

# Schedule 1—The reach of the Act

## Part 1—Amendments relating to Chapter 1 of the Personal Property Securities Act 2009

### Division 1—Main amendments

#### *Personal Property Securities Act 2009*

##### **Item 1 – Section 4 (paragraphs (b) and (c))**

1. Section 4 provides a high-level guide to Part 1.2 of the *Personal Property Securities Act 2009* (the PPS Act). Item 1 repeals paragraphs (b) and (c) from section 4. Item 1 replaces these paragraphs with a new paragraph (b) to indicate that Part 1.2 is now intended to address ‘the application of this Act in the external Territories’.
2. Item 1 removes existing paragraph (b) ‘geographical rules’ because provisions relating to the application of the PPS Act in Australia have been moved to Chapter 7 of the PPS Act. For further information see Schedule 7 of this Explanatory Memorandum.
3. Item 1 removes existing paragraph (c) ‘particular interests to which this Act does not apply’ from section 4 because these interests have been moved to Part 1 of the PPS Act in accordance with Item 5 of this Schedule below.

##### **Item 2 – Section 8**

4. Section 8 currently lists interests to which the PPS Act does not apply. Item 2 repeals section 8. This is because section 8 does not provide a clear distinction between whether items are excluded from security interests or personal property. Section 8 will be split into two distinct sections. Item 10 inserts new section 12A to address exclusions from security interests. Item 11 inserts new section 13A to address exclusions from personal property.
5. New subsections 12A(1) and 13A(2) are drafted to replicate the exclusions of personal property currently found in section 8 categorised as either an excluded property interest or excluded security interest. However, there are some differences outlined below.

##### Differences between current section 8 and new subsections 12A(1) and 13A(2)

6. *Clarification of exclusions in land:* new paragraphs 13B(1)(b) and (c) (currently subparagraphs 8(1)(f)(i) and (ii)) will clarify that:
  - interests provided for by the creation or transfer of an interest in land; and
  - interests relating to land that are registrable in a State or Territory’s Torrens system;  
or
  - an interest in a right to payment in connection with land;are excluded from personal property.
7. This amendment clarifies the scope of the exclusion of interests ‘relating to’ land so the edges of the exclusion align with the Torrens system requirements in a State or Territory.

8. The express exclusion of an interest in a right to payment in connection with land (currently contained in subparagraph 8(1)(f)(ii)) is retained. An interest in a right to payment is closely connected to interests in land. These interests are currently regulated by the States and Territories. For example, an assignment of rights to receive rent payable under a lease.
9. The requirement to specifically identify the land in writing (currently contained in subparagraph 8(1)(f)(ii)) will be removed as some interests in land can be created either with or without evidence in writing by specifically identifying the land. For example, interest created by taking possession.
10. *Removal of exclusion relating to successive transfer*: New subparagraph 13B(1)(c)(ii) and paragraph 12A(1)(g) differ from current subparagraphs 8(1)(f)(ii) and 8(1)(f)(iii) as they omit the phrase '(including a successive transfer)'.
11. This amendment is intended to remove the incorrect implication that references in the PPS Act to transfers that do not include a reference to 'including a successive transfer' only cover the primary transfer. This amendment should therefore clarify that references to transfers are intended to include primary and successive transfers.
12. *Removal of exclusion of interest provided for by a transfer of account*: Current subparagraphs 8(1)(f)(vii), 8(1)(f)(viii) and subsection 8(4) will not be replicated in the new subsection 12A(1) or 13A(2). This will mean that the PPS Act applies to:
  - a transfer of an account, if the transferee's sole purpose in acquiring the account is to collect it (for example, debt collectors when a right to collect and then keep a debt is transferred to the debt collector); and
  - interests created by a transfer of an account to satisfy (either wholly or partly) a pre-existing indebtedness.
13. The extension of the PPS Act to debt collectors is consistent with the general policy of the PPS Act to promote transparency in relation to transfers of accounts and other security interests.
14. The exclusion of a transfer of an account where the transferee's sole purpose in acquiring the account is to collect it (current subparagraph 8(1)(f)(vii)) is problematic as it could serve to exclude almost all transfers of accounts from the operation of the PPS Act, if the exclusion was interpreted broadly. This is because any person who takes a transfer of an account is likely to be doing so for the purposes of collecting it. The exclusion is also redundant because a debt collector who is collecting a debt for their own benefit should not be excluded, and a debt collector who is collecting the debt on behalf of the transferor will be excluded by new paragraph 12A(1)(h).
15. Extending the PPS Act to interests created by a transfer of an account to satisfy (either wholly or partly) a pre-existing indebtedness is also consistent with the policy of the PPS Act, in amended paragraph 12(3)(a) as referenced in Item 32 of this Schedule below, to deem transfers of accounts as creating a security interest.
16. Current subsection 8(4) states that 'an interest provided for by a transfer of an interest or right is the interest that the transferee has to claim against the transferor'. This subsection will not be replicated because it might suggest by negative implication that other exclusions within the new subsections 12A(1) and 13A(2) extend to subsequent interests, and not just to the immediate interests referred to in that exclusion.

17. Not replicating subsection 8(4) is therefore intended to clarify that the exclusions relating to transfers of an interest or right only exclude the immediate subject matter of the subsection, and not an interest that might derivatively flow from it.
18. *Removal of exclusion of interests taken by a pawnbroker*: Paragraph 8(1)(ja) currently excludes interests taken by a pawnbroker. It will not be replicated in new subsections 12A(1) or 13A(2). This will mean that the PPS Act will extend to security interests in personal property taken by pawnbrokers.
19. Current subsection 8(6) will be relocated to new section 109 (see Item 1, Schedule 4). This will ensure that Chapter 4 enforcement provisions do not apply to security interests taken by a pawnbroker. This means that enforcement of pawnbrokers' rights will continue to be governed by the laws of States and Territories.
20. The approach to interests taken by pawnbrokers enhances the PPS Act's objective to increase consistency of treatment for secured transactions without disadvantaging pawnbrokers. It allows the PPS Act's priority rules to resolve competitions between pawnbrokers and another person who holds a security interest over pawned goods subject to the PPS Act.
21. For further information on pawnbroker interests see Item 1 of Schedule 4 of this Explanatory Memorandum.

**Item 3 – Section 10 (definition of *commercial consignment*)**

22. Item 3 amends the definition of 'commercial consignment' in section 10 of the PPS Act to:
  - accommodate the new definition of 'knowledge' which will be inserted into the PPS Act by Items 4 and 5 of Schedule 3 of this Explanatory Memorandum; and
  - clarify the exclusion contained at subsection 10(e) of the definition.
23. New subsection 10(e) clarifies that a consignment is not a 'commercial consignment' for the purposes of the PPS Act if people dealing with the consignee would know that the consignee deals with the goods of others. The amendment will remove reference to creditors of the consignee currently contained in subsection 10(e), which will expand the test from what is known to creditors to what is known to any person doing business with the consignee.
24. The current test makes it difficult for consignors to ascertain whether they fall within the exclusion because they would need to know what a consignee's creditors know about the consignee - a difficult threshold to meet. The new definition of 'commercial consignment' in subsection 10(e) simplifies the test in making it more readily determinable.
25. The amendment also ensures that the new definition of 'commercial consignment' aligns with the new concept of 'knowledge' which has been amended to cover actual and constructive knowledge. An explanation of the new definition of 'knowledge' is found at Items 4 and 5 of Schedule 3 of this Explanatory Memorandum.

**Item 4 – Section 10 (definition of *interest*)**

26. Item 4 repeals the definition of 'interest' in section 10 of the PPS Act.

27. The current definition of ‘interest’ provides that an ‘interest, in personal property, includes a right in the personal property’. This creates uncertainty because it suggests that a security interest under the PPS Act could extend beyond proprietary rights (for example, rights *in rem*) to include contractual rights. The removal of this current definition should clarify that that an interest can only be a security interest in personal property if it is a proprietary interest in the personal property and not some lesser interest, such as a contractual interest in relation to it.

**Item 5 – Section 10 (definition of *personal property* and *security interest*)**

28. Item 5 substitutes the definition of ‘personal property’ with a signpost to new section 13A. New section 13A (which is inserted by Item 10 of this Schedule) will define ‘personal property’.
29. Item 5 adds a note to the definition of ‘security interest’. The note states that the PPS Act does not apply to certain interests that may be ‘security interests’ within the meaning of section 12. It includes a signpost to new section 12A. New section 12A (which is inserted by Item 9 of this Schedule) expressly excludes certain security interests from the PPS Act.

**Item 6 – Subsection 12(1) (note)**

30. Subsection 12(1) provides the meaning of ‘security interest’. It currently contains a note directing the reader to section 8 for the application of the PPS Act to interests. Item 6 replaces the current note with a new note which states that certain interests are not ‘security interests’ and refers to new subsection 12(2) and new section 12A.

**Item 7 – Subsection 12(2)**

31. Item 7 repeals the current subsection 12(2) which provides a list of examples of pre-PPS Act transactions that can give rise to a ‘security interest’, as defined by subsection 12(1).
32. The PPS Act intends to create a single regime for ‘security interests’ which covers all ‘in-substance security interests’ regardless of their form. This intention is articulated clearly in subsection 12(1). Repealing the list in current subsection 12(2) emphasises the substance over form approach of the PPS Act.
33. While the current list in subsection 12(2) may have been useful for providing examples of the kinds of transactions intended to be covered by the PPS Act when the PPS Act first came into effect, reference to pre-PPS Act terminology is no longer necessary. The definition in subsection 12(1) provides sufficient clarity to determine a ‘security interest’ without the aid of the list in current subsection 12(2) which, operatively only serves as an explanatory aid to subsection 12(1).
34. The kinds of transactions listed in current subsection 12(2) that could give rise to a ‘security interest’, if the substantive test in subsection 12(1) is met, are captured in the below:
- i. a fixed charge;
  - ii. a floating charge;
  - iii. a chattel mortgage;
  - iv. an agreement to sell subject to retention of title;
  - v. a hire purchase agreement;
  - vi. a pledge;

- vii. a trust receipt;
  - viii. a consignment (whether or not a commercial consignment);
  - ix. a lease of goods (whether or not a PPS lease); or
  - x. transfer of an interest.
35. Current subsection 12(2) of the PPS Act includes, at paragraph 12(2)(d), ‘a conditional sale agreement (including an agreement to sell subject to retention of title)’. Item (iv), above, substitutes this with ‘an agreement to sell subject to retention of title’ to better align with Australian terminology. The previous term was adopted from New Zealand and Canadian PPS Acts. All references to ‘a conditional sale agreement’ in the PPS Act have been repealed and substituted with ‘an agreement to sell subject to retention of title’.
36. Current paragraph 12(2)(j) of the PPS Act refers to ‘an assignment’. Item (x), above, substitutes this with ‘a transfer of an interest’ to improve consistency of terminology in the PPS Act. The current list in the PPS Act also includes paragraph 12(2)(k), ‘a transfer of title’, which will be removed as it describes a subset of transactions that would be included by the new item (x) above. This is intended to simplify the list and does not change its scope. The current list also includes paragraph (l), ‘a flawed asset arrangement’, which will be deleted as it does not have a commonly accepted meaning amongst businesses and consumers. Retaining this wording will increase the risk of potential confusion and uncertainty.

#### **Item 8 – Subsection 12(5)**

37. Item 8 repeals current subsection 12(5) as it is a duplication of the exclusion of licences and interests prescribed by the Personal Properties Securities Regulations 2010 (the PPS Regulations) from the definition of ‘security interests’. These interests remain excluded from the definition of ‘security interests’ under paragraphs 12A(p) and 12A(q), inserted by Item 9 of this Schedule.

#### **Item 9 – After section 12**

##### **Section 12A – Interests that are not *security interests***

38. Item 9 inserts new section 12A after section 12 which currently provides the meaning of ‘security interest’.
39. New subsection 12A(1) lists all security interests which are excluded from the operation of the PPS Act. These exclusions are currently located in section 8. Section 8 will be repealed and as such, the exclusions have been included in this new subsection for clarity.
40. Though the security interests listed in new subsection 12A(1) are excluded from the operation of the PPS Act, new subsection 12A(2) provides specific exemptions to that list. New subsection 12A(2) replicates current section 8(2) which provides exceptions to the exemptions.
41. In addition to replicating exclusions currently contained in section 8, Item 9 also inserts paragraph 12A(1)(f) which is relocated from regulation 1.8 of the PPS Regulations. This paragraph provides that the extinguishment of a beneficial interest in an account is not a security interest under the PPS Act. The reference to ‘chattel paper’ is omitted because ‘chattel paper’ is removed from the PPS Act. The type of transaction that this paragraph is targeted at includes when debt instruments are sold by a seller to a special purpose

vehicle (SPV), and the SPV then on-sells the receivables to investors. The event described may arise, for example, when the securitisation vehicle's interest in one of the receivables is extinguished because the receivable is removed from the securitisation vehicle.

42. Item 9 also inserts new paragraph 12A(1)(q) to ensure that other exemptions to security interests can be prescribed in the PPS Regulations.

## **Item 10 – After section 13**

### **Section 13A – Meaning of *personal property***

43. Item 10 inserts new section 13A after section 13 which provides for the meaning of *personal property*.
44. Subsection 13A(1) defines 'personal property' to mean property (including a licence) other than land. This new definition differs from the current definition in section 10 as it does not include subsection 10(b) which excludes statutory rights. The exclusion in subsection 10(b) will instead be contained in new paragraph 13A(2)(e) (see below).
45. Subsection 13A(2) outlines that 'personal property' does not include an interest of a kind excluded by section 13B or regulations made under subsection 13B(2).

### **Section 13B – Interests that are not *personal property***

46. Item 10 also includes a new section 13B which clarifies which interests are not 'personal property'. New paragraph 13B(1)(a) replicates current paragraph 8(1)(j). It carves out an interest in a fixture from being an interest in 'personal property' to which the PPS Act applies.
47. New paragraph 13B(1)(b), in conjunction with new subparagraph 13B(1)(1)(c) replicates current subparagraphs 8(1)(f)(i) and 8(1)(f)(ii).
48. New subparagraphs 13B(1)(c)(i) and 13B(1)(c)(ii) (currently subparagraphs 8(1)(f)(i) and 8(1)(f)(ii)) will clarify that interests in land and interests relating to land that are registrable in a State or Territory's Torrens system, or an interest in a right to payment in connection with land, are excluded from 'personal property'.
49. This amendment clarifies the scope of the exclusion of interests 'relating to' land so the edges of the exclusion align with the Torrens system requirements in a State or Territory.
50. The express exclusion of an interest in a right to payment in connection with land (currently contained in subparagraph 8(1)(f)(ii)) is retained. An interest in a right to payment is closely connected to interests in land. These interests are currently regulated by the States and Territories. For example, an assignment of rights to receive rent payable under a lease.
51. The requirement to specifically identify the land in writing (currently contained in subparagraph 8(1)(f)(ii)) will be removed as some interests in land can be created either with or without evidence in writing specifically identifying the land. For example, interest created by taking possession.
52. New paragraph 13B(1)(d) replicates and combines current paragraph 8(1)(i) and subsection 8(5). It carves out an interest in water rights from being an interest in personal property to which the PPS Act applies. New paragraph 13B(1)(d) is not intended to, nor does it, change the current scope of the exclusion with regard to water rights.

53. New paragraph 13B(1)(e) replicates current paragraph 8(1)(jb). It carves out an interest that a person has as a member of a superannuation fund from being an interest to which the PPS Act applies. New paragraph 13B(1)(e) is not intended to, nor does it, change the current scope of the exclusion with regard to superannuation.
54. New paragraph 13B(1)(f) replicates current paragraph 8(1)(k). It carves out rights, licences or authorities granted under a law of the Commonwealth, State or Territory where that law provides for its exclusion from being an interest in ‘personal property’ to which the PPS Act applies.
55. New paragraph 13B(1)(g) replicates current paragraph 8(1)(l). Through it, the PPS Regulations can prescribe and carve out an interest from being an interest in personal property to which the PPS Act applies.
56. New subsection 13B(2) provides a regulation-making power, so that the interests mentioned in subsection 13B(1) can be unexcluded from all or part of the PPS Act.

**Item 11 – Subsection 73(1) (note)**

57. Item 11 repeals the current Note in subsection 73(1) of the PPS Act, and substitutes it with a new Note which provides that 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)).

**Item 12 – Subsection 73(2) (note)**

58. Item 12 repeals the current Note in subsection 73(2) of the PPS Act, and substitutes it with a new Note which provides that the statutory interest is a kind of interest excluded from the definition of ‘security interest’ (see subsection 12(2) and paragraph 12A(1)(b)).

**Item 13 – Subsection 73(6)**

59. Item 13 removes the words ‘subparagraph 8(1)(f)(ii)’ and substitutes this with ‘paragraph 13B(1)(c)’, for drafting efficacy.

**Item 14 – Subsection 75 (note 2)**

60. Item 14 removes the words ‘(see paragraph 8(1)(d))’ and substitutes this with ‘(a right of set off is a kind of interest excluded from the definition of security interest: see paragraph 12A(1)(d))’, for drafting efficacy.

**Division 2—Other amendments**

***Corporations Act 2001***

**Item 15 – Section 51 (definition of *PPSA security interest*)**

61. Item 15 removes the words ‘and to which that Act applies’ from the definition of ‘PPSA security interest’ in the Corporations Act for drafting efficacy.

**Item 16 – Section 51 (Note 1 to the definition of *PPSA security interest*)**

62. Item 16 repeals the current Note 1 of section 51 of the Corporations Act, and substitutes it with a new note that replaces references to section 8 of the PPS Act with the new, as replaced by Items 9 and 10 of this Schedule.

**Item 17 – Subsection 51F(1) (paragraphs (a) and (b) of the examples)**

63. Item 17 removes the words ‘(see subsection 12(2) of the *Personal Property Securities Act 2009*)’ from (a) and (b) of the examples listed in subsection 51F(1) of the Corporations Act. The examples were provided on the basis of subsection 12(2) of the PPS Act which has now been repealed and replaced by Item 7 of this Schedule. References to subsection 12(3) are being retained in examples (c) and (d) noting amendments to example (d) in Item 20 of this Schedule.



## Part 2—Amendments relating to PPS leases

### Division 1—Main amendments

#### *Personal Property Securities Act 2009*

##### Item 18 – Section 13

64. Item 18 repeals current section 13 and replaces it with a new section 13 which provides the meaning of a ‘PPS lease’. The amendments to section 13 should clarify the circumstances in which a ‘PPS lease’ may arise and are intended to provide certainty so as to reduce any regulatory burden on affected industries, including the hire and rental industry.

##### Section 13 – Meaning of *PPS lease*

65. Subsection 13(1) will provide that a ‘PPS lease’ can arise if:

- a lease is for a term of more than 2 years (paragraph 13(1)(a));
- a lease is automatically renewable, or is renewable at the option of one of the parties, and has accordingly been renewed for terms totalling more than 2 years (paragraph 13(1)(b)); or
- a lease is for a term of up to 2 years, or for an indefinite term, and 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 the day the lessee first acquires possession (paragraph 13(1)(c)).

66. The amendment to new paragraph 13(1)(c) removes the uncertainty of the current paragraph 13(1)(c) which provides that a lease becomes a ‘PPS lease’ when it is ‘renewable at the option of one of the parties, for one or more terms if the total of all the terms *might* exceed 2 years’ (emphasis added).

67. The commencement date of a ‘PPS lease’ is important because, in order to obtain a PMSI, the PPS Act provides that a lessor must register on the PPS Register within 15 business days of the lessee obtaining possession of the equipment. To provide clarification of a commencement date, new subsection 13(2) will provide:

- in the case of new paragraph 13(1)(a), a lease is a ‘PPS lease’ on the day on which the lease is entered into;
- in the case of new paragraph 13(1)(b), a lease is a ‘PPS lease’ when a lease is renewed for a period that takes it beyond 2 years’; or
- in the case of new paragraph 13(1)(c), a ‘PPS lease’ commences at the start of the day after the end of 2 years after the lessee first acquires possession of the goods.

##### Paragraph 13(1)(b) clarification

68. New paragraph 13(1)(b) has been inserted to address any uncertainty caused by current paragraph 13(1)(c) of the PPS Act. The word ‘might’ in current paragraph 13(1)(c) of the

PPS Act creates uncertainty because it is not immediately apparent when a lease might exceed 2 years and is being removed by this Item. For example, an 18-month lease which is automatically renewable for a further 4 months at the option of the lessee might exceed the 2 year threshold. A lessor in this example has two points in time at which they could register:

- within 15 business days of the lessee obtaining possession after the beginning of the lease, if the lessor has a reasonable expectation that the lease will exceed 2 years; or
- within 15 business days after the lessee exercises the option to renew the lease so that it exceeds a 2 year term.

69. To address this uncertainty around timing, new paragraph 13(1)(b) provides that a lease which is automatically renewable, or renewable for a period of 2 years, only becomes a 'PPS lease' when it is in fact renewed for terms totalling more than 2 years.

#### New subsection 13(3)

70. New subsection 13(3) will replicate current subsection 13(2) which excludes certain leases from being 'PPS leases' with the following amendments.
71. New subsection 13(3) will remove references to 'bailments' (see Item 18 of this Schedule below for the repeal of bailments).
72. New paragraph 13(3)(b) will be amended to replace the phrase 'consumer property' in current paragraph 13(2)(b) with the phrase 'personal property for use predominantly for personal, domestic or household purposes'. This change is also made to the phrase 'consumer property' throughout the PPS Act.
73. New subparagraphs 13(3)(b)(i) and 13(3)(b)(ii) will be inserted to aid understanding of the exclusion currently contained in paragraph 13(2)(c).

#### Notes

74. This Item also provides the addition of notes to new section 13 to aid understanding of the section and how it interacts with other parts of the PPS Act.
75. Note 1 is added to provide that the interest of a lessor under a 'PPS lease' is a PMSI in those goods as per subsection 12(3) and paragraph 14(1)(c) of the PPS Act. Subsection 12(3) provides that a 'security interest' includes a 'PPS lease', amongst others, whether or not it secures payment or performance of an obligation. Paragraph 14(1)(c) provides that the interest of a lessor under a PPS lease is a PMSI. The balance of the note points to perfection by registration under section 150. This note is added to aid those to which 'PPS leases' apply and to provide guidance to parts of the PPS Act which affect interests of lessors under a 'PPS lease'.
76. Note 2 is added to aid understanding of this section and provide a reminder that a lessor's interest in the goods (or their proceeds) will have priority over any non-PMSI in the same goods or proceeds if that interest is registered within 15 business days after the lease becomes a 'PPS lease' under new subsection 13(2), or after the grantor takes possession of the goods (if later) (see section 62 of the PPS Act).
77. Note 3 is added to signpost new section 63 of the PPS Act. New section 63 provides that a lessor's PMSI has priority over another perfected PMSI that is granted by the same

grantor in the same goods or proceeds, if it is perfected by registration within the 15-business day period.

78. Note 4 is added as a reminder that a financing statement for a lease may be registered before it becomes a 'PPS lease' under sections 150 and 151 if the lessor believes on reasonable grounds that the lease is, may be or will become a 'PPS lease' (see Item 21 of Schedule 5 of this Explanatory Memorandum). The new note intends to bring awareness that an interest can be perfected on the basis of a reasonable belief prior to attachment of an interest.

### **Item 19 – Amendments of listed provisions**

79. Item 19 makes consequential amendments to the PPS Act to reflect the fact that the definition of 'PPS lease' in new subsection 13(1) of the PPS Act will no longer expressly refer to 'bailment'.
80. This amendment is intended to reduce uncertainty that stemmed from the inclusion of bailments in the definition of a PPS lease, which generated considerable uncertainty in determining whether a 'bailment' is captured by the PPS Act.
81. Removing the reference to bailments from the definition of a PPS lease only means that bailments will be excluded from the definition if they are not otherwise captured by the meaning of 'lease'. For example, if A bails property to B and B pays A for having had the goods bailed to them for a period of more than 2 years, then it is expected that such an arrangement should be treated as a lease by the PPS Act.

## **Division 2—Other amendments**

### ***Corporations Act 2001***

#### **Item 20 - Subsection 51F(1) (paragraph (d) of the examples)**

82. Item 20 will remove the words 'or bailed' from paragraph (d) in the examples listed after current subsection 51F(1) of the Corporations Act. This is removed as a consequence of the PPS Act being amended to remove all references to bailments in the definition of PPS leases.

#### **Item 21 - Section 588FO (heading)**

83. Item 21 replaces the heading in current section 588FO (which currently makes references to bailors) and will substitute it with 'Certain consignors and lessors entitled to damages'.
84. This will remove the word 'bailors' from the heading as a consequence of the PPS Act being amended to remove all references to bailments in the definition of PPS leases.

#### **Item 22 - Paragraph 588FO(1)(b)**

85. Item 22 omits the words 'or bailor' from paragraph 588FO(1)(b) of the Corporations Act. The words 'or bailor' will be removed from this subsection as a consequence of the PPS Act being amended to remove all references to bailments in the definition of PPS leases.

#### **Item 23 – Subsection 588FO(2)**

86. Item 23 omits the words 'lessor or bailor' from subsection 588FO(2) of the Corporations Act and substitutes it with 'or lessor'. This is as a consequence of the PPS Act being amended to remove all references to bailments in the definition of PPS leases.

**Item 24 - Subparagraph 588FO(2)(b)(i)**

87. Item 24 omits the words 'lease or bailment' from subparagraph 588FO(2)(b)(i) of the Corporations Act and substitutes it with 'or lease'. This is as a consequence of the PPS Act being amended to remove all references to bailments in the definition of PPS leases.

**Item 25 – Subparagraph 588FO(2)(b)(ii)**

88. Item 25 omits the words 'leased or bailed' from subparagraph 588FO(2)(b)(ii) of the Corporations Act and substitutes it with 'or leased'. This is as a consequence of the PPS Act being amended to remove all references to bailments in the definition of PPS leases.

**Item 26– Subparagraph 588FO(2)(b)(ii)**

89. Item 26 omits the words 'lease or bailment' from subparagraph 588FO(2)(b)(ii) of the Corporations Act and substitutes it with 'or lease'. This is as a consequence of the PPS Act being amended to remove all references to bailments in the definition of PPS leases.

**Item 27– Subsection 588FO(2) (note)**

90. Item 27 omits the words 'lessor or bailor' from the note below subsection 588FO(2) of the Corporations Act and substitutes it with 'or lessor'. This is as a consequence of the PPS Act being amended to remove all references to bailments in the definition of PPS leases.

## **Part 3—Amendments relating to chattel paper**

### **Division 1—Main amendments**

#### ***Personal Property Securities Act 2009***

##### **Item 28 - Section 10 -Definition of *chattel paper***

91. Item 28 repeals the definition of ‘chattel paper’ from section 10 of the PPS Act.
92. The concept of ‘chattel paper’ was imported into the PPS Act from the Canadian and New Zealand Personal Property Security Acts. However, ‘chattel paper’ is not recognised by Australian law outside of the PPS Act and there is little or no use of the term ‘chattel paper’ within Australia.
93. Repealing the definition will simplify the PPS Act.

##### **Item 29 - Section 10 (paragraph (a) of the definition of *financial property*)**

94. Item 29 repeals paragraph (a) from the current definition of ‘financial property’ in section 10, meaning that ‘chattel paper’ will no longer be included in the definition of financial property.
95. This is as a consequence of removing the concept of ‘chattel paper’ from the PPS Act entirely. The concept of ‘chattel paper’ was imported into the PPS Act from the Canadian and New Zealand Personal Property Security Acts. However, ‘chattel paper’ is not recognised by Australian law outside of the PPS Act and there is little or no use of the term ‘chattel paper’ within Australia.

##### **Item 30 – Section 31 (subparagraph (1)(c)(i) of the definition of *proceeds*)**

96. Item 30 repeals subparagraph 31(1)(c)(i) of the definition of ‘proceeds’ so that ‘chattel paper’ will no longer be included in the definition of ‘proceeds’ under subsection 31(1).

##### **Item 31- Subsection 76(2)**

97. Item 31 repeals subsection 76(2) of the PPS Act which applies the returned collateral rules in section 38 of the PPS Act to ‘chattel paper’.
98. The repeal of subsection 76(2) of the PPS Act is as a consequence of removing the concept of ‘chattel paper’ from the PPS Act entirely. The concept of ‘chattel paper’ was imported into the PPS Act from the Canadian and New Zealand Personal Property Security Acts. However, ‘chattel paper’ is not recognised by Australian law outside of the PPS Act and there is little or no use of the term ‘chattel paper’ within Australia.
99. Given that the concept of ‘chattel paper’ has been removed from the PPS Act, a rule regarding chattel paper relating to returned collateral is no longer required.

##### **Item 32 – Subparagraph 120(1)(a)(ii)**

100. Item 32 repeals subparagraph 120(1)(a)(ii) of the PPS Act which deals with the enforcement of a security interest in ‘chattel paper’.
101. The repeal of subparagraph 120(1)(a)(ii) of the PPS Act is as a consequence of removing the concept of ‘chattel paper’ from the PPS Act entirely. The concept of ‘chattel paper’

was imported into the PPS Act from the Canadian and New Zealand Personal Property Security Acts. However, 'chattel paper' is not recognised by Australian law outside of the PPS Act and there is little or no use of the term 'chattel paper' within Australia.

102. Given that the concept of 'chattel paper' has been removed from the PPS Act, a rule regarding enforcement against chattel paper is no longer required.

### **Item 33- Amendments of listed provisions**

103. Item 33 makes amendments throughout the PPS Act to omit references to 'chattel paper'. This is a consequence of removing the concept of 'chattel paper' from the PPS Act entirely. The concept of 'chattel paper' was imported into the PPS Act from the Canadian and New Zealand Personal Property Security Acts. However, 'chattel paper' is not recognised by Australian law outside of the PPS Act and there is little or no use of the term 'chattel paper' within Australia.

104. Given that the concept of 'chattel paper' has been removed from the PPS Act, all references to 'chattel paper' have been omitted by this Item.

## **Division 2—Other amendments**

### ***Corporations Act 2001***

#### **Items 34– Paragraph 588FN(1)(a)**

105. Item 34 removes the reference to 'or chattel paper' from current paragraph 588FN(1)(a) of the Corporations Act. Section 588FN provides exemptions to PPSA security interests vesting in a company where the security interest does not secure payment or performance of an obligation (and may otherwise be captured by the definition of a deemed security interest under the PPS Act).

106. This is as a consequence of removing the concept of 'chattel paper' from the PPS Act entirely. The concept of 'chattel paper' was imported into the PPS Act from the Canadian and New Zealand Personal Property Security Acts. However, 'chattel paper' is not recognised by Australian law outside of the PPS Act and there is little or no use of the term 'chattel paper' within Australia.

107. Given the concept of chattel paper has been removed from the PPS Act, there is no need to refer to 'chattel paper' in current subsection 588FN(1).