
- (a) stating an amount (including a nil amount) that is to be imposed as a fee; and
 - (b) stating a time within which the request must be responded to after the fee has been paid.

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

- (3) If the court is satisfied that:
- (a) the information has not already been provided to the grantor or the grantor's authorised representative in response to a

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request made under section 275 within the previous 6 months; or

- (b) there has been a material change in the information since the information was last provided to the grantor or the authorised representative;

the court may, on application by the interested person, make an order:

- (c) that the information be provided to the grantor, or the authorised representative, free of charge; and
- (d) stating a time within which the request must be responded to.

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

Consequential orders

- (4) If the court makes an order under this section, it may also make any other consequential orders that it considers appropriate.

282 Consequences of not complying with court order

If a person fails to comply with a court order made under section 280 or 281, the court may, on the application of the person who made the request under section 275:

- (a) make an order extinguishing the security interest to which the request relates, together with an order requiring the Registrar to register a financing change statement amending the registration accordingly; or
- (b) make such other orders as the court thinks necessary to ensure compliance with the request.

283 Estoppels against persons who respond to a request

- (1) For the purposes of this Act, a person who responds to a request made under section 275 is prevented from denying any of the things mentioned in subsection (2) of this section to any of the following persons to the extent that that person relies on the response:

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- (a) the person who makes the request;
 - (b) any other person who the person who responds to the request actually knows will rely on the response.
- (2) For the purposes of subsection (1), a person is prevented from denying the following things:
- (a) that a copy of a security agreement provided in response to a request made in accordance with paragraph 275(1)(a) is a true copy of the security agreement;
 - (b) if the person corrected information in response to a request made in accordance with paragraph 275(1)(b), (c) or (d):
 - (i) the accuracy of information provided in response to the request before the correction; or
 - (ii) the accuracy of the information provided in response to the request.

Part 8.5—Notices and timing

284 Guide to this Part

This Part deals with notices that must be given under this Act, and how those notices must be given.

The Part also empowers a court to make an order extending a period within which something under this Act must be done.

A reference to time in this Act is a reference to time by legal time in the Australian Capital Territory.

285 Application of this Part—notices etc.

This Part does not apply to notices or other documents served or given:

- (a) in, or for the purposes of, any proceedings in a court or a tribunal of the Commonwealth or a State or Territory; or
- (b) in accordance with a procedure specified in a security agreement for serving or giving notices or other documents.

286 Notices—writing

A notice or any other document required or permitted to be given to any person for the purposes of this Act must be in writing.

Note: **Writing** may include the display or representation of words or data by any form of communication, if recorded in a certain way (see section 10).

287 Notices—registered secured parties

General rule

- (1) A notice or document required or permitted to be given, for the purposes of this Act, to a person registered as a secured party must

Section 288

be given to the person, by one of the following methods, at the address specified in the registration for the giving of notices to the person:

- (a) leaving it at the address;
- (b) sending it to the address by pre-paid post;
- (c) sending it to the address by fax or by email.

Note: For the giving of verification statements by the Registrar, see section 156.

Notices given by the Registrar

- (2) If the Registrar is required or permitted to give a notice or document for the purposes of this Act to a person registered as a secured party, the Registrar:
 - (a) must give the notice to the person at the address (the **registered address**) specified in the registration for the giving of notices to the person by one of the methods mentioned in subsection (1); or
 - (b) if there is no registered address for the person, or the Registrar believes on reasonable grounds that the registered address for the person is incorrect, or otherwise insufficient for giving the notice or document to the person—must publish the notice on a website maintained by the Australian Financial Security Authority for the purposes of this Act.
- (3) If the Registrar publishes a notice or other document on a website under paragraph (2)(b), and this Act provides for a period after the giving of the notice or document within which something is required or permitted to be done, the period is extended by a period of 28 days.

288 Notices—more than one registered secured party

- (1) This section applies if:
 - (a) a registration includes 2 or more secured parties; and
 - (b) a notice or document is required or permitted to be given to each of the secured parties.

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- (2) The notice or document may be given to each of the secured parties by giving a single notice in accordance with section 287.

289 Notices etc. must be given to persons registered as secured parties using identifier

Despite anything in this Part, a notice or document is, for the purposes of this Act, taken not to have been given to a person registered as a secured party if:

- (a) the Registrar approves a manner of including an identifier in a notice or document; and
- (b) an identifier is specified in the registration for the giving of notices to the person; and
- (c) the notice or document does not include the identifier in the manner approved by the Registrar.

290 Notices—deceased persons

If a notice or document is required or permitted to be given to a person for the purposes of this Act and the person is deceased, a copy of the notice or document must be given to:

- (a) the legal personal representative of the deceased person; or
- (b) on application by the person giving the notice, such person as a court directs.

Note: For which courts have jurisdiction, and for transfers between courts, see Part 6.2.

291 Notices—Court orders

- (1) Despite anything in this Part, if a notice or other document is required or permitted by this Act to be given to a person, a court may, on application by a person who is required or permitted to give the notice or document, make an order:
- (a) directing that the notice or document be given in any manner specified by the court; or
 - (b) dispensing with any requirement to give the notice or document, either unconditionally or subject to conditions.

Section 292

Note: For which courts have jurisdiction, and for transfers between courts, see Part 6.2.

- (2) In considering whether to make an order under subsection (1), the court must have regard to the following matters:
- (a) the efficient administration of this Act;
 - (b) any other matter that the court considers relevant.

292 Notices—formal defects

A notice purportedly given under this Act is not invalid as a result of a formal defect or an irregularity, unless:

- (a) a person applies to a court objecting on that ground; and
- (b) the court is satisfied that substantial injustice has been caused by the defect or irregularity; and
- (c) the court is satisfied that the injustice cannot be remedied by an order of the court.

293 Timing—applications for extension of time

- (1) On application, a court may make an order extending the number of business days in a period specified in any of the following provisions if the court is satisfied that it is just and equitable to do so:
- (a) section 62 (priority for perfected purchase money security interests over other perfected security interests), including that subsection as it applies for the purposes of section 63 (priority between purchase money security interests—seller, lessors and consignors);
 - (b) subparagraph 64(1)(b)(ii) (priority for non-purchase money security interest in accounts);
 - (c) subparagraph 81B(4)(c)(i) and paragraph 81B(5)(a) (dealings in accounts—protection of rights of account debtor);
 - (d) subsections 118(4) and (9) (seizure by higher priority parties—notice);
 - (e) paragraph 129(2)(c) (disposing of collateral—notice);
 - (f) paragraph 132(2)(a) (retaining collateral—notice);

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- (g) section 134 (retaining collateral—proof of interest);
 - (h) subsections 139(2) and (6) (enforcement against collateral—statement of account);
 - (i) subparagraph 144A(3)(c)(i) and paragraph 144A(4)(a) (enforcement of security interests in negotiable instruments);
 - (j) subparagraph 144B(2)(e)(i) (enforcement against accounts and negotiable instruments—notice to higher priority parties);
 - (k) paragraph 166(2)(c) (defects in registration—temporary effectiveness);
 - (l) subsection 167(2) (individual grantors—secured party required to end registration if security interest ends);
 - (m) subsection 182A(3) (amendment demands—registration of financing change statement);
 - (n) paragraph 182B(2)(b) (amendment demands—court orders);
 - (o) subsection 275(3) (secured party to provide certain information relating to security interest).
- (2) The court may make the order even if the period has ended.
- (3) In making an order to extend a period under subsection (1), the court must take into account the following:
- (a) whether the need to extend the period arises as a result of an accident, inadvertence or some other sufficient cause;
 - (b) whether extending the period would prejudice the position of any other secured parties or other creditors;
 - (c) whether any person has acted, or not acted, in reliance on the period having ended.

294 Timing—references to time in this Act

- (1) In this Act, a reference to a particular time is a reference to that time by legal time in the Australian Capital Territory.
- (2) To avoid doubt, a reference to a particular time includes a reference to a particular time by reference to the end of a period.

Part 8.6—Onus of proof and knowledge

295 Guide to this Part

This Part provides that the onus of proving certain facts lies with the person asserting those facts.

The Part also provides specific rules about knowledge requirements relating to bodies corporate and other entities and transfers between persons who have close associations with each other.

296 Onus of proof

In a proceeding in Australia under this Act, the onus of proving the following facts lies with the person asserting those facts:

- (a) the fact that a security interest attaches to personal property;
- (b) the fact that a security interest is perfected by registration;
- (c) the fact that a person takes personal property free of a security interest, except in relation to sections 43 and 47;
- (d) the fact that a person takes personal property free of a security interest under subsection 47(1);
- (e) the fact that a person does not take personal property free of a security interest under subsection 47(2);
- (f) the fact that a person who purchases collateral does so as a result of disposal by public sale;

Note: See subsection 130(4).

- (g) the fact that a person acquires personal property without actual or constructive knowledge as mentioned in paragraph 267(3)(b);
- (h) the fact that a fee referred to in subsection 279(1) does not exceed the reasonable marginal costs of providing information;

Note: See subsection 279(2).

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- (i) the fact that information has been provided to a grantor or the grantor's authorised representative under section 275 or 276 in response to a request made within the previous 6 months;

Note: See subsection 279(3).

- (j) the fact that there has not been a material change in information provided to a grantor or the grantor's authorised representative since the information was last provided to the grantor or the authorised representative;

Note: See subsection 279(4).

- (k) the fact that the fee imposed under subsection 279(1) exceeds the reasonable marginal costs of providing information;

Note: See subsection 281(2).

- (l) the fact that:

- (i) information has not been provided to the a grantor or a grantor's authorised representative in response to a request made under section 275 within the previous 6 months; or
- (ii) there has been a material change in information since the information was last provided to a grantor or a grantor's authorised representative.

Note: See subsection 281(3).

298 Knowledge by bodies corporate and other entities

- (1) If it is necessary to establish that a body corporate has knowledge of a particular circumstance, it is sufficient to show:
 - (a) that a director, employee or agent of the body corporate, being a director, employee or agent who is responsible for acting on behalf of the body corporate in relation to such a circumstance, had that knowledge; or
 - (b) that both of the following apply:
 - (i) the circumstance is communicated to a director, employee or agent of the body corporate;
 - (ii) if the director, employee or agent had exercised reasonable care, the circumstance would have been brought to the attention of a director, employee or agent

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of the body corporate who is responsible for acting on behalf of the body corporate in relation to such a circumstance.

- (2) If it is necessary to establish that a person other than a body corporate has knowledge of a particular circumstance, it is sufficient to show:
- (a) that an employee or agent of the person, being an employee or agent who is responsible for acting on behalf of the person in relation to such a circumstance, had that knowledge; or
 - (b) that both of the following apply:
 - (i) the circumstance is communicated to an employee or agent of the person;
 - (ii) if the employee or agent had exercised reasonable care, the circumstance would have been brought to the attention of an employee or agent of the person who is responsible for acting on behalf of the person in relation to such a circumstance.
- (3) Paragraphs (1)(b) and (2)(b) do not require a person to bring information to the attention of another person unless:
- (a) doing so is part of the person's regular duties; or
 - (b) the person has reason to know both of the following:
 - (i) the transaction to which the circumstance relates;
 - (ii) that the transaction would be materially affected by the information.

299 Knowledge in relation to certain property transfers

- (1) This section applies if:
- (a) a person (the *transferee*) acquires personal property from another person (the *transferor*); and
 - (b) any of the following applies:
 - (i) the transferee is a member of the same household as the transferor;
 - (ii) the transferee is an associated entity (within the meaning of the *Corporations Act 2001*) of the

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- transferor, or the transferor is such an associated entity of the transferee;
- (iii) the transferee is a director or officer (within the meaning of the *Corporations Act 2001*) of the transferor, or the transferor is such a director or officer of the transferee.
- (2) For the purposes of this Act, the following is to be presumed, unless the contrary is shown beyond reasonable doubt:
- (a) the transferee had knowledge that the acquisition constituted a breach of the security agreement that provides for a security interest in the personal property;
 - (b) the transferee had knowledge of a security interest in the personal property;
 - (c) value was not given by the transferee for the interest acquired.

300 Registration of data does not constitute constructive notice

A person does not have notice, or knowledge, about the existence or contents of a registration merely because data in the registration is available for search in the register.

Part 8.7—Forms and regulations

301 Guide to this Part

This Part enables the Registrar to approve forms for the purposes of this Act. Broad parameters are set out for what may be required by an approved form, including the way in which the form must be given to another person.

This Part also empowers the Governor-General to make regulations for this Act.

302 Approved forms

- (1) This section applies if this Act requires or authorises something to be in the approved form.
- (2) To be in the *approved form*, the thing must:
 - (a) be in writing in a form approved by the Registrar; and
 - (b) include the information, statements, explanations or other matters required by the form approved for the purposes of paragraph (a); and
 - (c) include any other material (including documents) required by that form; and
 - (d) be given in accordance with any requirements specified by the Registrar for the purpose.

Note: *Writing* may include the display or representation of words or data by any form of communication, if recorded in a certain way (see section 10).

Example: Examples of forms that could be approved (see paragraph (2)(a)) are as follows:

- (a) an interactive form provided on the internet;
- (b) a communication exchange provided by an interactive voice recognition telephone system;
- (c) a digital communication enabling computer to computer interaction.

Section 303

- (3) The Registrar may, by written instrument, approve a form for the purposes of paragraph (2)(a).
- (4) Without limiting subsection (2), a form approved under subsection (3) may specify a requirement that the applicant comply with registered data conditions (see section 176B) or third party data conditions (see section 176C), or both, for applications under any of the following sections:
 - (a) section 150 (registration);
 - (b) section 170 (search);
 - (c) section 175 (copies of financing statements and verification statements).
- (5) A form approved under subsection (3) may provide for a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time, despite section 46AA of the *Acts Interpretation Act 1901*.

303 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Chapter 9—Transitional provisions

Part 9.1—Guide to this Chapter

304 Guide to this Chapter

This Chapter deals with the way this Act will apply when the positive rules established by this Act begin to operate. It also provides for some other matters that will have less relevance over time (fixed and floating charges, in Part 9.5).

Part 9.2 defines key concepts for the Chapter.

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

Part 9.4 contains provisions that relate to transitional security interests. These are interests in existence at the registration commencement time or arising afterwards under security agreements made before the registration commencement time.

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

Part 9.4 also deals with the migration of data from existing Commonwealth, State and Territory registers onto the Personal Property Securities Register.

Part 9.5 contains specific rules relating to fixed and floating charges.

Part 9.2—Key concepts

305 Guide to this Part

This Part contains definitions of the following terms used in this Chapter (and elsewhere in this Act):

- (a) migration time;
- (b) registration commencement time;
- (c) transitional security agreement;
- (d) transitional security interest.

306 Meaning of *migration time* and *registration commencement time*

Migration time

- (1) For the purposes of this Act, the ***migration time*** is:
- (a) the start of the first day of the month that is 25 months after the month in which this Act is given the Royal Assent; or
 - (b) another time determined by the Minister.

Example: If this Act were given the Royal Assent on 10 December 2009, the migration time under paragraph (a) would be the start of 1 January 2012.

Registration commencement time

- (2) For the purposes of this Act, the ***registration commencement time*** is at:
- (a) the start of the first day of the month that is 26 months after the month in which this Act is given the Royal Assent; or
 - (b) another time determined by the Minister.

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Example: If this Act were given the Royal Assent on 10 December 2009, the registration commencement time under paragraph (a) would be the start of 1 February 2012.

- (3) The Minister may only determine a time for the purposes of paragraph (2)(b) that is on a day that is at least 28 days after the day on which the migration time occurs.
- (4) If the Minister determines other times for both the migration time and the registration commencement time, the Minister may, after the migration time, make a further determination for the purposes of paragraph (2)(b) that has the effect of providing for a later registration commencement time.

Note: The registration commencement time determined by the further determination must be at least 28 days after the day on which the migration time occurs.

- (5) The Minister may, by written instrument, determine a time for the purposes of paragraph (1)(b) or (2)(b) (including a determination mentioned in subsection (4)).
- (6) A determination made under subsection (5) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

307 Meaning of *transitional security agreement*

In this Act:

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

308 Meaning of *transitional security interest*

In this Act:

transitional security interest means a security interest provided for by a transitional security agreement, if:

Section 308

- (a) in the case of a security interest arising before the registration commencement time—this Act would have applied in relation to the security interest immediately before the registration commencement time, but for section 310; 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) this Act applies in relation to the security interest.

Note: Section 310 provides that this Act only starts to apply to security interests at the registration commencement time.

Part 9.3—Initial application of this Act

309 Guide to this Part

This Act starts to apply to the following at the registration commencement time (26 months after the Act is given the Royal Assent, or another time determined by the Minister):

- (a) new security agreements;
- (b) security interests arising after commencement;
- (c) transitional security agreements and interests;
- (d) new interests in personal property;
- (e) prescribed personal property;
- (f) migrated personal property data from Commonwealth, State and Territory registers.

Special provision is made for the following:

- (a) the enforceability of transitional security interests;
- (b) certain declared statutory interests;
- (d) the enforcement generally of security agreements;
- (e) the starting time for registrations;
- (f) governing laws (under Part 7.2);
- (g) constitutional and non-constitutional interests;
- (h) charges, and fixed and floating charges.

Section 310

310 When this Act starts to apply, and in relation to which matters

Subject to this Part and Part 9.4, this Act starts to apply at the registration commencement time in relation to the following matters:

- (a) a security agreement made at or after the registration commencement time;
- (b) a security interest (other than a transitional security interest) arising at or after the registration commencement time;
- (c) a transitional security agreement;
- (d) a transitional security interest (whether arising before, at or after the registration commencement time);
- (e) an interest in personal property (other than a security interest) arising at or after the registration commencement time;
- (f) personal property of a kind prescribed by regulations made for the purposes of paragraph 148(c);
- (g) personal property, if data in relation to the property is given to the Registrar as mentioned in section 330 or 331 (data in transitional registers).

311 Enforceability of transitional security interests against third parties

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

312 Declared statutory security interests

Section 73 (priority between security interests and declared statutory interests) applies in relation to an interest in collateral only if the interest is created, arises or is provided for under one of the following at or after the registration commencement time:

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- (a) a law of the Commonwealth, a State or a Territory;
- (b) the general law.

314 Enforcement of security interests provided for by security agreements

Chapter 4 (enforcement of security interests) applies only in relation to security interests provided for by security agreements made at or after the registration commencement time.

315 Starting time for registrations

- (1) A person may only apply to the Registrar for the registration of a financing statement or a financing change statement at or after the registration commencement time.
- (2) The Registrar may only register a financing statement or a financing change statement (whether on application by a person or at the Registrar's initiative) at or after the registration commencement time.

Note: However, the Registrar may, before the registration commencement time, register a financing statement or a financing change statement under Division 6 (migrated security interests) or Division 7 (preparatory registration) of Part 9.4.

316 Governing laws

Part 7.2 (Australian laws and those of other jurisdictions) applies only in relation to security interests in collateral (other than transitional security interests) that arise at or after the registration commencement time.

317 Constitutional and non-constitutional interests

- (1) Section 251 (personal property taken free of security interest when Act starts to operate) applies only in relation to security interests in collateral (other than transitional security interests) that arise at or after the registration commencement time.

Section 318

- (2) Section 252 (priority between non-constitutional security interests and constitutional security interests) applies only in relation to security interests in collateral, in relation to which this Act does not operate, that arise at or after the registration commencement time.

318 References to charges and fixed and floating charges

Part 9.5 (charges and fixed and floating charges) applies only:

- (a) in the case of a reference to a charge, a fixed charge or a floating charge in a law of the Commonwealth (whether the law is made before, at or after the registration commencement time)—in relation to a security interest (other than a transitional security interest) arising at or after the registration commencement time; or
- (b) in the case of a reference to a charge, a fixed charge or a floating charge in a security agreement—in relation to a security agreement made at or after the registration commencement time.

Part 9.4—Transitional application of this Act

Division 1—Introduction

319 Guide to this Part

This Part deals with the transitional application of this Act.

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

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

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

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

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

Section 319

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

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

Division 8 provides rules for dealing with defective registrations with respect to transitional security interests. For example, omissions arising from the migration of data onto the Personal Property Securities Register will not automatically render the registration of the data ineffective.

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

320 Guide to priority rules for transitional security interests

- (1) The following table is a guide to how this Act applies to the determination of priorities involving transitional security interests:

Priorities involving transitional security interests			
Item	The following security interest:	has priority over ...	because of ...
1	a perfected transitional security interest	an unperfected security interest (whether transitional or not)	subsection 55(3).
2	a perfected transitional security interest	a perfected security interest that is not a transitional security interest	subsection 55(5) and sections 322 and 322A.
3	an unperfected transitional security interest	an unperfected security interest that is not a transitional security interest	subsection 55(2) and section 321.
4	a perfected security interest (whether transitional or not)	an unperfected transitional security interest	subsection 55(3).

- (2) Other priorities involving transitional security interests are dealt with under this Division as follows:
- (a) for the priority between 2 perfected transitional security interests, see section 323;
 - (b) for the priority between 2 unperfected transitional security interests, see section 323;
 - (c) for the priority between 2 security interests, one or both of which is a transitional security interest, if the priority comes to be determined after the end of the month that is 24 months after the registration commencement time in circumstances involving insolvency or bankruptcy, see section 324.

Section 321

- (3) In this section, a reference to a perfected transitional security interest is taken to be a reference to a transitional security interest that has been continuously perfected, at the time the priority comes to be determined, since immediately before the registration commencement time.

321 Attachment rule

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

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

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

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

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

322 Perfection rule

Main rule

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

Note 1: As a result of this subsection, the priority time for a transitional security interest under section 55A will be immediately before the

Section 322

registration commencement time, as long as the security interest remains continuously perfected.

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

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

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

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

Exception

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

Section 322A

322A Priority rule—priority between transitional security interest and security interest perfected by control

Despite subsection 57(1), a transitional security interest in collateral that has been continuously perfected since the registration commencement time has priority over a security interest in the same collateral (other than a transitional security interest) that is currently perfected by control.

Note 1: Only security interests in certain kinds of property can be perfected by control (see paragraph 21(2)(c) and Part 2.3).

Note 2: Subsection 57(1) provides generally for security interests currently perfected by control to have priority over other security interests.

323 Priority rule—priority otherwise undetermined

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

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

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

324 Priority rule—certain security interests upon insolvency or bankruptcy

- (1) The priority between 2 security interests in the same collateral is to be determined under this Act, as if section 322 had not been enacted, if:

Section 324

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

Division 6—Migration of personal property interests

330 Scope of Division

This Division applies if, at or after the migration time, and before the registration commencement time:

- (a) an officer or agency of the Commonwealth, a State or a Territory gives the Registrar data, in relation to personal property, that is held by the officer or agency in a register (a *transitional register*) maintained under a law of the Commonwealth, a State or a Territory; and
- (b) the data is given in the approved form; and
- (c) the Registrar accepts the data.

331 Requirement for Commonwealth officers etc. to provide data

Upon a written request by the Registrar at or after the migration time, and before the registration commencement time, an officer of the Commonwealth, or the person in charge of an agency of the Commonwealth, must give the Registrar, in the approved form, data held by the officer or the agency in a transitional register.

332 Meaning of *migrated security interest*

An interest in personal property is a *migrated security interest* in the personal property if all the following conditions are met in relation to the interest:

- (a) it is a transitional security interest in the personal property;

Note: Transitional security interests are security interests that arise under security agreements made before the registration commencement time, to which this Act will apply at the registration commencement time (see sections 307, 308 and 310).

- (b) data in a transitional register in relation to the property is:
 - (i) given to the Registrar as mentioned in section 330 or 331; and
 - (ii) accepted by the Registrar;

- (c) a registration in that transitional register in relation to the property was effective immediately before the time the data was given to the Registrar;
- (d) the registration in a transitional register was duly authorised by the law under which the register was maintained.

333 Registration with respect to migrated data

Determination of registrable personal property

- (1) At or after the migration time, and before the registration commencement time, the Registrar may, by legislative instrument, determine a class of personal property to be registrable if:
 - (a) data in a transitional register in relation to personal property of that class is given to the Registrar as mentioned in section 330 or 331; and
 - (b) registrations in that transitional register with respect to personal property of that class were effective immediately before the time the data was given to the Registrar.

Registration of determined personal property

- (2) If, in the opinion of the Registrar, personal property is in a determined class, the Registrar may register a financing statement with respect to the property at or after the migration time, and before the registration commencement time.

Note: The Registrar must give a verification statement to each secured party after the registration of a financing statement (see section 156).

Matters to be included in registered data

- (3) If, in the opinion of the Registrar, a financing statement under subsection (2) describes personal property that is the subject of a transitional security agreement, without limiting any other matters that may be included, the Registrar must, in the statement:
 - (a) either:

Section 334

- (i) if subsection (4) applies—state the transitional registration end time as the end time for the effective registration in respect of the personal property; or
 - (ii) if subsection (4) does not apply—not state an end time for the effective registration in respect of the personal property; and
- (b) disclose that:
- (i) the personal property is covered by a transitional security agreement; and
 - (ii) the transitional security agreement provides for a security interest that is a migrated security interest.
- (4) This subsection applies if, in the Registrar’s opinion, the registration of the interest in the personal property in the transitional register would have ended at a particular time (the ***transitional registration end time***) in accordance with the law under which the transitional register was maintained (as in force immediately before the migration time).

Registration time

- (5) Despite subsection 160(1), the ***registration time*** for a migrated security interest is the registration commencement time.

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

334 Incorrectly registered migrated data

Incorrectly registered data taken never to have been registered

- (1) If data is registered with respect to personal property in a financing statement under subsection 333(2) on the basis that the property is in a class determined under subsection 333(1), but the personal property is not, in fact, in the determined class, this Act applies as if the data is not, and never has been, included in the register.

Removal of data

- (2) Before a time determined under subsection (3), the Registrar may (at his or her initiative) register a financing change statement to remove data from the register, if the Registrar becomes satisfied that subsection (1) applies to the data.
- (3) The Registrar may, by legislative instrument, determine a time for the purposes of subsection (2).

Note 1: Incorrectly removed data may be restored under section 186.

Note 2: Application may be made to the Administrative Appeals Tribunal for review of the Registrar's decision under subsection (2) (see section 191).

335 No requirement for notice of verification statement

Section 157 does not apply in relation to a verification statement that relates to a registration event consisting of the registration of a financing statement under section 333 or a financing change statement under section 334.

Note: Section 157 requires the holder of a verification statement to ensure that notice of the verification statement is given to certain persons.

Division 7—Preparatory registration relating to transitional security interests

336 Preparatory registration—transitional security interests

Application for preparatory registration

- (1) At or after the migration time, and before the registration commencement time, a person may apply to the Registrar, in the approved form, for the registration of any of the following:
 - (a) a financing statement that describes collateral with respect to a transitional security interest;
 - (b) a financing statement with respect to personal property prescribed by regulations made for the purposes of paragraph 148(c);
 - (c) a financing change statement to amend a financing statement mentioned in paragraph (a) or (b) that is registered under this section.
- (2) The Registrar may accept an application made under subsection (1), but only if:
 - (a) in the case of a financing statement, or a financing change statement, with respect to a transitional security interest—the Registrar is satisfied on reasonable grounds that a transitional security interest will (whether before, at or after the registration commencement time) be:
 - (i) attached to the collateral; and
 - (ii) held by the applicant; and
 - (b) in any case—in the Registrar’s opinion, it is operationally practicable for the Registrar to register the financing statement, or financing change statement, before the registration commencement time.

Registration

- (3) If the Registrar accepts the application for registration, the Registrar may register the financing statement (or financing change

statement), in accordance with the application, before the registration commencement time.

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

- (4) A registration under this section with respect to a transitional security interest must disclose that the collateral is covered by a transitional security agreement.

Registration time

- (5) Despite subsection 160(1), the **registration time** for a transitional security interest is the registration commencement time.

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

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

Division 8—Transitional security interests: registration defects

337 Registration effective despite certain defects

Scope

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

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

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

Registration temporarily unaffected by the defect

- (4) Despite sections 164 and 165, the defect does not make the registration ineffective for the period starting at the registration time for the collateral and ending at the following time:

Section 337A

- (a) if the financing statement, as initially registered, states an end time—that end time (or an earlier end time, if the registration is amended to state an earlier end time);
- (b) if the financing statement, as initially registered, does not state an end time—the end of the month that is 60 months after the registration commencement time (or an earlier end time, if the registration is amended to state an end time).

Registration becomes ineffective

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

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

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

Part 9.5—Charges and fixed and floating charges

338 Guide to this Part

This Part contains special rules dealing with references to charges and fixed and floating charges in laws of the Commonwealth and in security agreements.

These rules are expected to have less relevance over time, as the scheme provided for by this Act provides an alternative to reliance on those techniques for security interest transactions.

339 References to fixed and floating charges in other laws

Scope

- (1) This section applies to a reference to a charge, or to a fixed charge or a floating charge, over property in a law of the Commonwealth other than this Act, but only to the extent that:
 - (a) the charge has attached to personal property; and
 - (b) title to that personal property is held by the grantor; and
 - (c) the charge is a security interest to which this Act applies.
- (2) However, this section does not apply if the charge referred to is a perfected security interest provided for by the transfer of an account.

Reference to charge

- (3) A reference to a charge over property is taken to be a reference to a security interest that has attached to:
 - (a) a circulating asset; or
 - (b) personal property that is not a circulating asset.

Reference to fixed charge

- (4) 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.

Reference to floating charge

- (5) 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.

Meaning of circulating asset

- (6) **Circulating asset** has the same meaning as in the *Corporations Act 2001*.

Note: See sections 51CA and 51CB of the *Corporations Act 2001*.

Schedule 1 Transitional provisions relating to amendments of this Act

Part 1 Transitional provisions relating to the Personal Property Securities Amendment (Deregulatory Measures) Act 2015

Clause 1

Schedule 1—Transitional provisions relating to amendments of this Act

Note: See section 2A.

Part 1—Transitional provisions relating to the Personal Property Securities Amendment (Deregulatory Measures) Act 2015

1 Definitions

In this Part:

amending Act means the *Personal Property Securities Amendment (Deregulatory Measures) Act 2015*.

2 Application of amendments relating to serial numbered goods

Despite the amendments made by items 4 and 5 of Schedule 1 to the amending Act, this Act continues to apply, in relation to leases and bailments of goods entered into before the commencement of those items, as if those amendments had not been made.

**Part 2—Application provision relating to the
Personal Property Securities Amendment
(PPS Leases) Act 2017**

**3 Application provision relating to the *Personal Property Securities
Amendment (PPS Leases) Act 2017***

The amendments of section 13 made by the *Personal Property Securities Amendment (PPS Leases) Act 2017* apply in relation to leases or bailments entered into after this section commences.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

Endnote 1—About the endnotes

can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Personal Property Securities Act 2009	130, 2009	14 Dec 2009	15 Dec 2009 (s 2)	
Personal Property Securities (Consequential Amendments) Act 2009	131, 2009	14 Dec 2009	Sch 4 (items 1–7, 9–35, 37–64): 15 Dec 2009 (s 2(1) item 2) Sch 4 (items 8, 36): 1 Apr 2010 (s 2(1) item 3)	—
Personal Property Securities (Corporations and Other Amendments) Act 2010	96, 2010	6 July 2010	Sch 2 (items 1–107, 109–153): 6 July 2010 (s 2(1) items 5, 7) Sch 2 (item 108): 30 Jan 2012 (s 2(1) item 6)	—
Personal Property Securities (Corporations and Other Amendments) Act 2011	35, 2011	26 May 2011	Sch 2: 26 May 2011 (s 2(1) item 3)	—
Personal Property Securities Amendment (Registration Commencement) Act 2011	138, 2011	29 Nov 2011	Sch 1 (items 1–6): 29 Nov 2011 (s 2)	—
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Sch 1 (items 466, 467) and Sch 2 (item 1): 12 Apr 2013 (s 2(1) items 2, 3)	—

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
International Interests in Mobile Equipment (Cape Town Convention) (Consequential Amendments) Act 2013	92, 2013	28 June 2013	Sch 1 (item 4): 1 Sept 2015 (s 2(1) item 2)	—
Statute Law Revision Act 2013	103, 2013	29 June 2013	Sch 1 (item 55): 29 June 2013 (s 2(1) item 2) Sch 1 (item 73): 18 Nov 2012 (s 2(1) item 3)	—
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 1 (items 55, 56): 24 June 2014 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2015	5, 2015	25 Feb 2015	Sch 1 (item 34): 25 Mar 2015 (s 2(1) item 2)	—
Personal Property Securities Amendment (Deregulatory Measures) Act 2015	74, 2015	25 June 2015	Sch 1: 1 Oct 2015 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 476): 5 Mar 2016 (s 2(1) item 2)	—
Statute Law Revision Act (No. 2) 2015	145, 2015	12 Nov 2015	Sch 1 (item 10): 10 Dec 2015 (s 2(1) item 2)	—
Personal Property Securities Amendment (PPS Leases) Act 2017	39, 2017	19 May 2017	20 May 2017 (s 2(1) item 1)	—
Regulatory Powers (Standardisation Reform) Act 2017	124, 2017	6 Nov 2017	Sch 12: 31 Mar 2018 (s 2(1) item 3)	Sch 12 (items 13, 14)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Corporations Amendment (Corporate Insolvency Reforms) Act 2020	130, 2020	15 Dec 2020	Sch 1 (items 115–117): 1 Jan 2021 (s 2(1) item 2)	—
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021	13, 2021	1 Mar 2021	Sch 2 (items 670–684): 1 Sept 2021 (s 2(1) item 5)	—
Corporate Collective Investment Vehicle Framework and Other Measures Act 2022	8, 2022	22 Feb 2022	Sch 3 (item 15): 1 July 2022 (s 2(1) item 2)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Chapter 1	
Part 1.1	
s 2A.....	ad No 74, 2015
s 3.....	am No 96, 2010; No 35, 2011; No 138, 2011; No 74, 2015; No 124, 2017
Part 1.2	
s 6.....	am No 131, 2009; No 96, 2010
s 8.....	am No 131, 2009; No 96, 2010; No 103, 2013
Part 1.3	
Division 2	
s 10.....	am No 131, 2009; No 96, 2010; No 35, 2011; No 13, 2013; No 124, 2017; No 13, 2021
Division 3	
s 12.....	am No 131, 2009; No 96, 2010; No 35, 2011
s 13.....	am No 96, 2010; No 74, 2015; No 39, 2017
s 14.....	am No 131, 2009; No 96, 2010
s 15.....	rs No 96, 2010 am No 35, 2011
Chapter 2	
Part 2.2	
s 19.....	am No 96, 2010
s 20.....	am No 96, 2010; No 35, 2011
s 21.....	am No 96, 2010; No 35, 2011
Part 2.3	
s 23.....	am No 131, 2009; No 96, 2010
s 24.....	am No 96, 2010
s 25.....	rs No 35, 2011
s 26.....	am No 131, 2009 rs No 96, 2010 am No 35, 2011

Endnote 4—Amendment history

Provision affected	How affected
Part 2.4	
Division 1	
s 30.....	am No 96, 2010
Division 2	
s 31.....	am No 96, 2010
s 32.....	am No 131, 2009; No 96, 2010
Division 3	
s 36.....	am No 31, 2014
Division 4	
s 39.....	am No 131, 2009
s 40.....	am No 131, 2009
Part 2.5	
s 41.....	am No 131, 2009; No 96, 2010
s 42.....	am No 96, 2010
s 43.....	am No 131, 2009
s 44.....	am No 131, 2009; No 96, 2010; No 35, 2011
s 49.....	am No 131, 2009; No 96, 2010
s 51.....	am No 131, 2009; No 96, 2010
s 52.....	am No 96, 2010; No 35, 2011
Part 2.6	
Division 1	
s 54.....	am No 96, 2010
Division 2	
s 55.....	am No 131, 2009
s 57.....	am No 96, 2010
s 61.....	am No 131, 2009
Division 3	
s 62.....	am No 96, 2010
s 63.....	am No 96, 2010
s 64.....	am No 131, 2009; No 96, 2010

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
Division 4	
s 68.....	am No 96, 2010
Division 5	
s 71.....	am No 96, 2010
s 72.....	am No 96, 2010
Division 6	
s 73.....	am No 131, 2009
s 75.....	am No 35, 2011
s 77.....	am No 131, 2009; No 96, 2010
Part 2.7	
Part 2.7 heading.....	rs No 96, 2010
s 78.....	am No 96, 2010
s 79.....	am No 131, 2009
s 80.....	am No 131, 2009
Chapter 3	
Part 3.2	
s 83.....	rs No 96, 2010
s 84A.....	ad No 96, 2010
s 85.....	am No 96, 2010
s 86.....	am No 96, 2010
Chapter 4	
Part 4.2	
s 108.....	am No 96, 2010
s 109.....	am No 96, 2010
s 112.....	am No 35, 2011
s 115.....	am No 96, 2010; No 35, 2011
s 116.....	am No 96, 2010
	rs No 35, 2011
s 119.....	am No 131, 2009

Endnote 4—Amendment history

Provision affected	How affected
Part 4.3	
Division 1	
s 122.....	am No 96, 2010
Division 2	
s 126.....	am No 96, 2010
Division 3	
s 128.....	am No 131, 2009
s 129.....	am No 131, 2009
Division 4	
s 135.....	am No 96, 2010
s 136.....	am No 96, 2010
Division 6	
Division 6.....	ad No 96, 2010
s 138A.....	ad No 96, 2010
s 138B.....	ad No 96, 2010
s 138C.....	ad No 96, 2010
Part 4.4	
s 139.....	am No 96, 2010
s 140.....	am No 96, 2010
s 141.....	am No 96, 2010
Chapter 5	
Part 5.1	
s 145.....	am No 35, 2011
Part 5.2	
s 146.....	am No 35, 2011
s 148.....	am No 35, 2011
Part 5.3	
s 150.....	am No 35, 2011
s 151.....	am No 131, 2009; No 96, 2010; No 35, 2011; No 124, 2017
s 155.....	am No 35, 2011
s 157.....	am No 131, 2009

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 158.....	am No 145, 2015
Part 5.4	
s 164.....	am No 35, 2011
s 165.....	am No 35, 2011
Part 5.5	
Part 5.5 heading.....	rs No 35, 2011
s 169.....	am No 35, 2011
s 170.....	am No 35, 2011
s 171.....	am No 131, 2009; No 35, 2011
s 172.....	am No 35, 2011; No 124, 2017
s 174.....	am No 96, 2010; No 35, 2011
s 175.....	am No 35, 2011
Part 5.5A	
Part 5.5A.....	ad No 35, 2011
s 176A.....	ad No 35, 2011
s 176B.....	ad No 35, 2011
s 176C.....	ad No 35, 2011
Part 5.6	
Division 1	
s 178.....	am No 96, 2010; No 103, 2013
Part 5.9	
s 195A.....	ad No 35, 2011 am No 124, 2017
Chapter 6	
Part 6.1	
s 204.....	am No 124, 2017
Part 6.2	
Division 1	
s 205.....	am No 13, 2013; No 13, 2021
s 206.....	am No 13, 2013; No 124, 2017; No 13, 2021

Endnote 4—Amendment history

Provision affected	How affected
Division 2	
s 207.....	am No 13, 2013; No 13, 2021
s 208.....	am No 13, 2013; No 13, 2021
Division 3	
s 210.....	am No 13, 2013; No 13, 2021
s 211.....	am No 13, 2013; No 13, 2021
Part 6.3	
Part 6.3	rs No 124, 2017
Division 1 heading	rep No 124, 2017
s 220.....	rs No 124, 2017
s 221.....	rs No 124, 2017
	am No 13, 2021
Division 2 heading	rep No 124, 2017
s 222.....	rs No 124, 2017
s 223.....	rep No 124, 2017
s 224.....	rep No 124, 2017
s 225.....	rep No 124, 2017
Division 3.....	rep No 124, 2017
s 226.....	rep No 124, 2017
s 227.....	rep No 124, 2017
s 228.....	rep No 124, 2017
s 229.....	rep No 124, 2017
Division 4.....	rep No 124, 2017
s 230.....	rep No 124, 2017
s 231.....	rep No 124, 2017
Chapter 7	
Part 7.2	
s 235.....	am No 131, 2009
s 237.....	am No 96, 2010
s 238.....	am No 131, 2009
s 239.....	am No 131, 2009; No 96, 2010

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 241.....	am No 96, 2010
Part 7.3	
Division 1	
Division 1 heading	ad No 96, 2010
s 242.....	am No 96, 2010
Division 2	
Division 2 heading	ad No 96, 2010
s 243.....	am No 96, 2010
s 244.....	am No 96, 2010; No 35, 2011
Division 3	
Division 3.....	ad No 96, 2010
s 252A.....	ad No 96, 2010
s 252B.....	ad No 96, 2010
Part 7.4	
Division 2	
s 254.....	am No 96, 2010
Division 3	
s 256.....	am No 92, 2013
s 260.....	rep No 96, 2010
Chapter 8	
Part 8.1	
s 265.....	am No 131, 2009
Part 8.2	
s 267.....	am No 131, 2009; No 96, 2010; No 130, 2020; No 8, 2022
s 267A.....	ad No 96, 2010
s 268.....	am No 131, 2009; No 96, 2010; No 74, 2015
s 269.....	am No 96, 2010
Part 8.5	
s 293.....	am No 35, 2011
s 294.....	am No 5, 2015

Endnote 4—Amendment history

Provision affected	How affected
Part 8.7	
s 302.....	am No 35, 2011
Chapter 9	
Part 9.1	
s 304.....	am No 96, 2010; No 138, 2011
Part 9.2	
s 306.....	am No 138, 2011; No 126, 2015
s 307.....	am No 96, 2010
Part 9.3	
s 309.....	am No 138, 2011
s 311.....	rs No 96, 2010
s 313.....	rs No 96, 2010
s 317.....	am No 131, 2009
Part 9.4	
Division 1	
Division 1.....	rs No 96, 2010
s 319.....	rs No 96, 2010 am No 138, 2011
Division 2	
Division 2.....	rs No 96, 2010
s 320.....	rs No 96, 2010 am No 35, 2011
s 321.....	rs No 96, 2010
s 322.....	rs No 96, 2010
s 322A.....	ad No 35, 2011
s 323.....	rs No 96, 2010
s 324.....	rs No 96, 2010
s 325.....	rep No 96, 2010
Division 3.....	rep No 96, 2010
s 326.....	rep No 96, 2010
Division 4.....	rep No 96, 2010

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 327.....	am No 131, 2009 rep No 96, 2010
s 328.....	rep No 96, 2010
Division 5.....	rep No 96, 2010
s 329.....	rep No 96, 2010
Division 6	
s 333.....	am No 96, 2010
Division 7	
s 336.....	rs No 96, 2010
Division 8	
s 337.....	rs No 96, 2010
s 337A.....	ad No 96, 2010
Part 9.5	
s 338.....	am No 131, 2009
s 339.....	am No 131, 2009
s 340.....	am No 131, 2009; No 96, 2010; No 35, 2011
s 341.....	am No 96, 2010; No 35, 2011
s 341A.....	ad No 35, 2011
Part 9.6	
s 342.....	rs No 131, 2009 am No 138, 2011
Schedule 1	
Schedule 1.....	ad No 74, 2015
Part 1	
c 1.....	ad No 74, 2015
c 2.....	ad No 74, 2015
Part 2	
Part 2.....	ad No 39, 2017
c 3.....	ad No 39, 2017