



Australian Government
Attorney-General's Department

**Government Response to the Final
Report of the Statutory Review of the
Personal Property Securities Act 2009
Consultation Paper**

Contents

1 Introduction	2
Background	2
About the reform package	3
Documents accompanying this consultation paper	4
About this consultation paper	5
Navigating the ED package	6
Request for feedback	6
2 Exposure draft of the Amendment Bill	7
Schedule 1: The reach of the Act	7
Schedule 2: Creating an effective security interest	8
Schedule 3: Dealings in collateral	10
Schedule 4: Enforcement of security interests and insolvency of a grantor	12
Schedule 5: Perfection by registration	14
Schedule 6: Regulatory powers amendments	15
Schedule 7: Interaction with other laws and other matters	16
3 Exposure draft of the new PPS Regulations	18
4 Other recommendations	20
5 Transitional arrangements	23
6 Conclusion	25
7 Appendices	26

1 Introduction

The Australian Government (the Government) is seeking stakeholder feedback on its proposed legislative response to the recommendations of the Final Report of the 2015 Statutory Review of the *Personal Property Securities Act 2009* (the Whittaker Review). The overarching objective of the reforms is to simplify the personal property securities framework to make it easier for users to engage with, providing clearer, more accessible rules for the granting, validity and enforcement of security interests in personal property.

The *Personal Property Securities Act 2009* (the PPS Act) establishes and is supported by the the Personal Property Securities Register (the PPS Register), a single online national register of personal property securities. The PPS Register is administered by the Australian Financial Security Authority (AFSA). A key focus of the proposed reforms has been the development of amendments to reduce the complexity of the PPS Register. These amendments include streamlining the collateral class structure by reducing the number of collateral classes from nine collateral (with multiple subclasses) to six standalone classes.

The Attorney-General's Department (the department), together with the Australian Financial Security Authority (AFSA), will work with users of the register regarding implementation and transitional arrangements to guide stakeholders through the transition process.

Background

The PPS Act established a new regime for the creation, legal effect and enforcement of security interests in personal property in Australia. Prior to the PPS Act, the secured transactions laws across Australia were fragmented across more than 70 overlapping Commonwealth, state and territory statutes and common law rules, and more than 40 state and territory registers. The introduction of the PPS Act streamlined the regulation of personal property securities law, reducing duplication and administrative uncertainty, to consistently apply a single set of rules to all types of security interest and all types of personal property, regardless of the location of the collateral or the grantor.

In April 2014, a statutory review into the operation of the PPS Act was announced in accordance with section 343 of the Act. Mr Bruce Whittaker, a leading expert in personal property securities law, conducted the review. The Whittaker Review was tabled in Parliament in March 2015. The Review made 394 recommendations to improve the PPS Act, enhance the usability of the PPS Register and increase public awareness of the personal property securities framework.

The Whittaker Review found that although the PPS Act had improved the consistency of Australia's secured transactions laws, it was complex and at times unclear. Broadly, the Whittaker Review recommended simplifying both the PPS legislative framework and the PPS Register. The Review recognised that clearer and simpler rules can lead to more predictable outcomes, providing financiers with greater confidence in the application of the PPS Act and their ability to take effective security interest under it.

Since the Whittaker Review, the department has undertaken significant stakeholder engagement and consultations on the Whittaker Review recommendations and operation of the PPS Act, including targeted consultations with:

- sections of the finance industry in October 2020,
- agribusiness and agribusiness financiers in December 2020, and
- states and territories at officer-level in February 2021.

In 2015 and 2017 the PPS Act was amended in response to four recommendations contained within the Whittaker Review relating to PPS leases, specifically recommendations 19, 21, 22 and 23.

About the reform package

The Government proposes to accept 345 recommendations made by the Whittaker Review. These include recommendations proposed to be accepted in full as well as those accepted in part. The proposed response to these recommendations is contained in the Exposure Draft package (ED package). The ED package includes amendments to the PPS Act through the Personal Properties Securities Amendment (Framework Reform) Bill (the Amendment Bill) and new PPS Regulations through the proposed Personal Property Securities Regulations 2023.

The Amendment Bill also includes amendments relating to nine recommendations that the Government proposes to not accept, but where the scope or policy intent of the provision has been clarified.

The Whittaker Review, at recommendation one, advised against repealing and replacing the PPS Act, and instead recommended that the PPS Act be amended to improve the existing PPS framework. Therefore, the reform package seeks to clarify and streamline the PPS Act rather than overhaul the fundamental elements of the PPS framework.

This consultation process aims to test the operation of the proposed reforms in the ED package against the current commercial operating environment. The PPS framework cuts across a broad spectrum of users, ranging from high-value entities to small businesses and individual consumers. While the proposed reforms have been developed on a balance of stakeholder interests, it is likewise important to consider the reform package in light of these various interests, which can often conflict and at times be contradictory.

Subject to stakeholder views and Government approval, the ED package will inform the development and finalisation of draft legislation to be introduced to Parliament.

Documents accompanying this consultation paper

In support of the reform package, this consultation paper is accompanied by:

- the [Whittaker Review](#)
- an Index listing the proposed Government responses to each of the 394 Whittaker Review recommendations
- the Exposure Draft of the Amendment Bill, which outlines the proposed amendments to the PPS Act
- a consolidated version of the PPS Act, which shows what the PPS Act will look like with the Amendment Bill reforms implemented
- the Explanatory Memorandum (EM), which explains the amendments made by the Amendment Bill
- the Exposure Draft of the Personal Property Securities Regulations 2023 (what the replacement regulations would look like if the proposed reforms were progressed), and
- the Explanatory Statement (ES), which explains the proposed new PPS Regulations.

The documents accompanying this ED package are represented in the diagram below. You are encouraged to review these documents while considering your response to the ED package.

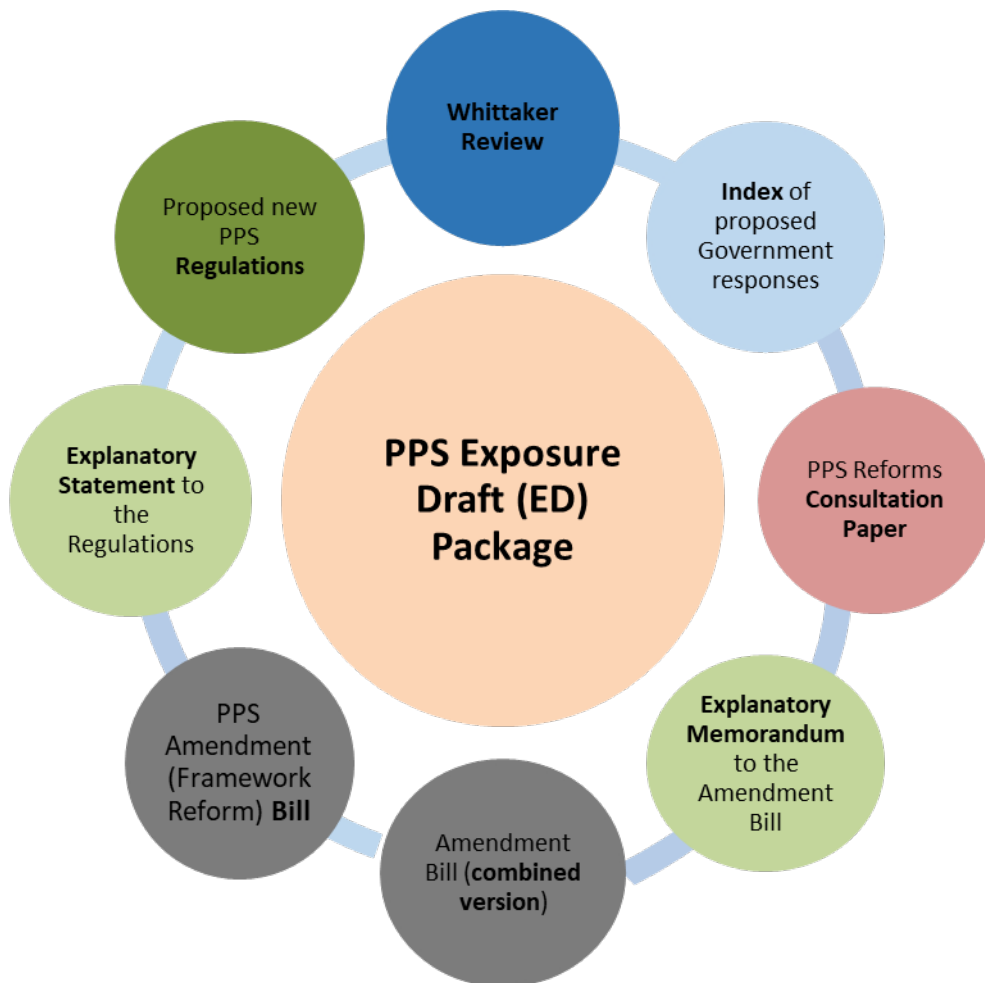


Image description: This image provides a pictorial representation of the documents listed above

About this consultation paper

This consultation paper is intended to guide you through the reform package by providing examples of key reforms in each schedule of the Amendment Bill and proposed new PPS Regulations.

The consultation paper should be read in conjunction with the Amendment Bill and proposed new PPS Regulations as well as the EM and ES.

This consultation paper includes seven parts that relate to the schedules of the Amendment Bill. Each schedule of the Amendment Bill aligns with a chapter of the Whittaker Review, except for Schedule 6 which relates to corresponding amendments to the *Regulatory Powers (Standardisation Reform) Act 2021* (Cth) ('Regulatory Powers Act'). The EM is similarly broken down by schedule.

A further part of this consultation paper relates to amendments made by the proposed new PPS Regulations.

Schedule of Amendment Bill/EM	Chapter of the Whittaker Review
Schedule 1 – <i>The reach of the Act</i>	Chapter 4
Schedule 2 – <i>Creating an effective security interest</i>	Chapter 5
Schedule 3 – <i>Dealings in collateral</i>	Chapter 7
Schedule 4 – <i>Enforcement of security interests and insolvency of a grantor</i>	Chapter 8
Schedule 5 – <i>Perfection by Registration</i>	Chapter 6
Schedule 6 – <i>Regulatory Powers Act amendments</i>	N/A
Schedule 7 – <i>Interaction with other laws and other matters</i>	Chapter 9

The specific amendments highlighted in this consultation paper are not exhaustive and are provided to highlight some of the key reforms in each schedule of the Amendment Bill and the proposed new Regulations. Their inclusion in this consultation paper is not intended to indicate that the relative priority of these amendments over other amendments.

The consultation paper also seeks stakeholder views on Whittaker Review recommendations that are not implemented through the ED package. The Government is seeking stakeholder input on these recommendations through this consultation process.

Navigating the ED package

The following provides guidance on how to navigate through the materials accompanying this consultation process:

1. Refer to the Whittaker Review report to identify recommendations that you wish to consider further.
2. Locate the recommendation in the Index to identify the proposed government response.
 - If the recommendation has been marked as 'Accept', 'Accept in Part' or 'Reject but clarify' – there will be a reference to where you can locate the relevant amendment in the Amendment Bill or new Regulations - refer to the pin-point reference to the relevant item and schedule.
 - If the recommendation is marked 'Accept to consider/consult', 'Rejected' or 'Redundant' then further information is provided on the government position. Recommendations on which we are seeking further views through this consultation are identified as outlined in Part 4 (other recommendations) of this consultation paper.
3. Review the provision or relevant amendment in the Amendment Bill or new Regulations (if relevant) to understand what has changed.
 - Refer to the consolidated version of the Amendment Bill to view the amendment in context of the existing PPS Act.
4. Refer to the EM or ES for further information about the amendment.
5. Provide your feedback via options outlined below.

Request for feedback

We seek feedback on whether the proposed legislative reforms to the PPS framework make the rules around the granting, validity and enforcement of security interests in personal property clearer, and more accessible and whether they are fit-for-purpose in the current commercial environment. We are also interested in your views on recommendations not currently implemented in the legislative package, particularly recommendations we are seeking further views on, as well as any operational or implementation feedback you may have on the reforms.

The consultation will be open for a period of two months.

We welcome your comments on the ED Package through the processes outlined below:

1. Complete our online survey,
2. Alternatively, you can provide a written submission by e-mail to PPSAreform@ag.gov.au.

If you are providing a written submission, please indicate whether or not you consent to your submission being published on the department's website.

For any other enquiries on the legislative amendments to the PPS framework, please e-mail PPSAreform@ag.gov.au.

2 Exposure draft of the Amendment Bill

Schedule 1: The reach of the Act

Schedule 1 of the Amendment Bill relates to the reach of the PPS Act, and corresponds with recommendations 1 to 50 in Chapter 4 of the Whittaker Review.

The amendments in Schedule 1 are intended to improve the consistency of the terminology used in the PPS Act. They also clarify which interests should be included in the scope of the PPS Act.

Schedule 1 includes amended definitions of ‘personal property’ and ‘security interest’, along with other changes to the definitions used in the Act. Schedule 1 also clarifies the exceptions to ‘personal property’ and ‘security interest’ by separating these into separate sections of the Amendment Bill.

The following table provides examples of some amendments made by Schedule 1:

Recommendation	Proposed amendment
17	Paragraph (e) of the definition of ‘commercial consignment’ in section 10 of the PPS Act has been amended to apply a broader knowledge test of what would be known to people dealing with the consignee. This change simplifies the exception and makes it easier to apply.
20	Section 13 clarifies when a PPS lease can arise. For example, the definition of PPS lease in section 13 of the PPS Act has been amended to remove references to ‘bailments’. The term creates uncertainty as to scope and leads to unnecessary registrations on the PPS Register.
32	Section 8 of the PPS Act has been repealed and replaced with the proposed section 12A (interests that are not <i>security interests</i>) and section 13B (interests that are not <i>personal property</i>) to clarify and distinguish what is covered under ‘security interest’ and what is covered by ‘personal property’.
34	Proposed subsection 13B(c) would replace subparagraph 8(1)(f)(ii) of the PPS Act to clarify the intent of the exclusion relating to interests in land. The proposed definition does not seek to affect the scope of the Act.
35	Proposed subsection 12A(g) replaces subparagraph 8(1)(f)(iii) of the PPS Act to omit the words ‘including a successive transfer’ from the exclusion that relates to an interest provided by the transfer of an unearned right to payment under a contract.

Recommendation	Proposed amendment
43	Paragraph 8(1)(ja) and subsection 8(6) of the PPS Act is proposed to be repealed and not replaced by the Amendment Bill. The effect of this amendment is to bring security interests held by pawnbrokers within the scope of the PPS Act.

Schedule 2: Creating an effective security interest

Schedule 2 of the Amendment Bill relates to creating an effective security interest, and corresponds with recommendations 51 to 84 in Chapter 5 of the Whittaker Review.

The amendments in Schedule 2 are intended to improve the rules for how a security interest attaches to collateral, and how a security interest can be made effective against third parties and perfected.

The following table provides examples of some amendments made by Schedule 2:

Recommendation	Proposed amendment
57	The Amendment Bill repeals and replaces the definition of ‘description’ in section 10, referencing out to new section 15A which provides the meaning of <i>description</i> of personal property. The requirement under the definition of ‘description’ to describe collateral by item or class is amended to require a description of personal property (including collateral and proceeds) by ‘item or kind’. An ‘item’ is a specific, individually distinguishable piece of collateral whereas ‘kind’ is a broad description for multiple pieces of collateral or collateral of the same ‘type’. Other than for a description of personal property in a financing statement or financing charge statement, the description of personal property must be sufficient to enable the collateral to be identified. This can be by item or kind or a description as ‘all present and after-acquired property’ (ALL-PAAP) or ‘all present and after-acquired property, except items or kinds of personal property’ (ALL-PAAP except).
65	The definition of ‘intermediated security’ in section 15 is proposed to be repealed and replaced with a new definition that is intended to clarify that an intermediated security is the rights of a person in whose name an intermediary maintains a securities account, to the extent those rights are in respect of that securities account and the financial products that are credited to that account.

Recommendation	Proposed amendment
69	The proposed new definition of 'investment instrument' in section 10 of the Amendment Bill is based on an articulation of principles rather than with reference to a list of financial products. This is intended to reduce the complexity of the definition and avoid the risk that new types of investment instruments are not captured by the definition in the future.
64, 71	Section 26, relating to control of intermediated securities, is proposed to be repealed and replaced in the Amendment Bill. The amendment provides an overarching principle that a secured party may perfect by control if the intermediated security cannot be dealt with without the consent of the secured party. This amendment is intended to make it easier for a third party to ascertain who has control of an intermediated security.
70, 71	<p>Section 27, relating to control of investment instruments, is proposed to be repealed and replaced in the Amendment Bill. The amendment provides that an investment instrument can only be perfected by control if the investment instrument cannot be dealt with except with the consent of the secured party, and either:</p> <ul style="list-style-type: none"> • the secured party is registered as the owner of the instrument on the issuer's books; • there is an agreement between the secured party and the issuer to not deal with the investment instrument without the secured party's consent; or • the secured party is in possession of a certificate in relation to the investment instrument.
72	Section 10 of the Amendment Bill repeals and replaces the definition of 'ADI' (authorised deposit-taking institution). The current definition of ADI states that it has the same meaning as in the <i>Banking Act 1959</i> (Cth) ('Banking Act'), effectively meaning that a bank account is only an ADI account if authorised to carry on business under that Act. The scope of the definition of ADI is widened under the Amendment Bill to apply to authorised foreign bank and Reserve Bank of Australia (RBA) accounts. Consequently, provisions in the PPS Act that apply to ADIs and ADI accounts will also apply to authorised foreign bank and RBA accounts.

Recommendation	Proposed amendment
75	The Amendment Bill repeals subparagraph 21(2)(c)(iv), which provides that negotiable instruments not evidenced by a certificate are able to be perfected by control. Australian law does not currently recognise negotiable instruments only in electronic form. Further, negotiable instruments not evidenced by a certificate do not align with how the PPS Act defines and treats negotiable instruments as it is not clear why a security interest over a negotiable instrument should be able to be perfected by control, unlike other payment intangibles. Therefore, the deletion of subparagraph 21(2)(c)(iv), ensures internal consistency with the PPS Act and aligns the PPS Act with the understanding of negotiable instruments under general law.
79	The Amendment Bill amends the temporary perfection period under subsection 33(2) of the PPS Act to allow security interests to be temporarily perfected for 10 business days rather than 5 business days. The temporary perfection period gives secured parties, in certain circumstances, perfection for a short period, during which they can take steps to perfect their security interest. This amendment is made to ensure the temporary perfection timeframe gives secured parties adequate time to perfect their interest and in support of the publicity function of perfection.
83	Section 56, relating to how a security interest is continuously perfected, is proposed to be repealed and replaced in the Amendment Bill. The amendment is intended to be simpler to follow, and makes clear that security interests may be continuously perfected in the same way or subsequently by another method.

Schedule 3: Dealings in collateral

Schedule 3 of the Amendment Bill relates to dealings in collateral, and corresponds with recommendations 168 to 273 in Chapter 7 of the Whittaker Review.

The amendments in Schedule 3 relate to the rules regulating dealings with collateral and the effect of those dealings. This includes how the PPS Act treats dealings in the proceeds of collateral, interests in collateral that are accessions, and interests in goods that are commingled or processed.

Schedule 3 also makes amendments to simplify the knowledge requirement to determine if the taking free rules apply to particular collateral, and to clarify the timing for resolving priority disputes between interests in the same collateral.

The following table provides examples of some amendments made by Schedule 3:

Recommendation	Proposed amendment
187	The definition of 'knowledge' is inserted into the Amendment Bill to cover both actual and constructive knowledge and which applies to all of the taking free rules and other parts of the PPS Act. This is intended to reduce the complexity of the PPS Act and make its application more consistent.
210	The definition of 'negotiable instrument' in section 10 of the PPS Act is proposed to be repealed and substituted with a definition which aligns with its general law meaning. Currently, the definition of 'negotiable instrument' under the Act is broader than its general law definition as it includes 'writing that evidences a right to payment of currency if the writing is transferred by delivery with any necessary endorsement or assignment' and 'letters of credit'. The PPS Act will still apply to letters of credit and other types of personal property that are no longer explicitly captured by the definition, however they will no longer be subject to the rules for negotiable instruments.
230, 233	The definition of a Purchase Money Security Interest (PMSI) is amended in subsections 14(1), 14(2) and 14(2A). Currently, the PMSI definition does not clearly cover a lease that is an in-substance security interest but not a PPS lease, or a consignment that is an in-substance security interest but not a commercial consignment. Subsection 14(1) clarifies that a PMSI captures all leases or consignments that give rise to a security interest, irrespective of whether they are a PPS lease or commercial consignment. Subsection 14(2) is repealed and substituted to provide that security interests in investment instruments, intermediated securities, monetary obligations or negotiable instruments cannot be PMSIs.
239	Section 62 provides rules for competitions between PMSIs and other perfected security interests. Currently, section 62 is split into different timing requirements for registering financing statements for PMSIs in 'inventory' and 'personal property other than inventory'. The section is proposed to be amended to provide a single timeframe of 15 business days to register a financing statement for a PMSI for personal property, regardless of whether that personal property is inventory or not.
241	The requirement under the PPS Act to indicate a PMSI in a registration (the PMSI checkbox) is not replicated in the Amendment Bill. Under the current requirement, a party is required to 'tick' the PMSI checkbox when making a registration. A failure to tick the checkbox could render a registration ineffective. The amendment removes a point of confusion and oversight for registrants and further streamlines the registration process.

Recommendation	Proposed amendment
260	<p>The definition of ‘accession’ in section 10 of the PPS Act is proposed to be repealed and substituted with a new definition. Goods are an accession to other goods if they are installed in, or affixed to, the other goods, unless:</p> <ul style="list-style-type: none"> • both lots of goods are required or permitted by the new PPS Regulations to be described by serial number; or • if they can be categorised as processed or commingled goods instead. <p>This amendment does not change the scope of the definition but ensures there is no overlap between the application of special rules for accessions, processed goods or commingled goods.</p>
263	<p>Part 3.4 of the PPS Act is restructured to separate the priority and enforcement rules for ‘processed’ and ‘commingled’ goods. ‘Processed’ goods are those that have been manufactured, processed and assembled into a product and the identity of the original goods has been lost. Commingled goods are those that are mixed with other goods and the identity of the original goods has been lost in the resulting mass. An example of commingled goods is wheat from multiple sources being stored in the same silo, while an example of a processed good is that wheat being used to bake bread. Currently, the same rules apply for ‘processed’ and ‘commingled’ goods which can lead to unfair outcomes for secured parties with an interest in commingled goods.</p>

For further insights into the mapping of collateral classes from the current classes to the new proposed classes, reference **Appendix A** and **B** in this consultation paper. These appendices provide a detailed breakdown of the mapping process, offering valuable information on the evolution of the collateral class framework.

Schedule 4: Enforcement of security interests and insolvency of a grantor

Schedule 4 of the Amendment Bill relates to the rules for enforcement of security interests and grantor insolvency, and corresponds with recommendations 274 to 335 in Chapter 8 of the Whittaker Review.

Schedule 4 repeals the entirety of Chapter 4 of the PPS Act and replaces it with a new Chapter 4. The amendments in Schedule 4 are intended to clarify how security interests in personal property can be enforced in the event of default under a security agreement. The amendments also clarify which provisions in Chapter 4 cannot be excluded by contract (mandatory enforcement provisions). The amendments aim to facilitate user understanding of the chapter, freedom of contract in commercial disputes, consumer protections and the application of consistent rules for enforcement.

The following table provides examples of some amendments made by Schedule 4:

Recommendation	Proposed amendment
288	Proposed new subsection 109(2) is inserted into section 109 of the Amendment Bill to clarify the current rule under the PPS Act that security interests in personal property to which the National Credit Code (NCC) applies are excluded from the operation of Chapter 4. This is because the NCC regulates consumer credit transactions, including enforcement provisions.
298	Proposed new section 144F is inserted in the Amendment Bill to clarify the current position under the PPS Act that a secured party with a security interest in an accession has a right to remove the accession in order to seize the collateral. The PPS Act currently does not expressly provide such a right.
309	Subsection 129(2)(b) of the PPS Act, which prohibits a secured party from purchasing collateral if the grantor or any higher-ranked secured party objects to the purchase, is proposed to be deleted. A secured party who purchases collateral may only do so at public sale, and by paying at least market value at the time of purchase. While the provision does not prevent the sale, it ensures the collateral will be sold for its market value.
312	Proposed new subsection 129(2), which sets out the requirements of a notice for disposal of collateral, including that the notice must state the amount owing on the specified day, allows the secured party to explain how the amount is to be calculated, if it cannot be identified as a specified sum.
322	Proposed new section 134 is based on current section 138 and is a mandatory enforcement rule. Proposed new section 134 continues to allow a secured party wanting to retain collateral to request proof of the interest in the collateral of a person (other than the grantor) if the person objects under new section 133, but adds new subsection 134(b) which gives an ability for the secured party to request proof of any objecting party's claim that it would be adversely affected by the secured party retaining the collateral. Currently, the secured party can only request proof of an objector's interest. This amendment reflects the position under subsection 61(2) of the Saskatchewan PPS Act.
330	Subparagraph 268(1)(a)(ii) is proposed to be amended to include "a PPS lease" to clarify that PPS leases that are not in-substance security interests are excluded from the vesting provisions in sections 267 and 267A.

Recommendation	Proposed amendment
334	Proposed new subparagraphs 267(3)(b)(iv) and 267(3)(b)(iva) extend the application of subsection 267(3) to personal bankruptcy. This provides consistency in the application of subsection 267(3) for both corporate bankruptcy and personal bankruptcy.

Schedule 5: Perfection by registration

Schedule 5 of the Amendment Bill relates to the rules for perfection by registration and maintenance of the PPS Register, and corresponds with recommendations 85 to 167 in Chapter 6 of the Whittaker Review.

The amendments in Schedule 5 relate to the process for amendment demands, the rules for how collateral is to be identified in a registration, and the functionality of the PPS Register to enable a registration to be made against a number of collateral classes at the same time.

The following table provides examples of some amendments made by Schedule 5:

Recommendation	Proposed amendment
86	Current table item 5 of subsection 153(1) sets out the end time for a registration. Item 5 is proposed to be amended to introduce new rules on end times for registrations based on whether the grantor is an individual or any other case. Under the amended item 5, registrations against individuals, or against serial-numbered property that may not identify the grantor because the grantor is an individual, must have a maximum term of 7 years. Registrations that specify a serial number for property where the grantor is an individual do not require the individual's details to be included in the registration.
87	The definitions of 'commercial property' and 'consumer property' in section 10 of the PPS Act are proposed to be repealed. This is because the requirement to identify the collateral based on its use is removed. This requirement is removed by amendments to section 153, which reduces the complexity in the current system associated with making parties differentiate between consumer and commercial use (recommendation 86).

Recommendation	Proposed amendment
92	Item (4)(c) of the table in subsection 153(1) of the PPS Act and the functionality of the PPS Register are proposed to be amended to enable a registration to be made against a number of collateral classes at the same time, with some exceptions. This amendment is made to improve the registration process. Current subsection 153(1) item (4)(c) stipulates that a registration must belong to a single collateral class.
100	Section 153 allows a registration against serial numbered goods to have the same registration period as any other collateral, for the relevant type of grantor.
127	Paragraph 165(c) of the PPS Act, which provides that a registration is defective if it indicates that the security interest is a PMSI when the security interest is not a PMSI, is proposed to be repealed. Currently, in order to indicate that a security interest is a PMSI, a registrant must tick a PMSI 'checkbox' when making a registration. This is the source of much confusion and error.
133, 139	New Part 5.6 provides a clearer process for making an amendment demand. The amendment demand process has been streamlined to ensure all required information is provided at the outset of the demand process to facilitate earlier action on the demand. For example, proposed new section 179 requires an eligible person to give an amendment demand in an approved form. Currently, a person is not required to use an approved form to give a secured party an amendment demand. This change means a person making an amendment demand need only provide one set of forms (rather than two as currently required, which leads to a high rate of user error). Additionally, Part 5.6 removes the requirement that the Registrar assess the merits of an application and instead requires the secured party to 'show cause' so that the Registrar makes a decision based on the written submissions of the secured party.

Schedule 6: Regulatory powers amendments

Schedule 6 of the Amendment Bill relates to corresponding amendments to the Regulatory Powers Act.

The PPS Act previously triggered Parts 4 and 6 of the Regulatory Powers Act, which provide the PPS Registrar with standard civil penalty and enforceable undertaking powers. Schedule 6 of the Amendment Bill amends the PPS Act to trigger Parts 5 (standard infringement notice) and Part 7 (injunctions provisions) of the Regulatory Powers Act. As the PPS Act does not contain an infringement notice scheme or the power to issue injunctions, this results in an expansion of the current regulatory powers of the PPS Registrar under the PPS Act.

Schedule 7: Interaction with other laws and other matters

Schedule 7 of the Amendment Bill relates to rules for determining whether the law of Australia or the law of another jurisdiction governs a security interest transaction, the constitutional operation of the PPS Act and the relationship between the PPS Act and other Australian laws. Schedule 7 corresponds with recommendations 336 to 385 in Chapter 9 of the Whittaker Review.

The Schedule 7 amendments provide a more detailed chapter summary for Chapter 7 as well as clarifying when a security interest taken to be attached to collateral in a foreign jurisdiction has a 'functionally equivalent' status under the PPS Act so that it is recognised as attached to the collateral under the Act. The amendments also clarify the governing law rules for financial property, such as non-negotiable documents of title, as well as intermediated securities and enforcement of security interests in tangible and intangible property.

The following table provides examples of some amendments made by Schedule 7:

Recommendation	Proposed amendment
336	Section 6 of the PPS Act, which provides a set of rules for determining when the PPS Act will apply to a security interest, is proposed to be repealed. This will remove the potential for inconsistency with the application of Part 7.2 of the PPS Act which is more appropriately used to identify whether Australian law, including the PPS Act, should apply to transaction concerning a security interest.
338	The terminology on perfection, enforceability and attachment used in Part 7.2 of the PPS Act is aligned with the terminology used elsewhere in the Act. Currently, Part 7.2 of the PPS Act uses 'validity' and 'perfection' whereas the remainder of the Act uses 'attachment', 'enforceability against a third party' and 'perfection'. This will ensure there is greater internal consistency within the PPS Act.
356	The Amendment Bill refines the concept of 'control' under the PPS Act to eliminate confusion. Currently, Chapter 2 of the PPS Act uses the term 'control' as a means of perfecting a security interest while Chapter 9 uses 'control' in respect of distinguishing circulating assets from non-circulating assets. The concept of control in sections 340 and 341A is amended to refer to 'circulating asset control' for the purposes of sections 51CA and 51CB of the Corporations Act.

Recommendation	Proposed amendment
357	Sections 340 to 341A are proposed to be clarified by relocation to the <i>Corporations Act 2001</i> (Cth) (the Corporations Act). These provisions have no consequence for the operation of the PPS Act itself as the concept of circulating assets is only relevant in the context of Corporations Act. The provisions have been moved largely in their current form.
367	Subsection 47A(1A) of the <i>Shipping Registration Act 1981</i> (Cth) ('Shipping Act') is proposed to be repealed to enhance the interaction between the Shipping Register and PPS Register and prevent inconsistent outcomes. Subsection 47A(1A) provides that a caveat over a ship cannot be lodged under the Shipping Act if it is an interest in a ship which is a PPS Act security interest. The amendment will allow a secured party to lodge a caveat on the Shipping Register under the Shipping Act. This will not prevent a dealing from being registered on the PPS Register, but provides the caveator with notice of the dealings, and time within which to act to prevent the dealing if it so wishes.
374	The Amendment Bill amends paragraph 275(6)(c) of the PPS Act to clarify that a banker's duty of confidence cannot be relied upon to block a disclosure that would otherwise be required by subsection 275(1). Currently, paragraph 275(6)(c) states that a secured party is not required to respond to a request under subsection 275(1) if the response would disclose information that is protected by a 'duty of confidence'.
377	The definition of 'intellectual property' is proposed to be repealed from the PPS Act. 'Intellectual property' continues to be referred to throughout the PPS Act however it will carry the meaning found in general law.

3 Exposure draft of the new PPS Regulations

The proposed new Regulations repeal and replace the Personal Property Securities Regulations 2010 (the current PPS Regulations) and incorporate the Government’s response to recommendations made by the Whittaker Review.

The proposed new Regulations set out a number of provisions relating to the types of interests in personal property that are or are not subject to the PPS Act and the operation of the PPS Register. They include:

- the information required to make a registration,
- how the collateral or property is to be described, and
- identification of the grantor and secured party in a registration.

The nine collateral classes have been reduced to six categories to further streamline registration requirements and reduce complexity in the PPS Register. See the below table for more information on these changes.

The current PPS Regulations are divided into Parts that mirror the Parts of the Act. However, to assist users the layout and structure of the proposed new Regulations follows more seamlessly the order of the corresponding provisions in the PPS Act.

The following table provides examples of some registration requirement amendments:

Recommendation	Proposed amendment
88	Item 1 of the table in clause 4.1 of Schedule 1 to the current Regulations is proposed to be repealed so that the inventory tick box is removed from the PPS Register. Currently, Item 1 of the table requires that if the registration is commercial, it must indicate whether or not the collateral includes inventory by ticking a checkbox on the PPS Register (the inventory tick box). The inventory tick box is proposed to be repealed because it provides little utility to insolvency practitioners in determining whether an asset is a circulating asset, and is a source of confusion for other registrants.
93	Section 20 of the proposed new Regulations amends the nine collateral classes on the PPS register to the following six classes: <ul style="list-style-type: none"> • serial-numbered property (with sub-classes for the different types of serial-numbered property) • goods • accounts • intangible property, and financial property • all present and after-acquired property • all present and after-acquired property except

Recommendation	Proposed amendment
98	Section 23 of the proposed new Regulations provides how to describe proceeds. The new section provides ‘proceeds classes’ and specifies what further description is required for each class. The description of the proceeds should be sufficient to identify the items that are to be proceeds.
101	The definition of “motor vehicle” in reg 1.7 of the current PPS Regulations is proposed to be amended so that a vehicle is a motor vehicle for the purposes of the PPS Act and Regulations if it is a road vehicle that has a vehicle identification number (VIN). The amendment is designed to reduce complexity and uncertainty, and the practice of duplicate registrations on the PPS Register.

4 Other recommendations

The Government has not settled on a finalised position in relation to 16 recommendations and is seeking input as part of this consultation process. These recommendations are therefore not canvassed by the exposure drafts of the Amendment Bill and proposed new PPS Regulations.

The outcomes of this consultation may inform the Government's approach to these recommendations, which may involve further drafting before the Amendment Bill is introduced to parliament, future amendments, or no further action being taken. We would encourage you to provide your feedback in relation to these recommendations through Part 5 of the consultation survey.

The recommendations are outlined in further detail in the table below:

Recommendation	Description
38	That government consider further whether transfers by way of security interests in life insurance policies could also be brought within the Act.
49	That government consider further, in consultation with industry, whether (and if so, how) securities lending arrangements, and potentially other similar arrangements, should be excluded from the Act.
104	That government consider whether clause 2.2(3)(d) of Schedule 1 to the Regulations should be amended to provide that the serial number for a watercraft that does not have an official number is its International Maritime Organisation (IMO) number, if it has one.
149	That government separately consider whether it wishes to facilitate the establishment of a register of construction and heavy industry machines.
169	That government consider further whether the Act should continue to provide that a transfer of collateral subject to a security interest will cause the transferee to become the grantor of that security interest, or whether the Act should be amended to reflect the alternative approach taken under the Canadian PPSAs and the NZ PPSA.
206	If government decides (pursuant to recommendation 169) to allow the Act to continue to provide that a transfer of collateral subject to a security interest makes the transferee the grantor of the security interest, that government consider whether section 52 should be amended to provide that it does not apply to a security interest that is temporarily perfected under section 34.
254	That government afford agribusiness financiers and farming organisations a further opportunity to comment on whether subsections 85 and 86 should be retained or deleted.

Recommendation	Description
287	That government consider further whether the nature of company receiverships is such that they need to remain outside Chapter 4, taking into account Government's deliberations on the extent to which provisions in Chapter 4 should be mandatory to all enforcement processes, and that section 116 be retained or deleted in accordance with government's decision.
366	That the arm of Government responsible for insolvency law reform be asked to consider whether the law should be amended to clarify the extent to which an administrator's equitable lien should rank ahead of security interests.
264	That government consider further, in consultation with industry and through consideration of the position in Canada and under Article 9, whether the commingling rules should be extended to commingled intangibles.

Additionally, the Government specifically seeks state and territory views on the following recommendations:

Recommendation	Description
11	That government separately consider, in consultation with the states and territories, whether the concept of an "account" under the Act should be expanded to include monetary obligations generally.
30	That government ask the states and territories to consider enacting legislation that clarifies the circumstances in which "trees" can be "crops".
31	That government ask the states and territories to agree that the Act be amended to delete the provisions that allow statutory rights to be removed from the reach of the Act.
40	That government explore with the states and territories whether paragraph 8(1)(i) and subsection 8(5) could be amended so that water rights are only excluded from the Act if they are able to be recorded under a statutory registration scheme that complies with the expectations set out in the 2005 Intergovernmental Agreement on a National Water Initiative.
42	That government explore with the states and territories whether a regime can be developed, potentially along the lines of the principles applied in the Canadian PPSAs, that would allow fixtures to be brought within the Act.

Recommendation	Description
219	That government consider, in consultation with the states and territories, whether or not taking free rules may be contained in laws other than the Act, and that the Act be amended to set out the agreed position.

5 Transitional arrangements

Should the amended PPS Act be introduced to Parliament and proceed to commencement, there will be a period of transition from the pre-amendment to post-amendment PPS system covered by transitional arrangements. The Australian Financial Security Authority (AFSA), the agency responsible for regulating the personal property securities system and administering the PPS Register, is assisting in identifying the opportunities and challenges associated with this transition. Changes to the PPS Register and registration requirements, including ensuring the continuous perfection of security interests during the transition period, are still being considered. The transition period is anticipated to extend over a minimum period of 24 months from the date of commencement of the Amendment Bill.

There are two main approaches being considered in respect of transitional arrangements, including those related to the PPS Register. These are grandfathering provisions and temporary perfection.

Grandfathering

The grandfathering model enables security interests that pre-date the amendments to continue to be governed by the pre-amendment PPS Act. If a grandfathering approach is taken, we propose to adopt a principles-based approach which would mean there would be broad high-level principles to govern when the new or old laws would apply. Tailored provisions would be developed where there is a need for a specific arrangement that diverts from the principles-based approach. This means that two sets of laws may need to continue in perpetuity, for example, for registrations without an end date. Under this approach, where action is taken post-commencement on a security interest, for example, through a dealing or registration of a financing change statement the new laws would apply, in accordance with the principles-based transitional arrangements.

The advantage of this transitional approach is that it does not require any action by registrants on the PPS register to maintain perfection of their security interest once the new laws commence. The transitional provisions would clarify when the new or old laws apply. However, this approach creates complexity around the PPS Register because it needs to account for pre-commencement and post-commencement security interests, including specifically registration requirements. There would be complexity both for the regulator and users in terms of having two sets of laws operating in parallel.

Temporary perfection

An alternate approach is the temporary perfection model, which would transition all interests under the new laws and new PPS Register. This was the approach taken when the PPS Act first came into force to transition existing security interests, including from federal, state and territory registers, to a single, unified PPS Register. The advantage of the temporary perfection model is that it enables one set of rules to apply to all registrations arising pre- and post-commencement, which is anticipated to simplify implementation of the new PPS Register. This ensures that only one set of laws applies to all security interests in personal property. However, this option would

require some level of positive action on the part of registrants to transition their interests under the new laws and new PPS Register or require specific rules about how pre-commencement registrations would transition.

The legal, operational and practical implications of both of these options are being worked through. We welcome your feedback on operational considerations that should inform the approach to transitional arrangements and provisions in this consultation.

6 Conclusion

Stakeholder feedback on the ED package will inform the final Amendment Bill and proposed new PPS Regulations to be introduced into the Parliament, as well as the transitional arrangements. As the PPS framework is a national system, state and territory agreement to a proposed final ED package will be sought before introduction of the draft legislation to Parliament.

The department, together with AFSA, will work with users of the register regarding implementation and transitional arrangements to guide stakeholders through the transition process.

A summary of next steps post-consultation can be seen in the below diagram:

What happens post-consultation?

Did you know?

Once the public consultation is complete, the new PPS framework won't exist until legislation is enacted. There would be a process to finalise the draft legislation to be introduced to Parliament, and subject to passage through Parliament, steps to implementation and commencement, as outlined below.

ED Package Consultation

There will be a 2-month period of public consultation where users of the PPS framework will have their say on the Amendment Bill and proposed new regulations. This will be followed by targeted consultation with the states and territories.

Consultation with states and territories

As the PPS system is a national framework, states and territories will be consulted on the proposed final drafts of the Amendment Bill and proposed new PPS Regulations.

Introduce Amendment Bill to Parliament and commencement of new PPS Regulations

Subject to stakeholder views and Government approval, the Amendment Bill will inform the development of draft legislation to be introduced to Parliament. The proposed new PPS Regulations would commence alongside the amended PPS Act.

Implementation

Once Parliament approves the legislation to amend the PPS Act, there will be a period of administrative and operational change, including the build of the new PPS Register.

7 Appendices

Table of Appendices	
Appendix A	Collateral class mapping table
Appendix B	Collateral class diagram

Appendix A: Collateral class mapping table



Australian Government
Attorney-General's Department

Old to new collateral class mapping table

Collateral type	Current class	Proposed class
Crops or livestock	Agriculture	Goods
Aircraft	Aircraft	Serial numbered property OR Goods
All present and after acquired property (All PAAP)	All PAAP	All PAAP
All present and after acquired property with exceptions (All PAAP except)	All PAAP except	All PAAP except
Chattel Paper	Financial Property	N/A ⁽¹⁾
Currency	Financial Property	Intangible property and financial property
Document of title	Financial Property	Intangible property and financial property
Intermediated security	Financial Property	Intangible property and financial property
Investment instrument	Financial Property	Intangible property and financial property
Negotiable instrument	Financial Property	Intangible property and financial property
Account	Intangible Property	Accounts
General intangible	Intangible Property	Intangible property and financial property
IP - Design	Intangible Property	Serial numbered property OR Intangible property and financial property
IP - Patent	Intangible Property	Serial numbered property OR Intangible property and financial property
IP - Plant breeder's rights	Intangible Property	Serial numbered property OR Intangible property and financial property
IP - Trade mark	Intangible Property	Serial numbered property OR Intangible property and financial property
IP - Circuit layout	Intangible Property	Intangible property and financial property
IP - Copyright	Intangible Property	Intangible property and financial property
Motor vehicles	Motor vehicles	Serial numbered property OR Goods
Watercraft	Watercraft	Serial numbered property OR Goods
Other goods	Other goods	Goods

⁽¹⁾ The concept of chattel paper is being removed from the Act. If a secured party takes security over collateral that would have been chattel paper under the current Act, the most appropriate collateral class under the amended Act is likely to be "financial property".

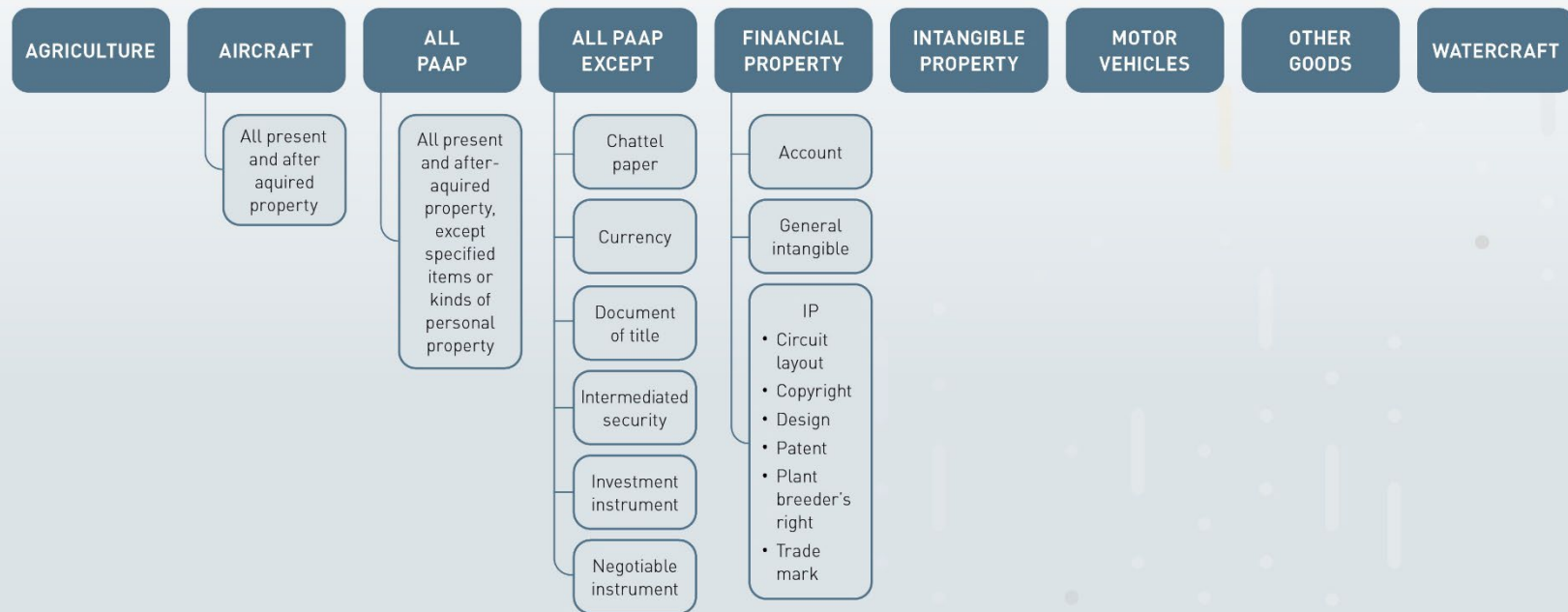
Appendix B: Collateral class diagram



Australian Government
Attorney-General's Department

The current collateral classes

including sub-categories





The proposed collateral classes

ALL
PAAP

ALL PAAP
EXCEPT

SERIAL
NUMBERED
PROPERTY

ACCOUNTS

INTANGIBLE
PROPERTY AND
FINANCIAL PROPERTY

GOODS

Examples of types of collateral that fall within the proposed collateral classes

- All present and after acquired property

- All present and after-acquired property, except specified items or kinds of personal property

- Design
- Patent
- Plant breeder's rights
- Trade mark
- Aircraft
- Vehicle
- Watercraft

- Account
- ADI account
- Securities account

- Financial products (shares, bonds, any other financial instrument, any other financial asset such as currency)
- General intangible
- Intellectual property (Circuit layout, Copyright, Design, Patent, Trademark, Plant breeder's right)
- Investment instrument (shares or other securities listed on the ASX and held through the CHESS system)
- Negotiable instrument (negotiable document of title, intermediated securities, document of title)

- Commingled goods (eg. Two automotive parts that are welded together to become part of a motor car engine)
- Processed goods (eg. Wheat that is mixed with other wheat)
- Other goods (e.g. crops and livestock)

Please note this is a non-exhaustive list and exceptions may apply