

EXPOSURE DRAFT

2022-2023

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Personal Property Securities Amendment (Framework Reform) Bill 2023

No. , 2023

(Attorney-General)

A Bill for an Act to amend the *Personal Property Securities Act 2009*, and for related purposes

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1 **A Bill for an Act to amend the *Personal Property***
2 ***Securities Act 2009*, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Personal Property Securities Amendment*
6 (*Framework Reform*) Act 2023.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.

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1

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedules 1 to 7	<i>[To be determined]</i>	

2

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

3

4

5

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

6

7

8

3 Schedules

9

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

10

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12

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[Drafting notes:

14

- *Sections with @ signs (eg “section @12A”) are new sections inserted or substituted by this Bill, even if the @ section is substituted for an existing section with the same number.*

15

16

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- *Bracketed and highlighted references to provisions indicate existing provisions of the Act or Regulations that correspond to provisions to be inserted or substituted by this Bill. References to “new” text indicate where there is no such correspondence.]*

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2

Personal Property Securities Amendment (Framework Reform) Bill

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The reach of the Act **Schedule 1**
Amendments relating to Chapter 1 of the Personal Property Securities Act 2009 **Part 1**

1 **Schedule 1—The reach of the Act**

2 **Part 1—Amendments relating to Chapter 1 of the**
3 **Personal Property Securities Act 2009**

4 **Division 1—Main amendments**

5 *Personal Property Securities Act 2009*

6 **1 Section 4 (paragraphs (b) and (c))**

7 Repeal the paragraphs, substitute:

8 (b) the application of this Act in the external Territories.
9 For the application of this Act in Australia in relation to security
10 interests, see Chapter 7 (Operation of laws).

11 **2 Section 8**

12 Repeal the section.

13 **3 Section 10 (definition of *commercial consignment*)**

14 Repeal the definition, substitute:

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

- 17 (a) the consignor retains an interest in the goods that the
18 consignor delivers to the consignee; and
19 (b) the consignor delivers the goods to the consignee for the
20 purpose of disposal; and
21 (c) the consignor and the consignee both deal in goods of that
22 kind in the ordinary course of business;
23 but does not include an agreement under which goods are
24 delivered:
25 (d) to an auctioneer for the purpose of sale; or

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Schedule 1 The reach of the Act

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

1 (e) to a consignee for the purpose of disposal of the goods, if it is
2 generally known by persons doing business with the
3 consignee that the consignee disposes of the goods of others.

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

7 **4 Section 10 (definition of *interest*)**

8 Repeal the definition.

9 **5 Section 10 (definitions of *personal property* and *security* 10 *interest*)**

11 Repeal the definitions, substitute:

12 *personal property*: see sections @13A and @13B.

13 *security interest*: see sections @12 and @12A.

14 **6 Subsection 12(1) (note)**

15 Repeal the note, substitute:

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

18 **7 Subsection 12(2)**

19 Repeal the subsection, substitute:

20 (2) However, a *security interest* does not include an interest:

21 (a) of a kind excluded from the definition of *security interest* by
22 section @12A; or

23 (b) if regulations are made in relation to the interest for the
24 purposes of subsection @12A(2)—to the extent that section
25 @12A excludes the interest from the definition of *security*
26 *interest*.

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

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

4 **8 Subsection 12(5)**

5 Repeal the subsection.

6 **9 After section 12**

7 Insert:

8 **@12A Interests that are not *security interests***

9 *Excluded interests*

10 (1) This section excludes interests of the following kinds from the
11 definition of *security interest*, subject to subsection (2):

12 (a) the interest of a seller who has shipped goods to a buyer
13 under a negotiable bill of lading, or its equivalent, to the
14 order of the seller, or to the order of an agent of the seller,
15 unless the parties have otherwise evidenced an intention to
16 create or provide for a security interest in the goods;

17 **[s 8(1)(a)]**

18 (b) a lien, charge, or any other interest in personal property, that
19 is created, arises or is provided for under a law of the
20 Commonwealth (other than this Act), a State or a Territory,
21 unless the person who owns the property in which the interest
22 is granted agrees to the interest;

23 **[s 8(1)(b)]**

24 (c) a lien, charge, or any other interest in personal property, that
25 is created, arises or is provided for by operation of the
26 general law;

27 **[s 8(1)(c)]**

28 (d) a right of set-off or right of combination of accounts (within
29 the ordinary meaning of that term);

30 **[s 8(1)(d)]**

31 (e) an interest provided for by a sale of an account as part of a
32 sale of business, unless the seller remains in apparent control

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

- 1 (within the ordinary meaning of that term) of the business
2 after the sale;
3 *[s 8(1)(f)(ix)]*
- 4 (f) an interest arising from the extinguishment of a beneficial
5 interest in an account;
6 *[Personal Property Securities Regulations 2010, r 1.8]*
- 7 (g) an interest provided for by the transfer of an unearned right to
8 payment under a contract to a person who is to perform the
9 transferor's obligations under the contract;
10 *[s 8(1)(f)(iii)]*
- 11 (h) an interest provided for by the transfer of an account made
12 solely to facilitate the collection of the account on behalf of
13 the person making the transfer;
14 *[s 8(1)(f)(vi)]*
- 15 (i) an interest provided for by a transfer of the beneficial
16 interest in a monetary obligation where, after the transfer, the
17 transferee holds the monetary obligation on trust for the
18 transferor;
19 *[s 8(1)(f)(x)]*
- 20 (j) a trust over some or all of an amount provided by way of
21 financial accommodation, if the person to whom the financial
22 accommodation is provided is required to use the amount in
23 accordance with a condition under which the financial
24 accommodation is provided;
25 *[s 8(1)(h)]*
- 26 (k) an interest provided for by the transfer of present or future
27 remuneration (including wages, salary, commission,
28 allowances or bonuses) payable to an individual as an
29 employee or contractor;
30 *[s 8(1)(f)(iv)]*
- 31 (l) an interest provided for by the transfer of an interest or claim
32 in, or under, a contract of annuity or policy of insurance,
33 except a transfer of a right to an insurance payment or other
34 payment as indemnity or compensation for loss of, or damage
35 to, collateral (or proceeds of collateral);
36 *[s 8(1)(f)(v)]*

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The reach of the Act **Schedule 1**
Amendments relating to Chapter 1 of the Personal Property Securities Act 2009 **Part 1**

- 1 (m) the following interests in property created under the
2 *Bankruptcy Act 1966*:
- 3 (i) the interest of the Official Trustee or a registered trustee
4 who has taken control (within the meaning of section 50
5 of that Act) of a debtor's or grantor's property under
6 that section;
- 7 (ii) the interest of the Official Trustee or a registered trustee
8 in property of a debtor or grantor that has vested in the
9 Official Trustee or the registered trustee under
10 section 58 of that Act;
- 11 (iii) a charge created under section 139ZN of that Act;
- 12 (iv) a charge created under section 139ZR of that Act;
- 13 (v) an interest created under a personal insolvency
14 agreement under Part X of that Act;
- 15 **[s 8(1)(g)]**
- 16 (n) any right or interest held by a person, or any interest provided
17 for by any transaction, under any of the following (as defined
18 in section 5 of the *Payment Systems and Netting Act 1998*):
- 19 (i) an approved netting arrangement;
- 20 (ii) a close-out netting contract;
- 21 (iii) a market netting contract;
- 22 **[s 8(1)(e)]**
- 23 (o) a charge created by section 5 of the *Loans Redemption and*
24 *Conversion Act 1921*;
- 25 **[s 8(1)(jc)]**
- 26 (p) a licence;
- 27 **[s 12(5)(b)]**
- 28 (q) an interest of a kind prescribed by regulations made for the
29 purposes of this paragraph.
- 30 **[s 8(1)(l)]**

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

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Schedule 1 The reach of the Act

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

1

Exception—regulations

2

(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:

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(a) one or more specified provisions of this Act; or

7

(b) the whole Act.

8

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).

9

10

11 10 After section 13

12

Insert:

13

@13A Meaning of *personal property*

14

(1) *Personal property* means property (including a licence) other than land.

15

16

(2) However, *personal property* does not include an interest in property:

17

18

(a) of a kind excluded from the definition of *personal property* by section @13B; or

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20

(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.

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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.

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1 **@13B Interests that are not *personal property***

2 *Excluded interests*

3 (1) This section excludes interests of the following kinds from the
4 definition of *personal property*, subject to subsection (2) of this
5 section:

6 (a) an interest in a fixture;

7 **[s 8(1)(j)]**

8 (b) an interest provided for by the creation or transfer of an
9 interest in land under the law of the State or Territory in
10 which the land is located;

11 **[s 8(1)(f)(i)]**

12 (c) an interest provided for by the creation or transfer of:

13 (i) an interest in relation to land, if the interest is registrable
14 under the law of the State or Territory in which the land
15 is located; or

16 (ii) an interest in relation to land consisting of an interest in
17 a right to payment in connection with land (for example,
18 an assignment of rights to receive rent payable under a
19 lease);

20 **[s 8(1)(f)(ii)]**

21 (d) an interest constituted by a right, entitlement or authority,
22 whether or not exclusive, that is granted by or under the
23 general law or a law of the Commonwealth, a State or a
24 Territory in relation to the control, use or flow of water,
25 including (without limitation) a right that a person has against
26 another person to receive (or otherwise gain access to) water;

27 **[s 8(1)(i)]**

28 (e) an interest that a person has:

29 (i) as a member of a superannuation fund (within the
30 meaning of the *Superannuation Industry (Supervision)*
31 *Act 1993*); or

32 (ii) as a member of an approved deposit fund (within the
33 meaning of the *Superannuation Industry (Supervision)*
34 *Act 1993*); or

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Schedule 1 The reach of the Act

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

- 1 (iii) as a holder of a retirement savings account (within the
2 meaning of the *Retirement Savings Accounts Act 1997*);
3 or
4 (iv) in an account kept under the *Small Superannuation*
5 *Accounts Act 1995* in the name of the person; or
6 (v) as a holder of a superannuation annuity (within the
7 meaning of the *Income Tax Assessment Act 1997*);

8 **[s 8(1)(jb)]**

- 9 (f) an interest constituted by a particular right, licence or
10 authority (the **statutory right**) granted by or under a law of
11 the Commonwealth, a State or a Territory, if, at the time the
12 statutory right is granted, or at any time afterwards, a
13 provision of that law declares that kind of statutory right not
14 to be personal property for the purposes of this Act (no
15 matter whether the provision remains in force);

16 **[s 8(1)(k)]**

- 17 (g) an interest of a kind prescribed by regulations made for the
18 purposes of this paragraph.

19 **[s 8(1)(l)]**

20 *Exception—regulations*

- 21 (2) The regulations may provide that an interest of a kind mentioned in
22 subsection (1) (including an interest of a kind prescribed for the
23 purposes of paragraph (1)(g)) is not excluded from the definition of
24 **personal property** by this section, for the purposes of:

- 25 (a) one or more specified provisions of this Act; or
26 (b) the whole Act.

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

30 11 Subsection 73(1) (note)

31 Repeal the note, substitute:

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

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The reach of the Act **Schedule 1**
Amendments relating to Chapter 1 of the Personal Property Securities Act 2009 **Part 1**

1 **12 Subsection 73(2) (note)**

2 Repeal the note, substitute:

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

5 **13 Subsection 73(6)**

6 Omit “subparagraph 8(1)(f)(ii)”, substitute “paragraph @13B(1)(c)”.

7 **14 Section 75 (note 2)**

8 Omit “(see paragraph 8(1)(d))”, substitute “(a right of set-off is a kind
9 of interest excluded from the definition of *security interest*: see
10 paragraph @12A(1)(d))”.

11 **Division 2—Other amendments**

12 ***Corporations Act 2001***

13 **15 Section 51 (definition of *PPSA security interest*)**

14 Omit “and to which that Act applies”.

15 **16 Section 51 (Note 1 to the definition of *PPSA security***
16 ***interest*)**

17 Repeal the note, substitute:

18 Note 1: See the following provisions of the *Personal Property Securities Act*
19 *2009*:

- 20 (a) sections 12 and @12A (definition of *security interest*, and
21 interests excluded from that definition);
22 (b) sections @13A and @13B (definition of *personal property*, and
23 interests excluded from that definition);
24 (c) Chapter 9 (transitional provisions).

25 **17 Subsection 51F(1) (paragraphs (a) and (b) of the**
26 **examples)**

27 Omit “(see subsection 12(2) of the *Personal Property Securities Act*
28 *2009*)”.

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Schedule 1 The reach of the Act

Part 2 Amendments relating to PPS leases

1 **Part 2—Amendments relating to PPS leases**

2 **Division 1—Main amendments**

3 ***Personal Property Securities Act 2009***

4 **18 Section 13**

5 Repeal the section, substitute:

6 **@13 Meaning of *PPS lease***

7 (1) A *PPS lease* means:

8 (a) a lease of goods for a term of more than 2 years; or

9 (b) a lease of goods that:

10 (i) is automatically renewable, or renewable at the option
11 of either party; and

12 (ii) has accordingly been renewed for terms totalling more
13 than 2 years; or

14 (c) a lease of goods for a term of 2 years or less, or for an
15 indefinite term, if the lessee, with the consent of the lessor,
16 retains uninterrupted (or substantially uninterrupted)
17 possession of the goods for a period of more than 2 years
18 after first acquiring possession.

19 (2) A lease starts to be a *PPS lease*:

20 (a) in the case of a lease mentioned in paragraph (1)(a)—when
21 the lease is entered into; or

22 (b) in the case of a lease mentioned in paragraph (1)(b)—when
23 the lease is renewed for a term that will end more than 2
24 years after the lease is entered into; or

25 (c) in the case of a lease mentioned in paragraph (1)(c)—at the
26 start of the day after the end of the period of 2 years after the
27 lessee first acquires possession of the goods.

28 (3) However, a *PPS lease* does not include the following:

29 (a) a lease by a lessor not regularly engaged in the business of
30 leasing goods;

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The reach of the Act **Schedule 1**
Amendments relating to PPS leases **Part 2**

- 1 (b) a lease of personal property for use predominantly for
2 personal, domestic or household purposes, if:
3 (i) the lease is part of a lease of land; and
4 (ii) that use of personal property is incidental to the use and
5 enjoyment of the land;
6 (c) a lease of personal property prescribed by regulations made
7 for the purposes of this paragraph.

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

19 Amendments of listed provisions

Amendments to omit references to bailment under PPS leases

Item	Provision	Omit	Substitute
1	Paragraph 12(3)(c)	or bailor	
2	Section 269 (heading)	lessors, bailors and consignors	consignors and lessors
3	Paragraph 269(1)(b)	or bailor	
4	Subsection 269(2)	, or lessor or bailor	or lessor

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Schedule 1 The reach of the Act

Part 2 Amendments relating to PPS leases

Amendments to omit references to bailment under PPS leases

Item	Provision	Omit	Substitute
5	Subparagraph 269(2)(b)(i)	lease, bailment or consignment	consignment or lease
6	Subparagraph 269(2)(b)(ii)	leased, bailed or consigned	consigned or leased
7	Subparagraph 269(2)(b)(ii)	lease, bailment or consignment	consignment or lease
8	Subsection 269(2) (note)	lessor, bailor or consignor	consignor or lessor

1 **Division 2—Other amendments**

2 ***Corporations Act 2001***

3 **20 Subsection 51F(1) (paragraph (d) of the examples)**

4 Omit “or bailed”.

5 **21 Section 588FO (heading)**

6 Repeal the heading, substitute:

7 **588FO Certain consignors and lessors entitled to damages**

8 **22 Paragraph 588FO(1)(b)**

9 Omit “or bailor”.

10 **23 Subsection 588FO(2)**

11 Omit “, lessor or bailor”, substitute “or lessor”.

12 **24 Subparagraph 588FO(2)(b)(i)**

13 Omit “, lease or bailment”, substitute “or lease”.

14 **25 Subparagraph 588FO(2)(b)(ii)**

15 Omit “, leased or bailed”, substitute “or leased”.

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The reach of the Act **Schedule 1**
Amendments relating to PPS leases **Part 2**

- 1 **26 Subparagraph 588FO(2)(b)(ii)**
2 Omit “, lease or bailment”, substitute “or lease”.
- 3 **27 Subsection 588FO(2) (note)**
4 Omit “, lessor or bailor”, substitute “or lessor”.

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Schedule 1 The reach of the Act

Part 3 Amendments relating to chattel paper

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

2 **Division 1—Main amendments**

3 ***Personal Property Securities Act 2009***

4 **28 Section 10 (definition of *chattel paper*)**

5 Repeal the definition.

6 **29 Section 10 (paragraph (a) of the definition of *financial***
7 ***property*)**

8 Repeal the paragraph.

9 **30 Section 31 (subparagraph (1)(c)(i) of the definition of**
10 ***proceeds*)**

11 Repeal the subparagraph.

12 **31 Subsection 76(2)**

13 Repeal the subsection.

14 **32 Subparagraph 120(1)(a)(ii)**

15 Repeal the subparagraph.

16 **33 Amendments of listed provisions**

17

Amendments to omit references to chattel paper

Item	Provision	Omit
1	Section 10 (definition of <i>account debtor</i>)	or chattel paper
2	Section 10 (paragraph (d) of the definition of <i>grantor</i>)	or chattel paper
3	Paragraph 12(3)(a)	or chattel paper
4	Paragraph 12(4)(a)	or chattel paper (wherever occurring)

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The reach of the Act **Schedule 1**
Amendments relating to chattel paper **Part 3**

Amendments to omit references to chattel paper

Item	Provision	Omit
5	Section 30	or chattel paper
6	Subsection 76(1) (note)	or chattel paper
7	Subparagraph 268(1)(a)(i)	or chattel paper

1 **Division 2—Other amendments**

2 *Corporations Act 2001*

3 **34 Paragraph 588FN(1)(a)**

4 Omit “or chattel paper”.

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Schedule 2 Creating an effective security interest

1 **Schedule 2—Creating an effective security**
2 **interest**
3

4 ***Personal Property Securities Act 2009***

5 **1 Section 10 (definition of *ADI*)**

6 Repeal the definition, substitute:

7 *ADI* means any of the following:

- 8 (a) an authorised deposit taking institution within the meaning of
9 the *Banking Act 1959*;
10 (b) a body corporate authorised to carry on banking business
11 (within the meaning of that Act) in a foreign country;
12 (c) the Reserve Bank of Australia.

13 **2 Section 10 (definition of *description*)**

14 Repeal the definition, substitute:

15 *description* of personal property: see section @15A.

16 **3 Section 10 (definition of *financial product*)**

17 Repeal the definition, substitute:

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

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

24 **4 Section 10 (definition of *future advance*)**

25 Repeal the definition.

26 **5 Section 10 (definition of *investment instrument*)**

27 Repeal the definition, substitute:

EXPOSURE DRAFT

Creating an effective security interest **Schedule 2**

- 1 ***investment instrument*** means an obligation, or any share or similar
2 right of participation in an entity, that:
- 3 (a) is one of a class or series, or by its terms is divisible into a
4 class or series; and
 - 5 (b) is of a type dealt in or traded on a recognised market, or is
6 issued as a medium for investment;
- 7 but does not include any of the following:
- 8 (c) a document of title;
 - 9 (d) an intermediated security;
 - 10 (e) a negotiable instrument;
 - 11 (f) an instrument prescribed by regulations made for the
12 purposes of this paragraph.

13 **6 Section 15**

14 Repeal the section, substitute:

15 **@15 Meaning of *intermediated security* and related terms**

16 *Meaning of intermediated security*

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

22 *Meaning of intermediary*

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

28 *Meaning of securities account*

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

EXPOSURE DRAFT

Creating an effective security interest **Schedule 2**

1

If a secured party has title to goods

2

- (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:

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(a) that security interest; and

8

(b) any other security interest (whether granted before or after the security interest mentioned in paragraph (a)).

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

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(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).

18

- (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.

19

20

21

10 At the end of subparagraph 20(1)(b)(i)

22

Add “(other than as a result of seizure or repossession)”.

23

11 Subsection 20(2)

24

Repeal the subsection, substitute:

25

Writing describing security and collateral of security agreement

26

- (2) A security agreement covers collateral in accordance with this subsection if:

27

28

29

(a) the security interest provided for by the security agreement is evidenced by writing; and

30

(b) the writing mentioned in paragraph (a) includes a description of the collateral; and

31

32

(c) the writing mentioned in paragraph (a) is:

33

(i) signed by the grantor (see subsection (3)); or

EXPOSURE DRAFT

Schedule 2 Creating an effective security interest

- 1 (i) adopted or accepted by the grantor by an act, or
2 omission, that reasonably appears to be done with the
3 intention of adopting or accepting the writing.

4 **12 Subsection 20(3)**

5 Omit “subparagraph (2)(a)(i)”, substitute “subparagraph (2)(c)(i)”.

6 **13 Subsections 20(4) and (5)**

7 Repeal the subsections.

8 **14 Subparagraph 21(2)(c)(iii)**

9 Omit “instrument;”, substitute “instrument.”.

10 **15 Subparagraphs 21(2)(c)(iv), (v) and (vi)**

11 Repeal the subparagraphs.

12 **16 Paragraph 22(2)(b)**

13 Repeal the paragraph, substitute:

14 (b) ending at the earlier of the following times:

- 15 (i) the end of the period of 10 business days after the day of
16 issue of the document;
17 (ii) the end of the day the secured party takes possession of
18 the document.

19 **17 Subsections 22(3) and (4)**

20 Repeal the subsections.

21 **18 Section 23**

22 Repeal the section, substitute:

23 **@23 Guide to this Part**

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

26 Possession of personal property is generally effective to perfect a
27 security interest in the property (see paragraph 21(2)(b)). A grantor

EXPOSURE DRAFT

Creating an effective security interest **Schedule 2**

1 and secured party cannot both have possession of collateral. There
2 are special rules about possession of goods transported by a
3 common carrier.

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

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

10 **19 Subsections 24(4) to (6)**

11 Repeal the subsections.

12 **20 Sections 26 to 29**

13 Repeal the sections, substitute:

14 **@26 Control of intermediated securities**

15 *Main rule*

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

21 *Control by maintenance of securities account*

- 22 (2) This subsection applies in relation to the securities account
23 maintained by the intermediary if:
- 24 (a) the securities account is maintained in the secured party's
25 name; or
 - 26 (b) both:
 - 27 (i) the securities account is maintained in the name of
28 another person (other than the grantor or the debtor) on
29 the secured party's behalf; and

EXPOSURE DRAFT

Schedule 2 Creating an effective security interest

- 1 (ii) the other person acknowledges in writing that the
2 securities account is so maintained on behalf of the
3 secured party.

4 *Control by agreement not to deal without consent*

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

16 **@27 Control of investment instruments**

17 *Main rule*

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

23 *Control by registration on issuer's books*

- 24 (2) This section applies (whether or not the instrument is evidenced by
25 a certificate) if:
26 (a) the secured party is registered as the owner of the instrument
27 on books maintained for that purpose by or on behalf of the
28 issuer of the instrument; or
29 (b) both:
30 (i) another person (other than the grantor or debtor) is
31 registered, on the secured party's behalf, as the owner of

EXPOSURE DRAFT

Creating an effective security interest **Schedule 2**

- 1 the instrument on books maintained for that purpose by
2 or on behalf of the issuer of the instrument; and
3 (ii) the other person acknowledges in writing that the
4 registration mentioned in subparagraph (i) is on behalf
5 of the secured party.

6 *Control by agreement not to deal without consent*

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

14 *Control by possession of certificate*

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

24 **21 Section 30**

25 Omit "5 business days", substitute "10 business days".

26 **22 Subsection 33(2)**

27 Omit "5 business days", substitute "10 business days".

28 **23 Subsection 33(3)**

29 Repeal the subsection.

EXPOSURE DRAFT

Schedule 2 Creating an effective security interest

1 **24 Subparagraphs 34(1)(c)(i) and (ii)**

2 Omit “5 business days”, substitute “10 business days”.

3 **25 Subsection 34(2)**

4 Repeal the subsection.

5 **26 Subsection 35(1) (heading)**

6 Repeal the heading.

7 **27 Subsection 35(2)**

8 Omit “5 business days”, substitute “10 business days”.

9 **28 Subsection 35(3)**

10 Repeal the subsection.

11 **29 Subsection 36(1) (heading)**

12 Repeal the heading.

13 **30 Subsection 36(2)**

14 Omit “5 business days”, substitute “10 business days”.

15 **31 Subsection 36(3)**

16 Repeal the subsection.

17 **32 Section 56**

18 Repeal the section, substitute:

19 **@56 How a security interest is continuously perfected**

20 A security interest is *continuously perfected* if:

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

EXPOSURE DRAFT

Creating an effective security interest **Schedule 2**

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- 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.

EXPOSURE DRAFT

EXPOSURE DRAFT

Schedule 3 Dealings in collateral

1 **Schedule 3—Dealings in collateral**
2

3 *Personal Property Securities Act 2009*

4 **1 Section 10 (definition of *accession*)**

5 Repeal the definition, substitute:

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

8 (a) both those goods and the other goods are required or
9 permitted by the regulations to be described by serial
10 number; or

11 (b) those goods are processed or commingled with the other
12 goods.

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

14 **2 Section 10**

15 Repeal the following definitions:

16 (a) definition of *account debtor*;

17 (b) definition of *advance*.

18 **3 Section 10 (definition of *commingled*)**

19 Repeal the definition, substitute:

20 *commingled*, in relation to goods that are collateral: see
21 section @99.

22 **4 Section 10 (definition of *constructive knowledge*)**

23 Repeal the definition.

24 **5 Section 10**

25 Insert:

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

28 (a) a transfer of the property;

EXPOSURE DRAFT

Dealings in collateral **Schedule 3**

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

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

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

- 8 (a) the person has actual knowledge of the circumstance; or
9 (b) the person (the *first person*) would have had actual
10 knowledge of the circumstance if the first person had:
11 (i) made the inquiries that would ordinarily have been
12 made by an honest and prudent person in the first
13 person's situation; or
14 (ii) made the inquiries that would ordinarily have been
15 made by an honest and prudent person with the first
16 person's actual knowledge in the first person's situation.

17 **6 Section 10 (definition of *motor vehicle*)**

18 Repeal the definition.

19 **7 Section 10 (definition of *negotiable instrument*)**

20 Repeal the definition, substitute:

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

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

28 **8 Section 10**

29 Insert:

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

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Schedule 3 Dealings in collateral

1 Note: For *purchase money security interest*, see section 14.
2 *priority time*, for a security interest: see section @55A.
3 *processed*, in relation to goods that are collateral: see section @99.
4 *recovered goods security interest*: see section @38 (recovered
5 goods—third party finance).

6 *vehicle* means goods that have a VIN.

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

9 *VIN* means the vehicle identification number allocated to a road
10 vehicle, within the meaning of the *Road Vehicle Standards Act*
11 *2018*, in accordance with the national road vehicle standards under
12 that Act.

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

15 **9 After section 10**

16 Insert:

17 **@10A References to secured parties, grantors, debtors etc.**

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

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

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

30 **10 Subsections 14(1), (2) and (2A)**

31 Repeal the subsections, substitute:

EXPOSURE DRAFT

Dealings in collateral **Schedule 3**

1 *Main definition*

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

16 *Sale and lease back transactions*

- 17 (1A) A security interest arising under a transaction of sale and lease
- 18 back of collateral to the grantor is a ***purchase money security***
- 19 ***interest***:
- 20 (a) only if the grantor buys the collateral and sells it to the
- 21 secured party; and
- 22 (b) only if, and to the extent that, the purchase price (or part of
- 23 the purchase price) for the collateral is paid directly by the
- 24 secured party to the supplier of the collateral.

25 *Exceptions*

- 26 (2) Security interests in the following collateral are not ***purchase***
- 27 ***money security interests***:
- 28 (a) an investment instrument;
- 29 (b) an intermediated security;
- 30 (c) a monetary obligation;
- 31 (d) a negotiable instrument.

32 **11 Subsection 14(5)**

33 Repeal the subsection, substitute:

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Schedule 3 Dealings in collateral

1 *Replacement of security interest has same status*

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

6 **12 At the end of subsection 14(7)**

7 Add:

8 ; or (c) as a result of a renewal, refinancing, consolidation or
9 restructure of an obligation mentioned in paragraph (a) or (b),
10 whether or not by the same secured party.

11 **13 After subsection 14(7)**

12 Insert:

13 (7A) If a secured party holds a purchase money security interest in a part
14 of a grantor’s inventory, a reference in subsection (7) to collateral
15 includes a reference to any other part of the inventory in which the
16 secured party holds or has held a purchase money security interest.

17 (7B) Subsection (7A) does not apply to any inventory that is required or
18 permitted by the regulations to be described by serial number.

19 **14 At the end of section 14**

20 Add:

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

23 **15 Section 16**

24 Omit “and assigning”.

25 **16 Section 30**

26 Omit “A security interest in collateral continues in the proceeds”,
27 substitute “If collateral gives rise to proceeds by a dealing in the
28 collateral, an existing security interest in the collateral remains attached
29 to the collateral and attaches to the proceeds as well”.

EXPOSURE DRAFT

Dealings in collateral **Schedule 3**

1 **17 Paragraph 31(3)(a)**

2 Repeal the paragraph, substitute:

- 3 (a) the grantor of the security interest in the collateral has rights
4 in the proceeds; and

5 **18 After subsection 31(3)**

6 Insert:

- 7 (3A) Paragraph (3)(a) does not apply to a person who is the grantor of
8 the collateral because of paragraph (e) of the definition of *grantor*
9 in section 10.

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

12 **19 Subsection 32(1)**

13 Repeal the subsection, substitute:

14 *Continuing attachment of security interest in collateral, and*
15 *attachment to proceeds*

16 (1) Subject to this Act:

- 17 (a) if collateral is dealt with, the security interest remains
18 attached to the collateral, unless the secured party agreed that
19 a party to the dealing could take the collateral free of the
20 security interest; and
21 (b) if collateral gives rise to proceeds (by being dealt with or
22 otherwise), the security interest attaches to the proceeds
23 unless the security agreement provides otherwise.

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

27 **20 Subsection 32(2)**

28 Omit “(other than an investment instrument or an intermediated
29 security) and proceeds”, substitute “and proceeds that arise as a result of
30 a transfer of the collateral”.

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Schedule 3 Dealings in collateral

1 **21 Subsection 32(3)**

2 Repeal the subsection.

3 **22 Subsection 32(5)**

4 Repeal the subsection (including the note), substitute:

5 *Priority for proceeds*

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

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

10 **23 Subsection 34(1) (heading)**

11 Repeal the heading, substitute:

12 *Security interest in collateral is temporarily perfected*

13 **24 Subsection 34(1)**

14 Omit “the security interest” (first occurring), substitute “that security
15 interest”.

16 **25 Paragraph 34(1)(b)**

17 After “security interest”, insert “in the collateral”.

18 **26 Subparagraph 34(1)(c)(ii)**

19 Omit “actual or constructive”.

20 **27 Sections 37 and 38**

21 Repeal the sections, substitute:

22 **@37 Recovered goods—reattachment of security interest**

23 *Scope*

24 (1) This section applies if:

25 (a) goods are subject to a security interest; and

EXPOSURE DRAFT

Dealings in collateral **Schedule 3**

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

7 *Reattachment of security interest*

- 8 (2) The security interest reattaches to the goods at the recovery time if
9 the goods are returned to or repossessed by the grantor because of
10 any of the following events:
11 (a) in the case of a sale—the contract of sale is rescinded;
12 (b) in the case of a lease—the lease expires or is rescinded;
13 (c) the goods are repossessed in the exercise by the grantor of a
14 right in enforcing the contract of sale or lease;
15 (d) any other event prescribed by regulations made for the
16 purposes of this paragraph.

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

19 *Perfection of security interest*

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

28 **@38 Recovered goods—third party finance**

29 *Scope*

- 30 (1) This section applies if:
31 (a) goods are sold or leased; and

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Schedule 3 Dealings in collateral

- 1 (b) the sale or lease gives rise to an account; and
2 (c) a person (the *secured party*) takes a security interest in the
3 account.

4 *Recovered goods security interest*

- 5 (2) The secured party is also taken to have a security interest (a
6 *recovered goods security interest*) in the goods if, at a particular
7 time (the *recovery time*), the goods are returned to, or repossessed
8 by, the seller or lessor because of any of the following events:
9 (a) in the case of a sale—the contract of sale is rescinded;
10 (b) in the case of a lease—the lease expires or is rescinded;
11 (c) the goods are repossessed in the exercise of a right by the
12 seller or lessor in enforcing the account;
13 (d) any other event prescribed by regulations made for the
14 purposes of this paragraph.

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

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

19 *Temporary perfection of recovered goods security interest*

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

25 **28 Section 41**

26 Repeal the section, substitute:

27 **@41 Guide to this Part**

28

This Part is about taking personal property free of security 29 interests.

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Dealings in collateral **Schedule 3**

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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.

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29 Paragraph 42(b)

Omit “(except in sections 50 (investment instruments) and 51 (intermediated securities))”.

30 Paragraph 42(b) (note)

Repeal the note.

31 Subsection 43(1)

Before “value”, insert “new”.

32 Subsection 43(2)

Repeal the subsection, substitute:

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.

EXPOSURE DRAFT

Schedule 3 Dealings in collateral

1 **33 Subsection 44(1)**

2 After “of personal property”, insert “, for new value,”.

3 **34 Subsection 44(2)**

4 Repeal the subsection, substitute:

5 *Exceptions*

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

10 **35 Section 45 (heading)**

11 Omit “motor”.

12 **36 Subsection 45(1)**

13 Repeal the subsection, substitute:

14 *Incorrect or missing VIN*

15 (1) A buyer or lessee, for new value, of a vehicle takes the vehicle free
16 of a security interest in the vehicle if:

17 (a) there is a time during the period between the start of the
18 previous day and the time of the sale or lease by reference to
19 which a search of the register (by reference otherwise only to
20 the vehicle’s VIN) would not disclose a registration that
21 perfected the security interest; and

22 (b) the seller or lessor is:
23 (i) the person who granted the security interest; or
24 (ii) if the person who granted the security interest has lost
25 the right to possess the vehicle, or is estopped from
26 asserting an interest in the vehicle—another person who
27 is in possession of the vehicle.

28 **37 Paragraph 45(2)(c)**

29 Repeal the paragraph.

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Dealings in collateral **Schedule 3**

1 **38 Paragraph 45(2)(d)**

2 Omit “actual or constructive”.

3 **39 Subsection 45(3)**

4 Repeal the subsection, substitute:

5 *Taking from prescribed person*

6 (3) A buyer or lessor, for new value, of a vehicle takes the vehicle free
7 of a security interest in the vehicle if regulations made for the
8 purposes of this subsection apply to the seller or lessor of the
9 vehicle.

10 **40 Paragraph 45(4)(c)**

11 Repeal the paragraph.

12 **41 Paragraph 45(4)(d)**

13 Omit “actual or constructive”.

14 **42 Subsection 46(1)**

15 After “of personal property”, insert “, for new value.”.

16 **43 Subsection 46(2)**

17 Repeal the subsection, substitute:

18 *Exception*

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

23 **44 Subsection 47(1)**

24 Omit “market value (worked out at the time each part of the total new
25 value is given) of the total”.

26 **45 Paragraph 47(1)(b)**

27 Omit “has been prescribed”, substitute “is prescribed”.

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Schedule 3 Dealings in collateral

46 Paragraphs 47(2)(b) and (c)

Repeal the paragraphs, substitute:

- (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.

47 Section 48

Repeal the section, substitute:

@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.

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.

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

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

10 *Exception*

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

14 **@48B Taking negotiable instrument free of security interest**

15 *Main rule*

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

20 *Exception*

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

24 **@48C Taking negotiable document of title free of security interest**

25 *Main rule*

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

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Schedule 3 Dealings in collateral

1

Exception

2

- (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.

3

4

5

48 Section 49

6

Omit “prescribed financial market (within the meaning of the *Corporations Act 2001*)”, substitute “financial market prescribed by regulations made for the purposes of this section”.

7

8

9

49 Sections 50 and 51

10

Repeal the sections, substitute:

11

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

12

13

Scope

14

- (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.

15

16

17

Main rule

18

- (2) The buyer takes the investment instrument or intermediated security free of a security interest in the instrument or intermediated security if:

19

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- (a) the buyer gives new value for the investment instrument or intermediated security; and

22

23

- (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.

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Exception

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

29

30

42

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1 **50 Subsection 52(1)**

2 Omit “the proceeds of personal property, or of goods or a negotiable
3 document of title, takes the proceeds, goods or document”, substitute
4 “personal property takes the personal property”.

5 **51 Subsection 52(2)**

6 Repeal the subsection, substitute:

7 *Exception*

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

10 **52 Section 53**

11 Repeal the section.

12 **53 Section 54**

13 Omit all the words from and including “Division 5” to and including “or
14 negotiable document of title”.

15 **54 Subsection 55(2)**

16 Repeal the subsection, substitute:

17 *Priority between unperfected security interests*

18 (2) Priority between unperfected security interests in the same
19 collateral is to be determined by:

20 (a) the order of attachment of the security interests; or

21 (b) if the security interests attach to the collateral at the same
22 time—the order in which the security agreements providing
23 for the security interests were entered into.

24 **55 Subsection 55(4)**

25 Omit “(see subsection (5))”.

26 **56 Subsections 55(5) and (6)**

27 Repeal the subsections.

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1 **57 Section 55 (note)**

2 Repeal the note.

3 **58 After section 55**

4 Insert:

5 **@55A Meaning of *priority time***

6 (1) The *priority time* for a security interest in collateral is the earliest
7 of the following times:

- 8 (a) the registration time in relation to the security interest;
9 (b) the time the security interest is perfected.

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

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

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

20 **@55B When is priority determined?**

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

25 **59 Subsections 57(2) and (2A)**

26 Repeal the subsections, substitute:

27 (2) Priority between security interests in the same collateral that are
28 currently perfected by control, if the perfection by control has been
29 continuous, is to be determined by:

- 30 (a) the order in which the interests were perfected by control; or

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- 1 (b) if the security interests were perfected by control at the same
2 time—the order in which the secured parties put in place
3 mechanisms to enable them to take control of the collateral.

4 **60 Sections 58 and 59**

5 Repeal the sections, substitute:

6 **@58 Priority of secured obligations**

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

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

13 **61 Section 61**

14 Repeal the section, substitute:

15 **@61 Priority in accordance with priority agreement between** 16 **secured parties**

17 (1) A security interest in collateral has priority over another security
18 interest in the same collateral if the secured parties so agree.

19 (2) Such an agreement:

20 (a) is effective according to its terms between the secured
21 parties; and

22 (b) may be enforced by a third party if the third party is the
23 person, or one of a class of persons, for whose benefit the
24 agreement is intended; and

25 (c) subject to paragraph (b), does not affect the rights of any
26 other person with an interest in the collateral.

27 **62 Sections 62 and 63**

28 Repeal the sections, substitute:

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1 **@62 Priority for perfected purchase money security interests over**
2 **other perfected security interests**

3 *Main rule*

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

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

12 *When main rule applies*

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

28 *Replacement purchase money security interest*

- 29 (3) If the purchase money security interest replaces another purchase
30 money security interest as mentioned in subsection 14(5),
31 subsection (2) of this section applies to the replacement security
32 interest as follows:

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

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

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

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

16 **@63 Priority between purchase money security interests—sellers,** 17 **lessors and consignors**

18 (1) This section applies to a perfected purchase money security interest
19 (the *priority PMSI*) granted in collateral or its proceeds to a seller,
20 lessor or consignor of the collateral.

21 (2) If the priority PMSI is perfected by registration within the period
22 of 15 business days that is applicable under subsections @62(2)
23 and (3), the priority PMSI has priority over another perfected
24 purchase money security interest that is granted by the same
25 grantor in the same collateral or proceeds to any other person.

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

28 **@63A Priority of replacement purchase money security interests—** 29 **general**

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

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

5 **63 Section 64 (heading)**

6 Repeal the heading, substitute:

7 **64 Priority for non-purchase money security interest in accounts**

8 **64 Subsections 64(1) and (2)**

9 Repeal the subsections, substitute:

10 *Scope*

11 (1A) This section applies to the following security interests in relation to
12 an account:

- 13 (a) a non-purchase money security interest (the *accounts*
14 *financier's interest*) granted to a person (the *accounts*
15 *financier*) for new value in the account as original collateral
16 and perfected by registration;
- 17 (b) a purchase money security interest (the *inventory financier's*
18 *PMSI*) granted to another person (the *inventory financier*)
19 by the same grantor in inventory and perfected by
20 registration, if the inventory financier's PMSI attaches to the
21 account as proceeds of the inventory;
- 22 (c) a non-purchase money security interest (an *inventory*
23 *financier's non-PMSI*) (if any) in the account as original
24 collateral or proceeds that is granted by the same grantor to
25 the inventory financier.

26 *Priority for non-purchase money security interests in accounts*

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

- 30 (a) both of the following conditions are met:

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

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

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

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

31 **65 Subsection 64(3)**

32 Omit "is subordinate to", substitute "has a lower priority than".

33 **66 Paragraph 64(3)(a)**

34 Omit "subsection (1)", substitute "paragraph (1A)(a)".

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1 **67 Paragraph 68(2)(c)**

2 Omit “actual or constructive”.

3 **68 Paragraph 68(2)(d)**

4 Omit “an advance made, or an obligation incurred, by the transferee’s
5 secured party”, substitute “an obligation to make a payment, or any
6 other obligation, incurred by the transferee”.

7 **69 Paragraph 68(2)(d)**

8 Omit “but only to the extent of the advance or obligation”, substitute
9 “but only to the extent of the payment or other obligation”.

10 **70 Subsection 68(3)**

11 Omit “(priority of advances)”, substitute “(priority of secured
12 obligations)”.

13 **71 Division 5 of Part 2.6**

14 Repeal the Division.

15 **72 Subsection 74(1)**

16 Repeal the subsection, substitute:

17 (1) The interest of an execution creditor in collateral has priority over
18 a security interest in the same collateral if, at the time covered by
19 subsection (4):

20 (a) either:

21 (i) there is no registration in respect of the security interest;
22 or

23 (ii) if there is such a registration—there is no security
24 agreement providing for the security interest that covers
25 the collateral in accordance with subsection 20(2); and

26 (b) the security interest is not perfected.

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

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1 **73 Paragraph 74(4)(a)**

2 Repeal the paragraph, substitute:

- 3 (a) if the collateral is seized under a process of execution—the
4 time of seizure;

5 **74 Paragraphs 76(3)(a) and (b)**

6 Repeal the paragraphs, substitute:

- 7 (a) the priority interest attaches before the recovery time within
8 the meaning of section 37 or 38; and
9 (b) immediately before the recovery time within the meaning of
10 section 37 or 38, the priority interest is perfected.

11 **75 Part 2.7**

12 Repeal the Part, substitute:

13 **Part 2.7—Restrictions on some dealings in**
14 **collateral**

15 **Division 1—Introduction**

16 **@78 Guide to this Part**

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

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

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Schedule 3 Dealings in collateral

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.

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.

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

4 **@81 Restrictions in account contracts**

5 *Scope*

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

15 *Effect of restrictions*

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

23 **@81A Dealings in accounts—restrictions on rights of secured party**

24 *Restrictions on rights of secured party*

- 25 (1) If this Division applies to a dealing in an account, the rights of the
26 secured party arising as a result of the dealing are subject to:
27 (a) the terms of the account contract, and any equity, defence,
28 remedy or claim arising in relation to the contract (including
29 a defence by way of a right of set-off); and
30 (b) any other equity, defence, remedy or claim of the account
31 debtor against the account creditor (including a defence by

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1 way of a right of set-off) that accrues before the first time
2 when payment by the account debtor to the account creditor
3 no longer discharges the obligation of the account debtor
4 under subsection @81B(6) to the extent of the payment.

5 Note: The secured party may be a receiver.

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

9 *Modification of contract*

10 (3) If this Division applies to a dealing in an account, unless the
11 account debtor has otherwise agreed, a modification of the account
12 contract is effective against the secured party if:

- 13 (a) the account debtor and the account creditor have acted
14 honestly in modifying the contract; and
15 (b) the modification is made in a commercially reasonable way;
16 and
17 (c) the modification does not have a material adverse effect on:
18 (i) the secured party's rights under the contract; or
19 (ii) the account creditor's ability to perform the contract.

20 Note: For *modification*, see section 10.

21 (4) Subsection (3) applies:

- 22 (a) to the extent that a right to payment in favour of the secured
23 party has not been fully earned by performance; and
24 (b) even if there has been notice of the dealing to the account
25 debtor.

26 (5) If a modification of the account contract is effective under
27 subsection (3), the secured party obtains rights that correspond to
28 the rights of the account creditor under the contract as modified.

29 (6) Nothing in subsections (3) to (5) affects the validity of a term in
30 the agreement for the dealing if the term provides that a
31 modification of the account contract that is effective under
32 subsection (3) is a breach of contract by the account creditor.

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1 **@81B Dealings in accounts—protection of rights of account debtor**

2 *Adverse effect on account debtor’s ability to perform contract*

3 (1) A dealing in an account to which this Division applies is
4 ineffective to the extent that the dealing would make performance
5 of the account contract more onerous than if the dealing had not
6 occurred.

7 (2) However, subsection (1) does not apply to the extent that the
8 account debtor consents to the dealing.

9 *Payments by account debtor after dealing*

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

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

18 (4) A notice under subsection (3) must:
19 (a) identify the account contract; and
20 (b) if given by the secured party—include proof of the dealing;
21 and
22 (c) state that the amount owing must be paid to the secured party
23 before the later of:
24 (i) the end of 10 business days after the day the notice is
25 received; or
26 (ii) the end of the day the amount becomes due and payable.

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

29 (5) If the secured party gives a notice to the account debtor under
30 subsection (3), the secured party must give a copy of the notice to
31 the account creditor:

32 (a) before the end of 5 business days after the day the notice
33 under subsection (3) is given; or

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1 (b) if the account creditor has given a written notice to the
2 secured party specifying a shorter period to apply for the
3 purposes of this subsection—before the end of that period.

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

6 (6) After a dealing in an account to which this Division applies, the
7 following payments discharge the obligation of the account debtor
8 to the extent of the payment:

9 (a) a payment made to the account creditor under the account
10 contract before the end of the period for payment stated in a
11 notice under subsection (3);

12 (b) a payment made to the secured party in accordance with a
13 notice under that subsection, whether before or after the end
14 of the period for payment stated in the notice.

15 **76 Section 87**

16 Omit “continues in”, substitute “remains attached to”.

17 **77 Section 87**

18 Omit “be subordinate to”, substitute “have a lower priority than”.

19 **78 Section 88 (heading)**

20 Repeal the heading, substitute:

21 **88 Security interest in goods—attachment to accession**

22 **79 Section 88**

23 Omit “continues in”, substitute “remains attached to”.

24 **80 Paragraph 90(a)**

25 Omit “after”, substitute “at or after the time”.

26 **81 After paragraph 90(a)**

27 Insert:

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

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1 **82 Paragraph 90(b)**

2 Repeal the paragraph.

3 **83 Paragraph 90(c)**

4 Repeal the paragraph, substitute:

5 (c) a person who holds a perfected security interest in the whole
6 that secures the making of a payment, or the performance of
7 any other obligation, to the extent that the debtor incurs the
8 obligation to make the payment, or perform the other
9 obligation, at or after the time the goods become an
10 accession, but before the security interest in the accession is
11 perfected;

12 **84 Paragraph 90(d)**

13 Omit “after”, substitute “at or after the time”.

14 **85 Sections 91 and 96**

15 Omit “is subordinate to”, substitute “has a lower priority than”.

16 **86 Part 3.4**

17 Repeal the Part, substitute:

18 **Part 3.4—Processed and commingled goods**

19

20 **@98 Guide to this Part**

21

22

23

24

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).

25

26

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28

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.

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Schedule 3 Dealings in collateral

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

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

5 @99 Meaning of *processed* and *commingled* goods

6 (1) Goods are *processed* if:

7 (a) the goods are manufactured, processed or assembled into a
8 product; and

9 (b) the identity of the goods is lost in the product.

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

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

14 (2) Goods are *commingled* if:

15 (a) the goods are mixed with other goods into a mass; and

16 (b) the identity of the goods is lost in the mass.

17 Example 1: Wheat that is mixed with other wheat.

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

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

23 @100 Processed and commingled goods—attachment

24 (1) A security interest in goods that are processed into a product
25 remains attached to the product.

26 (2) A security interest in goods that are commingled into a mass
27 remains attached to the grantor's share of the mass.

28 (3) If the security interest in goods is a purchase money security
29 interest, the security interest that remains attached to the product or

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1 mass under subsection (1) or (2) is still a purchase money security
2 interest.

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

6 **@101 Processed and commingled goods—perfection of security** 7 **interest**

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

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

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

16 **@102 Processed goods—priority and enforcement of security** 17 **interests**

18 *Priority*

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

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

25 *Maximum amount recoverable*

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

EXPOSURE DRAFT

Schedule 3 Dealings in collateral

1 **@103 Commingled goods—priority and enforcement of security**
2 **interests**

3 *Priority*

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

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

10 *Maximum amount recoverable*

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

16 *Enforcement by seizure*

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

22 **87 Subsection 111(2)**

23 Omit "actual".

24 **88 Paragraph 166(2)(c)**

25 Omit "actual or constructive".

26 **89 Subsection 172(2) (table item 6, column headed**
27 **"Purpose", paragraph (a))**

28 Repeal the paragraph, substitute:

29 (a) the person is considering whether to acquire an interest in the property; or

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Dealings in collateral **Schedule 3**

1 **90 Paragraphs 267(3)(b) and 267A(2)(b)**

2 Omit “actual or constructive”.

3 **91 Section 295**

4 Omit “defines *constructive knowledge* and”.

5 **92 Section 297**

6 Repeal the section.

7 **93 Section 298 (heading)**

8 Omit “Actual or constructive knowledge”, substitute “**Knowledge**”.

9 **94 Subsections 298(1) and (2)**

10 Omit “actual or constructive”.

11 **95 Section 299 (heading)**

12 Omit “Actual or constructive knowledge”, substitute “**Knowledge**”.

13 **96 Paragraphs 299(2)(a) and (b)**

14 Omit “actual or constructive”.

15 **97 Section 300**

16 Omit “actual or constructive”.

17 **98 Subsection 322(1) (note 1)**

18 Omit “subsection 55(4)”, substitute “section @55A”.

19 **99 Amendments of listed provisions—motor vehicles**

20 The following provisions are amended by omitting “motor” (wherever
21 occurring):

22 (a) section 3 (paragraph beginning “Personal property”);

23 (b) paragraph 44(3)(a);

24 (c) paragraphs 45(2)(a), (b) and (d);

25 (d) paragraphs 45(4)(a), (b) and (d);

26 (e) section 176A (paragraph beginning “For example,”);

27 (f) subsection 176C(1) (example);

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Schedule 3 Dealings in collateral

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(g) subsection 261(1) (example).

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Enforcement of security interests and insolvency of a grantor **Schedule 4**
Main amendments **Part 1**

1 **Schedule 4—Enforcement of security**
2 **interests and insolvency of a grantor**

3 **Part 1—Main amendments**

4 *Personal Property Securities Act 2009*

5 **1 Chapter 4**

6 Repeal the Chapter, substitute:

7 **Chapter 4—Enforcement of security interests**

8 **Part 4.1—Guide to this Chapter**
9

10 **@107 Guide to this Chapter**

11 **[s 107]**

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

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

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

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

EXPOSURE DRAFT

Schedule 4 Enforcement of security interests and insolvency of a grantor Part 1 Main amendments

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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.

10 **Part 4.2—Scope of this Chapter: excluded security** 11 **interests** 12

13 **@108 Guide to this Part**

14 **[s 108]**

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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.

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Enforcement of security interests and insolvency of a grantor **Schedule 4**
Main amendments **Part 1**

1 **@109 Security interests to which this Chapter does not apply**

2 *[ss 109, 115(7), 116, 119]*

3 *Deemed security interests*

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

12 *National Credit Code securities*

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

15 *Security interests in personal property subject to certain*
16 *Corporations Act controllers*

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

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

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

- 29 (4) Each of the following terms, in relation to property of a
30 corporation, has the same meaning as in the *Corporations Act*
31 *2001*:

EXPOSURE DRAFT

Schedule 4 Enforcement of security interests and insolvency of a grantor Part 1 Main amendments

- 1 (a) *controller*;
- 2 (b) *receiver*;
- 3 (c) *receiver and manager*.

4 *Pawnbroker securities*

- 5 (5) This Chapter does not apply to a security interest taken by a
- 6 pawnbroker if all of the following are satisfied:
 - 7 (a) the pawnbroker holds a licence or is otherwise expressly
 - 8 authorised (for example, by registration) by a law of a State
 - 9 or Territory to carry on a pawnbroking business (however
 - 10 described in that law);
 - 11 (b) the taking of the interest is authorised by that licence or
 - 12 authorisation, and is not in contravention of that law of the
 - 13 State or Territory;
 - 14 (c) the interest is taken in the ordinary course of the
 - 15 pawnbroker's business as a pawnbroker;
 - 16 (d) at the time the interest is taken, the market value of the
 - 17 payment or other obligation secured by the interest is less
 - 18 than or equal to:
 - 19 (i) \$10,000; or
 - 20 (ii) if a greater amount is prescribed by regulations made for
 - 21 the purposes of subsection 47(1)—that amount;
 - 22 (e) at the time the interest is taken, the pawnbroker believes, and
 - 23 it is actually the case, that the market value of the collateral is
 - 24 less than or equal to:
 - 25 (i) \$10,000; or
 - 26 (ii) if a greater amount is prescribed by regulations made for
 - 27 the purposes of paragraph 47(2)(c)—that amount;
 - 28 (f) the collateral is not of a kind that the regulations provide
 - 29 may, or must, be described by serial number in a registration.

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Enforcement of security interests and insolvency of a grantor **Schedule 4**
Main amendments **Part 1**

Part 4.3—Enforcement of security interests

Division 1—Introduction

@110 Guide to this Part

[s 108]

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.

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Schedule 4 Enforcement of security interests and insolvency of a grantor Part 1 Main amendments

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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.

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@111 Meaning of *mandatory enforcement rule*

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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).

21

Division 2—General enforcement principles

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@112 Rights and remedies of parties to security agreements generally

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[s 110]

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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;

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Enforcement of security interests and insolvency of a grantor **Schedule 4**
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- 1 (b) the grantor;
2 (c) the secured party.

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

6 **@113 Rights and duties—honest and commercially reasonable**
7 **exercise**

8 **[s 111]**

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

15 **@114 Contracting out of enforcement under this Chapter**

16 **[s 115]**

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

21 Note: See section @111 for the mandatory enforcement rules.

- 22 (3) A provision of a security agreement or other instrument that
23 contravenes subsection (2) is void to the extent that it purports to
24 contract out of a mandatory enforcement rule.

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

- 27 (4) The parties to a security agreement that provides for a security
28 interest in collateral that is intended, at the time of entry into the
29 agreement, to be used predominantly for personal, domestic or

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Schedule 4 Enforcement of security interests and insolvency of a grantor Part 1 Main amendments

1 household purposes may not contract out of the application of this
2 Chapter, or any provision of it.

3 *Contracting out—effect on third parties*

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

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

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

17 *Waiver of right to notices*

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

22 **@115 Dealing with collateral under this Chapter**

23 **[s 112]**

24 (1) In exercising rights and remedies provided by this Chapter, a
25 secured party may deal with collateral only to the same extent as
26 the grantor would be entitled to so deal with the collateral.

27 (2) However, subsection (1) does not apply:

28 (a) if the secured party had title to the collateral immediately
29 before starting to exercise any right or remedy provided
30 under this Chapter; or

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Enforcement of security interests and insolvency of a grantor **Schedule 4**
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1 (b) to the extent that it would otherwise prevent the secured party
2 from dealing with the collateral by way of transfer because a
3 transfer by the grantor would be prohibited or declared to be
4 a default under a security agreement.

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

6 **@116 Effect of recovering judgment or issuing execution**

7 **[s 113]**

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

11 **@117 Cumulative rights and remedies under this Chapter**

12 **[s 114]**

13 The rights and remedies provided by this Chapter are cumulative.

14 **@118 Seizure by higher priority parties—notice**

15 **[s 127]**

16 *Scope*

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

22 *Notice requiring enforcing party to give possession of collateral to*
23 *higher priority party*

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

27 Note: If a person has a perfected security interest in the collateral that ranks
28 higher than that of the enforcing party, and the person does not give a

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Schedule 4 Enforcement of security interests and insolvency of a grantor Part 1 Main amendments

1 notice under this section, the person retains a security interest in the
2 collateral.

3 (3) The higher priority party may give a notice to the enforcing party
4 under subsection (2) only if both of the following are satisfied:

5 (a) the higher priority party would be entitled to seize the
6 collateral (in the higher priority party's own right), had the
7 enforcing party not first seized the collateral;

8 (b) the higher priority party has not waived its right to give a
9 notice under subsection (2) by agreement with the enforcing
10 party.

11 (4) An enforcing party who is given a notice under subsection (2) must
12 comply with the notice before the end of:

13 (a) the period of 5 business days after the day the notice is
14 received; or

15 (b) such longer period as is reasonable in the circumstances.

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

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

22 *Payment of enforcing party's expenses*

23 (6) A higher priority party who is given possession of collateral under
24 this section must, subject to subsections (7) and (8), pay the
25 enforcing party the amount of any reasonable expenses paid or
26 incurred by the enforcing party, in relation to the enforcement of
27 the security interest in the collateral.

28 (7) A higher priority party must pay an amount of expenses under
29 subsection (6) only to the extent that, before the higher priority
30 party disposes of the collateral and any proceeds of the collateral
31 sufficient to meet the expenses, the enforcing party gives the
32 higher priority party evidence showing that the enforcing party
33 incurred the amount.

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Enforcement of security interests and insolvency of a grantor **Schedule 4**
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- 1 (8) The amount payable under subsection (6) is the lesser of the
2 following amounts:
3 (a) the amount mentioned in that subsection;
4 (b) the amount of any proceeds from the higher priority party's
5 disposal of the collateral.
- 6 (9) A higher priority party must pay an amount of expenses under
7 subsection (6) before the end of 20 business days after the day the
8 higher priority party disposes of the collateral.
- 9 Note: The period specified in this subsection may be extended by a court
10 under section 293.
- 11 (10) The amount under subsection (6) is a debt due to the enforcing
12 party.
- 13 (11) The enforcing party may apply to a court to recover the amount of
14 the debt, and the court may grant the application.
- 15 Note: For which courts have jurisdiction, and for transfers between courts,
16 see Part 6.2.
- 17 (12) Two secured parties may contract out of the right of one of the
18 secured parties to receive an amount under this section.

19 **@119 Disposing of collateral free of interests**

20 **[s 133]**

- 21 (1) If a secured party exercises its right to dispose of collateral
22 (whether under section @128 or otherwise), a person who takes the
23 collateral as a result of the disposal does so free of all of the
24 following interests in the collateral:
25 (a) the interest of the grantor;
26 (b) the security interest of the secured party who disposed of the
27 collateral;
28 (c) all security interests in the collateral that have a lower
29 priority than the security interest of that secured party.
- 30 Note: If a person has a perfected security interest in the collateral that ranks
31 higher than that of the secured party, the person retains a security
32 interest in the collateral.

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Schedule 4 Enforcement of security interests and insolvency of a grantor

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- 1 (2) Subsection (1) applies in relation to a disposal of collateral (other
2 than a disposal by a secured party purchasing the collateral) even if
3 the requirements of this Chapter have not been complied with.

4 @120 Distribution of property received from enforcement

5 **[s 140]**

6 *Scope*

- 7 (1) This section applies if any property is received by or on behalf of a
8 secured party as a result of enforcing a security interest in
9 collateral.

- 10 (2) This section does not prevent the operation of another law of the
11 Commonwealth, or a law of a State or Territory, to the extent that
12 the law requires the property to be applied towards one or more
13 obligations to persons that do not hold security interests (or any
14 other interests) in the collateral before being applied towards any
15 (or all) of the obligations mentioned in subsection (3).

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

20 *Order of application*

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

26 Note: The higher priority interests mentioned in this paragraph might
27 be interests excluded by section @12A from the definition of
28 *security interest*.

- 29 (b) reasonable expenses incurred in relation to the enforcement
30 of security interests against the collateral, to the extent that
31 the expenses are secured by the security interests;

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Enforcement of security interests and insolvency of a grantor **Schedule 4**
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- 1 Note: Reasonable expenses in relation to the enforcement of a security
2 interest are taken to be secured by the security interest unless the
3 parties agree otherwise (see section @137).
- 4 (c) obligations to persons holding security interests in the
5 collateral that have a higher priority (whether under this Act
6 or otherwise) than the interest of the secured party;
7 (d) obligations to the secured party that are secured by the
8 security interest in the collateral;
9 (e) obligations to persons holding interests or security interests
10 in the collateral that have a lower priority (whether under this
11 Act or otherwise) than the interest of the secured party;
12 (f) to the grantor.
- 13 (4) The property must be applied towards interests mentioned in
14 paragraph (3)(a), (c) or (e) in the order of their priority (whether
15 under this Act or otherwise).
- 16 (5) This section applies in relation to a security interest in collateral
17 even if a person takes the collateral free of the security interest
18 under section @119.
- 19 (6) The application of property in accordance with subsection (3)
20 discharges an obligation secured by an interest in the collateral to
21 the extent of the property applied.
- 22 (7) To avoid doubt, any amount paid by the higher priority party to an
23 enforcing party in accordance with section @118 is, for the
24 purposes of this section, an expense incurred by the higher priority
25 party in relation to the enforcement of the security interest in the
26 collateral.
- 27 (8) A secured party is not liable to an action, suit or proceeding in
28 relation to an application of property in accordance with this
29 section if:
30 (a) the secured party applied the property honestly; and
31 (b) the secured party applied the property in a commercially
32 reasonable manner.

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Schedule 4 Enforcement of security interests and insolvency of a grantor
Part 1 Main amendments

1 **Division 3—Seizing collateral**

2 **@121 Seizing collateral—general rules**

3 **[s 123]**

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

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

9 **@122 Seizing collateral—property other than goods**

10 **[s 123]**

11 (1) For the purposes of this Act, unless subsection (2) applies, a
12 secured party may seize collateral other than goods under section
13 @121 only by giving a notice, stating that the giving of the notice
14 constitutes seizure of the collateral, to the following persons:

- 15 (a) the grantor;
16 (b) if the property is a licence:
17 (i) the licensor; or
18 (ii) the licensor's successor.

19 (2) Collateral other than goods may be seized by another method, if so
20 agreed between:

- 21 (a) the parties to the security agreement; or
22 (b) if the property is a licence—the parties to the security
23 agreement together with the licensor or the licensor's
24 successor.

25 **@123 Seizing collateral—perfection by possession or control**

26 **[s 124]**

27 (1) On default under a security agreement, a secured party whose
28 security interest in the collateral is perfected by possession or

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Enforcement of security interests and insolvency of a grantor **Schedule 4**
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1 control may seize the collateral under section @121 by giving a
2 notice to the grantor.

3 (2) To avoid doubt, this section applies whether the secured party has
4 perfected the security interest only by possession or control, or by
5 another method as well.

6 **@124 Seizing collateral—obligation to dispose or retain**

7 **[s 125]**

8 (1) A secured party who seizes collateral under section @121 must:
9 (a) dispose of the collateral in accordance with Division 5; or
10 (b) take action to retain the collateral in accordance with
11 Division 6.

12 (2) Before disposing of or taking action to retain the collateral, the
13 secured party is, subject to the security agreement that covers the
14 collateral, entitled to a reasonable period in which:
15 (a) to secure, store and value the collateral; and
16 (b) to determine how to deal with the collateral.

17 (3) The secured party may delay disposing of, or taking action to
18 retain, the whole or part of the collateral beyond the reasonable
19 period mentioned in subsection (2). However, the delay must:
20 (a) if the security agreement providing for the security interest
21 allows for the delay—be in accordance with the security
22 agreement; or
23 (b) otherwise—be reasonable in the circumstances.

24 **@125 Seizing collateral—taking apparent possession**

25 **[s 126]**

26 (1) A secured party may seize collateral under section @121 by taking
27 apparent possession of the collateral if:
28 (a) the collateral cannot be readily moved from a grantor's
29 premises; or

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Schedule 4 Enforcement of security interests and insolvency of a grantor Part 1 Main amendments

1 (b) adequate storage facilities are not readily available for the
2 collateral.

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

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

11 **Division 4—Redeeming collateral and reinstating security** 12 **agreement**

13 **@126 Redeeming collateral**

14 **[s 142]**

15 (1) This section applies, in relation to a secured party enforcing a
16 security interest in collateral, before any of the following has
17 occurred:

- 18 (a) the secured party has disposed of the collateral, whether
19 under section @128 or otherwise;
- 20 (b) the secured party has entered into a contract to dispose of the
21 collateral, whether under section @128 or otherwise;
- 22 (c) the secured party has become entitled to retain the collateral,
23 whether under section @136 or otherwise.

24 (2) While this section applies, any other person with a security interest
25 in the collateral, or the grantor, may redeem the collateral:

- 26 (a) by paying the amounts required to discharge the obligations,
27 or by performing the obligations, secured by security
28 interests in the collateral; and
- 29 (b) by paying the amount of any expenses in relation to the
30 enforcement of the security interest, the payment of which is
31 secured by the security interest.

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Enforcement of security interests and insolvency of a grantor **Schedule 4**
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1 Note: Reasonable expenses in relation to the enforcement of a security
2 interest are taken to be secured by the security interest unless the
3 parties agree otherwise (see section @137).

4 (3) However, a person must not redeem collateral under subsection (2)
5 if the person agrees in writing after the default not to do so.

6 (4) The grantor's right to redeem the collateral has priority over any
7 other person's right to redeem the collateral.

8 **@127 Reinstating security agreement**

9 **[s 143]**

10 (1) This section applies, in relation to a secured party enforcing a
11 security interest in collateral, before any of the following has
12 occurred:

- 13 (a) the secured party has disposed of the collateral, whether
14 under section @128 or otherwise;
- 15 (b) the secured party has entered into a contract to dispose of the
16 collateral, whether under section @128 or otherwise;
- 17 (c) the secured party has become entitled to retain the collateral,
18 whether under section @136 or otherwise.

19 (2) While this section applies, the grantor may reinstate the security
20 agreement by:

- 21 (a) paying the following amounts:
- 22 (i) amounts in arrears (disregarding amounts in arrears as a
23 result of an acceleration clause in the security
24 agreement);
- 25 (ii) the amount of any expenses, in relation to the
26 enforcement of the security interest, the payment of
27 which is secured by the security interest; and
- 28 (b) remedying any other default as a result of which the secured
29 party proposes to dispose of, or retain, the collateral.

30 Note: For subparagraph (a)(ii), reasonable expenses in relation to the
31 enforcement of a security interest are taken to be secured by the
32 security interest unless the parties agree otherwise (see section @137).

33

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- 1 (3) A security agreement may be reinstated only once during the
2 period in which the security agreement is in force.

3 **Division 5—Disposing of collateral (including by** 4 **purchasing collateral)**

5 **@128 Disposing of collateral—general rule**

6 **[s 128]**

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

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

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

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

17 **@129 Disposing of collateral—notice**

18 **[s 130]**

19 (1) Unless subsection (5) of this section or section @138 applies, a
20 secured party who proposes to dispose of collateral (whether under
21 section @128 or otherwise) must give a notice, in accordance with
22 this section, to:

23 (a) unless the grantor has, in writing, waived the right to receive
24 a notice under this section—the grantor; and

25 (b) unless another secured party with a security interest in the
26 collateral that has a higher priority has, under subsection
27 @114(7), waived the right to receive a notice under this
28 section—that secured party.

29 (2) A notice must:

30 (a) contain the name of the secured party giving the notice; and

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- 1 (b) contain a description of the collateral; and
2 (c) state that the secured party proposes to dispose of the
3 collateral, unless an obligation is performed, or an amount is
4 paid, to satisfy the obligation secured by the security interest
5 in the collateral, on or before the day specified in accordance
6 with subsection (3); and
7 (d) if the notice states that an amount is to be paid to satisfy the
8 obligation secured by the security interest—specify:
9 (i) the amount to be paid; or
10 (ii) if the amount cannot be specified—the method by
11 which the amount to be paid will be calculated; and
12 (e) state that the notice is given for the purposes of this section;
13 and
14 (f) contain any other matter required by the regulations for the
15 purposes of this subsection.

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

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

When notice is not required

- 26
27 (5) The secured party is not required to give a notice to any person
28 under subsection (1) if:
29 (a) the secured party believes on reasonable grounds that the
30 secured party was induced to enter into the relevant security
31 agreement by fraud on the part of the debtor or the grantor; or
32 (b) the secured party believes on reasonable grounds that there
33 would be a material decline in the value of the collateral if it
34 were disposed of after the end of the period that would apply
35 if notice were given; or

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- 1 (c) the secured party believes on reasonable grounds that the
2 expense of preserving the collateral is disproportionately
3 large in relation to its value; or
4 (d) the collateral is foreign currency.

5 **@130 Disposing of collateral—methods of disposal**

6 **[s 128, 129, 141]**

7 *Methods of disposal*

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

13 *Leases or licences*

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

20 *Purchase of collateral by secured party*

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

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

25 *Whole or part disposal*

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

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

4 *Power to transfer title*

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

8 **@131 Disposing of collateral—requirement to obtain market value**

9 **[s 131]**

10 (1) A secured party who disposes of collateral (whether under
11 section @128 or otherwise) owes a duty, to any other person with a
12 security interest in the collateral immediately before the disposal,
13 and to the grantor, to exercise all reasonable care:

14 (a) if the collateral has a market value at the time of disposal—to
15 obtain at least that market value; or

16 (b) otherwise—to obtain the best price that is reasonably
17 obtainable at the time of disposal, having regard to the
18 circumstances existing at that time.

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

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

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

26 **Division 6—Retaining collateral**

27 **@132 Retaining collateral—notice**

28 **[s 135]**

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1

Giving notice of proposed retention

2

(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:

3

4

5

(a) the grantor; and

6

(b) any other secured party that has a security interest in the collateral perfected by registration or possession.

7

8

(2) The secured party must give the notice to a person:

9

(a) at least 10 business days before the day the first steps are taken to retain the collateral; or

10

11

(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.

12

13

14

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

15

16

(3) The notice must:

17

(a) contain the name of the secured party giving the notice; and

18

(b) contain a description of the collateral; and

19

(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

20

21

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24

(d) state:

25

(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

26

27

28

(ii) otherwise—the obligation to be performed; and

29

(e) contain details of rights of objection under section @133; and

30

31

(f) contain the address to which a notice of objection may be given under section @133; and

32

33

(g) contain any other matter required by the regulations for the purposes of this subsection.

34

(4) The notice must be given in the approved form.

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1 **@133 Retaining collateral—objection**

2 **[s 137]**

3 (1) This section applies if a secured party gives a notice under section
4 @132 to a person mentioned in that section.

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

6 (2) Before the end of the day specified in accordance with paragraph
7 @132(3)(c), the person may give the secured party a notice (the
8 **notice of objection**) objecting to the retention.

9 Note: The secured party may request the person to provide proof of the
10 person’s interest under section @134.

11 (3) The secured party may not retain the collateral if the secured party
12 is given a notice of objection in accordance with subsection (2),
13 unless:

14 (a) the person giving the notice of objection is requested under
15 section @134 to provide proof of a matter and fails to do so
16 within the period mentioned in that section; or

17 (b) a court makes an order that the objection is ineffective (see
18 section @135).

19 **@134 Retaining collateral—proof of interest**

20 **[s 138]**

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

25 (a) if the person is not the grantor—of the person’s interest in the
26 collateral; or

27 (b) in any case—that the person would be adversely affected by
28 the secured party retaining the collateral.

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

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

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1 **@135 Retaining collateral—court order**

2 **[new]**

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

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

15 **@136 Retaining collateral free of interests**

16 **[s 134, 136]**

17 *When secured party may retain collateral*

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

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1 (c) the payment or other obligation mentioned in the notice given
2 under section @132 is not made or performed on or before
3 the day specified in the notice.

4 (3) A secured party entitled to retain collateral may, if the secured
5 party does not hold title to the collateral, take any steps necessary
6 to reflect the transfer of title resulting from the retention.

7 *Collateral retained free of interests*

8 (4) A secured party who retains collateral takes the collateral free of
9 all of the following interests in the collateral:

- 10 (a) the interest of the grantor;
11 (b) the security interest of the secured party who retains the
12 collateral;
13 (c) all security interests that have a lower priority than the
14 security interest of that secured party.

15 *Protection of those who acquire retained collateral*

16 (5) A person takes collateral free of the interests referred to in
17 subsection (4) if:

- 18 (a) a secured party is required to give one or more notices in
19 relation to the collateral in accordance with section @132;
20 and
21 (b) the secured party has not done so; and
22 (c) the person acquires the collateral from the secured party for
23 new value; and
24 (d) the person has no knowledge that the requirements of
25 section @132 have not been complied with.

26 (6) Subsection (5) applies in relation to a security interest referred to in
27 paragraph (4)(c) whether or not a registration with respect to the
28 security interest is effective.

29 *Extinguishment of obligation owed to the secured party*

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

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

8 **Division 7—Miscellaneous enforcement matters**

9 **@137 Security for enforcement expenses**

10 **[s 18(5)]**

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

14 **@138 When certain enforcement notices are not required**

15 **[s 144]**

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

- 18 (a) after having made reasonable attempts, the secured party has
19 failed to locate the person; or
20 (b) for the grantor—after a default under the security agreement,
21 the grantor waives in writing the grantor’s right to receive the
22 notice; or
23 (c) for another person (including another secured party but not
24 including the grantor)—the person (at any time) waives in
25 writing the person’s right to receive the notice; or
26 (d) for another secured party:
27 (i) the security interest of the other secured party is not
28 perfected by registration or possession; and
29 (ii) the secured party who would otherwise be required to
30 give a notice has no knowledge of the other secured
31 party’s security interest; or

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1 (e) in any case—on an ex parte application in relation to the
2 person, a court is satisfied that a notice is not required for any
3 other reason.

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

6 **@139 Enforcement against collateral—statement of account**

7 **[s 132]**

8 *Statement of account—enforcement complete*

9 (1) Unless section @138 applies, a secured party must, on request by
10 any other person with a security interest in the collateral, or the
11 grantor, give the person (or grantor) a written statement of account,
12 if the first-mentioned secured party has completed its enforcement
13 against the whole of the collateral (whether under this Chapter or
14 otherwise).

15 (2) A statement of account under subsection (1) must be given to a
16 person before the end of:

17 (a) the period of 20 business days after the day the person
18 requests the statement; or

19 (b) such longer period as is reasonable in the circumstances.

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

22 (3) A statement of account under subsection (1) must show:

23 (a) in the case of a disposal by lease or licence:

24 (i) the total amount expected to be received by the secured
25 party under the terms of the lease or licence; or

26 (ii) if the total amount cannot be specified—the method by
27 which the amount expected to be received will be
28 calculated; and

29 (b) in any other case—the total amount received or to be
30 received from the enforcement against the collateral during
31 the period:

32 (i) starting when the secured party seized the collateral; and

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- 1 (ii) ending at the time the secured party completes its
2 enforcement against the collateral; and
3 (c) in any case—the amount of expenses relating to the
4 enforcement; and
5 (d) any amounts paid to other secured parties; and
6 (e) the balance owing by the secured party to the grantor, or by
7 the debtor to the secured party, as the case may be.

8 *Statement of account—enforcement incomplete*

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

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1 **Part 4.4—Special enforcement rules for certain**
2 **types of collateral**

3 **Division 1—Introduction**

4 **@140 Guide to this Part**

5 **[new]**

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

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

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

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

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

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

19 **Division 2—Security interests and land law**

20 **@141 Obligations secured by interests in personal property and**
21 **land**

22 **[s 117]**

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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.

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1 *Decision to enforce the security interest under this Chapter*

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

6 *Meaning of land law*

7 (5) In this Act:

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

12 **@142 Enforcing security interests in accordance with land law** 13 **decisions**

14 **[s 118]**

15 *Scope*

16 (1) This section applies if:

- 17 (a) a secured party makes a decision (under
18 paragraph @141(2)(b)) to enforce the security interest in the
19 personal property in the same way as the interest in the land
20 may be enforced under the land law; and
21 (b) unless section @138 applies, the secured party gives a notice
22 in accordance with subsection (2) to the following persons:
23 (i) the grantor;
24 (ii) a secured party with a security interest in the personal
25 property that is perfected immediately before the
26 decision under paragraph @141(2)(b) is made;
27 (iii) any person who, by the time the secured party gives the
28 notice, has notified the secured party in writing that the
29 person claims an interest in the personal property.

30 (2) A notice is given in accordance with this subsection if:

- 31 (a) the notice is in the approved form; or
-

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- 1 (b) the notice:
2 (i) contains a description of the personal property to which
3 the notice relates; and
4 (ii) sets out the effect of this section.

5 *How security interest is to be enforced*

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

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

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

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

22 Note: For *modification*, see section 10.

23 *Application of Chapter*

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

- 31 (7) In addition:

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

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

16 *Exercise of powers etc. under applied law*

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

31 *This section does not affect land laws*

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

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1 **Division 3—Market-traded collateral**

2 **@143 Enforcement of security interests in market-traded collateral**

3 *[s 109(3), 109(4), 110, 111, 113, 140]*

- 4 (1) Subject to subsection (2), this Chapter does not apply to the
5 enforcement of a security interest in an investment instrument or an
6 intermediated security issued by a body corporate or other person
7 that is listed (within the meaning of the *Corporations Act 2001*).
- 8 (2) The following provisions of this Chapter apply to the enforcement
9 of such a security interest:
- 10 (a) section @112 (which deals with the rights and remedies of
11 parties to security agreements generally), to the extent that it
12 relates to section @113, @116 or @120;
- 13 (b) section @113 (which requires rights and duties to be
14 exercised honestly and in a commercially reasonable
15 manner);
- 16 (c) subsection @114(2) (which is about mandatory enforcement
17 rules), to the extent that it relates to section @113, @116 or
18 @120;
- 19 (d) section @116 (which deals with the effect of recovering
20 judgment or issuing execution);
- 21 (e) section @120 (distribution of property received from
22 enforcement of a security interest).

23 **Division 4—Enforcement of security interests in accounts 24 and negotiable instruments**

25 **@144 Enforcement of security interests in accounts**

26 *[s 120]*

- 27 (1) This section applies if:
- 28 (a) an obligation is secured by a security interest in an account;
29 and

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1 (b) a person (the *account debtor*) owes an amount to the grantor
2 on the account; and

3 (c) there is a default under the security agreement.

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

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

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

10 (a) giving the account debtor a written notice under
11 subsection @81B(3) to pay the amount (or any remaining
12 amount owing) to the secured party;

13 (b) seizing any proceeds of the account to which the secured
14 party is entitled under section 32.

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

19 @144A Enforcement of security interests in negotiable instruments

20 [*s 120*]

21 (1) This section applies if:

22 (a) an obligation is secured by a security interest in a negotiable
23 instrument; and

24 (b) a person (the *negotiable instrument issuer*) owes an amount
25 on the negotiable instrument; and

26 (c) there is a default under the security agreement.

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

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

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

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Schedule 4 Enforcement of security interests and insolvency of a grantor Part 1 Main amendments

- 1 (a) giving the negotiable instrument issuer a written notice to pay
2 the amount (or any remaining amount owing) to the secured
3 party;
4 (b) seizing any proceeds of the negotiable instrument to which
5 the secured party is entitled under section 32.
- 6 (3) A notice under paragraph (2)(a) must:
7 (a) identify the negotiable instrument; and
8 (b) include proof of the basis on which the secured party is
9 entitled to require the negotiable instrument issuer to make
10 payment under the negotiable instrument to the secured
11 party; and
12 (c) state that the amount must be paid to the secured party before
13 the later of:
14 (i) the end of 10 business days after the day the notice is
15 received; or
16 (ii) the end of the day the amount becomes due and payable.
- 17 Note: The period specified in subparagraph (3)(c)(i) may be extended by a
18 court order under section 293.
- 19 (4) If the secured party gives a notice to the negotiable instrument
20 issuer under paragraph (2)(a), the secured party must give a copy
21 of the notice to the grantor:
22 (a) before the end of 5 business days after the day the notice
23 under that paragraph is given; or
24 (b) if the grantor has given a written notice to the secured party
25 specifying a shorter period to apply for the purposes of this
26 subsection—before the end of that period.
- 27 Note: The period specified in paragraph (4)(a) may be extended by a court
28 under section 293.
- 29 (5) The following payments discharge the obligation of the negotiable
30 instrument issuer to the extent of the payment:
31 (a) a payment made to the grantor before the end of the period
32 for payment stated in a notice under paragraph (2)(a);
33 (b) a payment made to the secured party in accordance with a
34 notice under that paragraph before the end of the period for
35 payment stated in the notice.

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Enforcement of security interests and insolvency of a grantor **Schedule 4**
Main amendments **Part 1**

1 **@144B Enforcement against accounts and negotiable instruments—**
2 **notice to higher priority parties**

3 **[s 121]**

4 (1) Unless section @138 applies, a secured party (the *enforcing party*)
5 who proposes to take action under subsection @144(2) or
6 @144A(2) in relation to a security interest in collateral that is an
7 account or a negotiable instrument must give a written notice to
8 any other secured party (a *higher priority party*) with a security
9 interest in the collateral that has a higher priority.

10 (2) The notice must:

- 11 (a) contain the name of the secured party giving the notice; and
12 (b) contain a description of the collateral; and
13 (c) state that the enforcing party proposes to take action under
14 subsection @144(2) or @144A(2), and describe the proposed
15 action; and
16 (d) state the address to which a notice may be given under
17 subsection (3) of this section; and
18 (e) be given to each higher priority party:
19 (i) at least 10 business days before the earliest day the
20 action is to be taken; or
21 (ii) if a higher priority party has given a written notice to
22 the enforcing party specifying a shorter period to apply
23 for the purposes of this subsection—before the end of
24 that period.

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

27 (3) A higher priority party who is given a notice under subsection (1)
28 may, before the enforcing party takes any action under subsection
29 @144(2) or @144A(2), give a written notice to the enforcing party
30 informing the enforcing party of the higher priority party's
31 proposal to take action under the applicable subsection. If the
32 higher priority party gives such a notice, the enforcing party is not
33 entitled to take action under that subsection.

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Schedule 4 Enforcement of security interests and insolvency of a grantor
Part 1 Main amendments

1 **Division 5—Seizure and disposal or retention of crops and**
2 **livestock**

3 **@144C Meaning of *take* and *water source***

4 **[s 138A]**

5 In this Act:

6 ***take*** fish includes:

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

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

11 ***water source*** means:

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

17 **@144D Seizure and disposal or retention of crops**

18 **[s 138B]**

- 19 (1) Without limiting section @121 (seizing collateral—general rules),
20 for the purposes of seizing collateral under that section that is
21 crops, or the proceeds of crops, the secured party may:
22 (a) take possession of the crops or the proceeds; or
23 (b) cut, gather or harvest the crops or the proceeds.
- 24 (2) The secured party may dispose of, or retain, collateral that is crops,
25 or the proceeds of crops, after they have been taken, cut, gathered
26 or harvested, subject otherwise to Part 4.3 (enforcement of security
27 interests).
- 28 (3) For the purposes of exercising a power under subsection (1) or (2),
29 or a related power under Part 4.3 (enforcement of security

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Enforcement of security interests and insolvency of a grantor **Schedule 4**
Main amendments **Part 1**

1 interests), the secured party may enter the land on which, or the
2 water source in which, the crops are, or were, growing.

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

7 **@144E Seizure and disposal or retention of livestock**

8 **[s 138C]**

9 (1) Without limiting section @121 (seizing collateral—general rules),
10 for the purposes of seizing collateral under that section that is
11 livestock, or the proceeds of livestock, the secured party may:

- 12 (a) take possession of the livestock or proceeds wherever it is
13 located; or
14 (b) slaughter the livestock wherever it is located; or
15 (c) take livestock that is fish; or
16 (d) extract products from livestock (for example, by shearing
17 sheep to extract wool).

18 Note: A security interest may attach to a livestock product (for
19 example, the wool of a sheep) as original collateral as mentioned
20 in subsection 84A(2), or as proceeds.

21 (2) The secured party may dispose of, or retain, collateral that is
22 livestock, or the proceeds of livestock, after it has been taken,
23 slaughtered or extracted, subject otherwise to Part 4.3 (enforcement
24 of security interests).

25 (3) For the purposes of exercising a power under subsection (1) or (2),
26 or a related power under Part 4.3 (enforcement of security
27 interests), the secured party may enter the land on which, or the
28 water source in which, the livestock or proceeds is located.

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Schedule 4 Enforcement of security interests and insolvency of a grantor
Part 1 Main amendments

1 **Division 6—Accessions**

2 **@144F Right to remove accession**

3 **[new]**

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

7 **@144G Damaging goods when removing accession**

8 **[s 92]**

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

14 **@144H Reimbursement for damage caused in removing accessions**

15 **[s 93]**

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

24 **@144J Refusal of permission to remove accession**

25 **[s 94]**

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Enforcement of security interests and insolvency of a grantor **Schedule 4**
Main amendments **Part 1**

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

4 **@144K Notice of removal of accession**

5 **[s 95]**

6 *Notice required to be given by secured party*

- 7 (1) The secured party must give notice of the secured party's intention
8 to remove the accession to each of the following persons in
9 accordance with subsections (2) and (3):
- 10 (a) the grantor;
 - 11 (b) a secured party with a security interest in the accession that
12 has a higher priority.
- 13 (2) Unless section @138 applies or subsection (5) or (6) of this section
14 apply, the secured party must give a notice to a person:
- 15 (a) at least 10 business days before the day the accession is
16 removed; or
 - 17 (b) if the person has given a written notice to the secured party
18 specifying a lesser number of days to apply for the purposes
19 of this section—at least that number of days before the
20 accession is removed.
- 21 (3) The notice must contain the following:
- 22 (a) the name of the secured party giving the notice;
 - 23 (b) a description of the accession and of the other goods;
 - 24 (c) a statement of the obligation owed to the secured party, and
25 the value of the accession if the accession were removed
26 from the other goods;
 - 27 (d) a statement of intention to remove the accession, unless the
28 obligation secured by the security interest in the accession is
29 discharged, or the value of the accession is paid, before the
30 end of the period specified by subsection (2).
- 31 (4) The notice may be given in the approved form.

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Schedule 4 Enforcement of security interests and insolvency of a grantor Part 1 Main amendments

1

When notice is not required

2

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

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(6) The secured party is not required to give a notice to any person under subsection (1) if:

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(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.

14

15

16

(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.

17

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

18

19

[s 96]

20

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22

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:

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(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.

29

@144M Court order about removal of accession

30

[s 97]

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Enforcement of security interests and insolvency of a grantor **Schedule 4**
Main amendments **Part 1**

- 1 A court may, on the application of a person entitled to receive a
2 notice under section @144K (notice of removal of accession),
3 make an order:
4 (a) postponing the removal of the accession; or
5 (b) determining the amount payable to the secured party under
6 section @144L for the retention of the accession.
- 7 Note: For which courts have jurisdiction, and for transfers between courts,
8 see Part 6.2.

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Schedule 4 Enforcement of security interests and insolvency of a grantor
Part 2 Other amendments

1 **Part 2—Other amendments**

2 *Corporations Act 2001*

3 **2 Subsection 442CC(1A)**

4 Omit “140”, substitute “@120”.

5 **3 Paragraph 588FP(3)(c)**

6 Omit “under section 123 of the *Personal Property Securities Act 2009*”,
7 substitute “(whether under section @121 of the *Personal Property*
8 *Securities Act 2009* or otherwise)”.

9 *Marine Navigation Levy Collection Act 1989*

10 **4 Subsection 10(2)**

11 Omit “123”, substitute “@121”.

12 *Marine Navigation (Regulatory Functions) Levy Collection*
13 *Act 1991*

14 **5 Subsection 9(2)**

15 Omit “123”, substitute “@121”.

16 *Personal Property Securities Act 2009*

17 **6 Section 10**

18 Insert:

19 *controller*: see section @109.

20 *default*, in relation to a security agreement, means:

21 (a) a failure to make a payment, or perform another obligation,
22 that is secured by a security interest provided for by the
23 security agreement; or

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Enforcement of security interests and insolvency of a grantor **Schedule 4**
Other amendments **Part 2**

1 (b) the occurrence of an event that, under the security agreement,
2 gives the secured party a right or remedy to enforce the
3 security interest.

4 **7 Section 10 (note to definition of *expenses*)**

5 Omit “subsection 18(5)”, substitute “section @137”.

6 **8 Section 10 (definition of *land law*)**

7 Omit “has the meaning given by section 117”, substitute “: see section
8 @141”.

9 **9 Section 10**

10 Insert:

11 *mandatory enforcement rule*: see section @111.

12 **10 Section 10 (definition of *notice of objection*)**

13 Omit “has the meaning given by section 137”, substitute “: see section
14 @133”.

15 **11 Section 10**

16 Insert:

17 *receiver*: see section @109.

18 *receiver and manager*: see section @109.

19 **12 Section 10 (definition of *take*)**

20 Repeal the definition, substitute:

21 *take* fish: see section @144C.

22 **13 Section 10 (*water source*)**

23 Omit “has the meaning given by section 138A”, substitute “: see section
24 @144C”.

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Schedule 4 Enforcement of security interests and insolvency of a grantor
Part 2 Other amendments

1 **14 Subsection 31(1) (note)**

2 Omit “140 (distribution of proceeds received by secured party)”,
3 substitute “@120 (distribution of property received from enforcement)”.

4 **15 Paragraph 31(3)(b)**

5 Omit “140(2)(f)”, substitute “@120(3)(f)”.

6 **16 Subsection 31(3) (note)**

7 Omit “140(2)(f)”, substitute “@120(3)(f)”.

8 **17 Section 54 (paragraph beginning “Priority rules”)**

9 Omit “the debtor defaults”, substitute “there is a default under a security
10 agreement”.

11 **18 Section 83 (paragraph beginning “Other provisions”)**

12 Omit “Division 6 of Part 4.3 (enforcement of security interests in crops
13 and livestock)”, substitute “Division 5 of Part 4.4 (about enforcement of
14 security interests in crops and livestock)”.

15 **19 Section 87**

16 Omit:

17

The Part also deals with the removal of accessions by a secured 18 party who has an interest in the accession.

19 **20 Subsection 95(5)**

20 Omit “the debtor defaults”, substitute “the default giving rise to the
21 entitlement”.

22 **21 Paragraph 95(6)(a)**

23 Omit “default”, substitute “the default”.

24 **22 Subsection 95(6) (note)**

25 Omit “144”, substitute “@138”.

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Enforcement of security interests and insolvency of a grantor **Schedule 4**
Other amendments **Part 2**

1 **23 Paragraph 254(2)(h) (paragraph (b) of the note)**

2 Omit “110 (rights and remedies of debtors and secured parties)”,
3 substitute “@112 (rights and remedies of parties to security agreements
4 generally)”.

5 **24 Paragraph 254(2)(h) (paragraph (c) of the note)**

6 Repeal the paragraph.

7 **25 Paragraph 254(2)(h) (paragraph (ca) of the note)**

8 Omit “140 (distribution of proceeds received by secured party)”,
9 substitute “@120 (distribution of property received from enforcement)”.

10 **26 Subparagraph 267(1)(a)(iii)**

11 Repeal the subparagraph.

12 **27 Subparagraph 267(3)(b)(iv)**

13 Repeal the subparagraph, substitute:

- 14 (iv) the filing of an application for a sequestration order
15 against the bankrupt under the *Bankruptcy Act 1966*;
16 (iva) the bankrupt becoming a bankrupt by force of
17 section 55, 56E or 57 of the *Bankruptcy Act 1966*;

18 **28 Subparagraph 267A(2)(b)(iv)**

19 Repeal the subparagraph, substitute:

- 20 (iv) the filing of an application for a sequestration order
21 against the bankrupt under the *Bankruptcy Act 1966*;
22 (v) the bankrupt becoming a bankrupt by force of
23 section 55, 56E or 57 of the *Bankruptcy Act 1966*.

24 **29 After subparagraph 268(1)(a)(i)**

25 Insert:

- 26 (ii) a PPS lease;

27 **30 Paragraph 268(1)(aa)**

28 Repeal the paragraph.

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Schedule 4 Enforcement of security interests and insolvency of a grantor Part 2 Other amendments

31 At the end of subsection 268(1)

Add:

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.

32 Subsection 268(2)

Repeal the subsection, substitute:

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;

(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).

33 Paragraph 272(e)

Omit "118 (proceeding as if personal property were land)", substitute "@142 (enforcing security interests in accordance with land law decisions)".

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Enforcement of security interests and insolvency of a grantor **Schedule 4**
Other amendments **Part 2**

1 **34 Paragraph 296(f)**

2 Repeal the paragraph (including the note), substitute:

3 (f) the fact that a person who purchases collateral does so as a
4 result of disposal by public sale;

5 Note: See subsection @130(4).

6 ***Protection of the Sea (Civil Liability) Act 1981***

7 **35 Subsection 22(1B)**

8 Omit “123”, substitute “@121”.

9 ***Protection of the Sea (Harmful Anti-fouling Systems) Act***
10 ***2006***

11 **36 Subsection 18(6)**

12 Omit “123”, substitute “@121”.

13 ***Protection of the Sea (Prevention of Pollution from Ships)***
14 ***Act 1983***

15 **37 Subsection 27A(5B)**

16 Omit “123”, substitute “@121”.

17 ***Protection of the Sea (Shipping Levy Collection) Act 1981***

18 **38 Subsection 12(4)**

19 Omit “123”, substitute “@121”.

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Schedule 5 Perfection by registration

1 **Schedule 5—Perfection by registration**
2

3 *Personal Property Securities Act 2009*

4 **1 Section 10 (definition of ABM)**

5 Repeal the definition.

6 **2 Section 10 (definition of *amendment demand*)**

7 Repeal the definition, substitute:

8 *amendment demand*: see section @178.

9 **3 Section 10 (definition of *amendment notice*)**

10 Repeal the definition.

11 **4 Section 10 (definition of *amendment time*)**

12 Repeal the definition, substitute:

13 *amendment time*: see section @160.

14 **5 Section 10 (paragraph (d) of the definition of *business day*)**

15 Repeal the paragraph, substitute:

16 (d) a day on which the Registrar has suspended the operation of
17 the register, in whole or in part, under paragraph 147(5)(a);
18 or

19 **6 Section 10**

20 Repeal the following definitions:

- 21 (a) definition of *commercial property*;
22 (b) definition of *consumer property*.

23 **7 Section 10 (definition of *financing change statement*)**

24 Repeal the definition, substitute:

25 *financing change statement* means:

- 26 (a) data amending a registered financing statement; or

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Perfection by registration **Schedule 5**

- 1 (b) an amendment of a registered financing statement to end its
2 effectiveness (including an amendment to remove the
3 registration).

4 **8 Section 10 (definition of *inventory*)**

5 Omit “enterprise to which an ABN has been allocated”, substitute
6 “enterprise in relation to which an ABN, within the meaning of the A
7 *New Tax System (Australian Business Number) Act 1999*, has been
8 allocated”.

9 **9 Section 10 (paragraphs (a) to (d) of the definition of 10 *inventory*)**

11 Omit “the person” (wherever occurring), substitute “a person”.

12 **10 Section 10 (definition of *registration time*)**

13 Omit “, with respect to collateral described in a registration, has the
14 meaning given by”, substitute “: see”.

15 **11 Section 10 (paragraph (b) of the definition of *secured 16 party*)**

17 Repeal the paragraph.

18 **12 Paragraph 33(1)(a)**

19 Omit “paragraph (d) of item 4 of the table in section 153 (financing
20 statements with respect to security interests)”, substitute “item 4 of the
21 table in section 153 (registration—financing statements)”.

22 **13 Subsections 147(4) to (6)**

23 Repeal the subsections (not including the note), substitute:

- 24 (4) The Registrar must ensure that the register is operational at all
25 times except while it is suspended under subsection (5).
- 26 (5) The Registrar may suspend the operation of the register:
- 27 (a) if the Registrar considers that it is not practical to provide
28 access to the register—by:
- 29 (i) refusing access to the register in whole or in part; or

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Schedule 5 Perfection by registration

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

15 **14 Section 148 (note 1)**

16 Repeal the note.

17 **15 Section 148 (note 2)**

18 Omit “Note 2”, substitute “Note”.

19 **16 At the end of subsection 150(2)**

20 Add:

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

23 **17 Paragraph 150(3)(b)**

24 Omit “paid; and”, substitute “paid.”.

25 **18 Paragraphs 150(3)(c) and (d)**

26 Repeal the paragraphs.

27 **19 Section 150 (note 3)**

28 Repeal the note.

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20 Section 150 (note 4)

Omit “Note 4”, substitute “Note 3”.

21 Subsection 151(1)

Omit “is, or will become, a secured party”, substitute “is, may be, or may become, a secured party”.

22 Paragraph 151(3)(a)

Omit “the day of the registration time, or the amendment time, for the financing statement or financing change statement”, substitute “the day the financing statement, or financing change statement, was registered”.

23 Section 153

Repeal the section, substitute:

@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: (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: (a) if the grantor is an individual, and regulations made

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Schedule 5 Perfection by registration

Financing statements with respect to security interests		
Item	Data about:	Details of data
		<p>for the purposes of item 4 require the collateral to be described by serial number—no grantor’s details;</p> <p>(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;</p> <p>(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;</p> <p>(d) for a grantor that is a partner in a partnership:</p> <p>(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 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	A description of the collateral, and any proceeds, in accordance with the following rules:

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Financing statements with respect to security interests

Item	Data about:	Details of data
		(a) the collateral and any proceeds must be described in accordance with regulations made for the purposes of this paragraph; (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). 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.
5	The end time for registration	For all the collateral described in the statement, an end time for the registration no later than the following time: (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.

- 1 (2) A registration can be made in relation to more than one grantor in
2 relation to collateral from whom a security interest in the collateral
3 is (or is to be) taken if, and only if, the security interest is (or is to
4 be) granted jointly by each grantor.

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1 **24 Section 154 (heading)**

2 Repeal the heading, substitute:

3 **154 Registration—financing statements with respect to prescribed**
4 **personal property**

5 **25 Section 154**

6 Omit “data that complies with the following table”, substitute “the data
7 in the following table”.

8 **26 Section 154 (table item 2)**

9 Repeal the item, substitute:

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.

10 **27 Subsection 157(1)**

11 Repeal the subsection, substitute:

12 *Requirement to provide verification statement*

13 (1) A person (the *statement holder*) who is, under section 156, given a
14 verification statement in relation to a registration event concerning
15 a registration, must ensure that a notice of the statement, in the
16 approved form, is given to each person covered by subsection (1A)
17 as soon as reasonably practicable after the registration event.

18 (1A) The persons covered by this subsection are:

19 (a) unless paragraph (b) applies—the following persons:

20 (i) a person registered as a grantor in the registration
21 immediately before the time of the registration event;

22 (ii) a person registered as a grantor in the registration
23 immediately after the registration event; or

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- 1 (b) if the grantor is an individual, and the collateral is required
2 by regulations made for the purposes of item 4 of the table in
3 subsection @153(1) to be described in the registration by
4 serial number—the following persons:
5 (i) if the statement holder has entered into a security
6 agreement in relation to the collateral—the grantor;
7 (ii) if it is anticipated that the statement holder will enter
8 into a security agreement in relation to the collateral—
9 the anticipated grantor.
- 10 (1B) If, when an anticipated security agreement mentioned in
11 subparagraph (1A)(b)(ii) is entered into, an actual grantor under the
12 agreement is not the same person as the anticipated grantor, the
13 statement holder must also, as soon as practicable after the security
14 agreement is entered into, ensure that the notice required under
15 subsection (1) is given to the actual grantor.

28 Subsection 157(3)

16 Repeal the subsection, substitute:

17 *Exception—waiver of right to receive notice*

- 18
- 19 (3) The statement holder is not required to ensure that a person is
20 given a notice under subsection (1) or (1B) in relation to a
21 registration event if:
22 (a) the person is not an individual; and
23 (b) the person has, by written notice to the statement holder,
24 waived the right to receive a notice under this section in
25 relation to such events.

29 Subsection 157(4)

26 After “subsection (1)”, insert “or (1B)”.

30 At the end of subsection 158(1)

27 Add:

28 Example: For the purposes of paragraph (a), an example of registration events
29 affecting a number of persons registered as secured parties is a number
30 of transfers of security interests between persons registered as secured
31 parties (whether registered before or after the transfer).
32
33

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1 **31 Section 159**

2 Omit “This Part provides for the time at which a description of
3 collateral is registered.”, substitute “This Part deals with the timing of
4 registration.”.

5 **32 Section 160**

6 Repeal the section, substitute:

7 **@160 Meaning of *registration time* and *amendment time***

8 (1) In this Act, ***registration time***, in relation to a registration, means
9 the moment when the data in the registration becomes available for
10 search in the register.

11 (2) In this Act, ***amendment time***, for an amendment to a registration,
12 means the moment when the data in the amended registration
13 becomes available for search in the register.

14 Note 1: A written search result is evidence of a registration and of the
15 registration time or amendment time in relation to a registration or an
16 amendment to a registration (see section 174).

17 Note 2: A registration may stop being effective even if it is available for
18 search in the register (for example, because of a defect—see
19 section 164).

20 **33 Before subsection 163(1)**

21 Insert:

22 (1A) A registration with respect to a security interest that describes
23 particular collateral is effective only with respect to collateral as so
24 described.

25 Note: Collateral must be described in a registration in accordance with the
26 regulations (see table item 4 in subsection 153(1)).

27 **34 Subsection 163(1)**

28 Omit “for the description of the collateral”, substitute “for the security
29 interest”.

30 **35 Paragraph 163(1)(c)**

31 Omit “that time”, substitute “the registration time”.

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1 **36 Paragraphs 164(1)(a) and (b)**

2 Repeal the paragraphs, substitute:

3 (a) a defect mentioned in section 165; or

4 (b) any other defect in any data relating to the registration, if the
5 defect is seriously misleading, other than a defect of a kind
6 prescribed by regulations made for the purposes of this
7 paragraph.

8 **37 Section 165**

9 Omit “For the purposes of paragraph 164(1)(b)”, substitute “For the
10 purposes of paragraph 164(1)(a)”.

11 **38 Paragraph 165(c)**

12 Repeal the paragraph.

13 **39 Subparagraph 166(1)(a)(i)**

14 Omit “or (d)”.

15 **40 Subparagraph 166(1)(a)(ii)**

16 Omit “collateral; and”, substitute “collateral;”.

17 **41 At the end of paragraph 166(1)(a)**

18 Add:

19 (iii) a defect mentioned in paragraph 165(d), unless the
20 regulations made for the purposes of that paragraph
21 provide that this section does not apply in the
22 circumstances; and

23 **42 Section 167**

24 Repeal the section, substitute:

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:

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- 1 (a) the grantor;
2 (b) a person other than the grantor who has an interest in the
3 collateral described in the registration;
4 (c) a person who has been, but is no longer, the grantor of a
5 security interest in respect of which the registration is made.

6 *What amendment demands are authorised?*

- 7 (2) An amendment demand in relation to a registration is **authorised**
8 under this section only if:
9 (a) it is made by a person who is eligible under subsection (1);
10 and
11 (b) column 1 of an item of the following table applies to the
12 secured party; and
13 (c) column 2 of that item describes the amendment demanded.
14

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).
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.

- 15 Examples of authorised amendment demands are as follows:
16 (a) if the security interest is extinguished—the amendment in
17 column 2 of item 1;

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- 1 (b) if there is no (or is no longer) a security agreement in force
2 between the grantor and the secured party—the amendment in
3 column 2 of item 1;
4 (c) if all obligations under the security agreement have been
5 performed—the amendment in column 2 of item 2;
6 (d) if the secured party has agreed to release particular collateral
7 described in the registration from coverage by the security
8 agreement—the amendment in column 2 of item 3;
9 (e) if the registered collateral description includes an item or kind of
10 property that is not (or is no longer) collateral under the security
11 agreement—the amendment in column 2 of item 3.

12 *Amendment demands by individuals*

- 13 (3) A secured party must not require payment for compliance with an
14 amendment demand by an individual.
15 (4) A term of a contract or agreement is void to the extent that it
16 purportedly:
17 (a) prevents or restricts the making of an amendment demand by
18 an individual; or
19 (b) requires a payment in contravention of subsection (3).

20 **@179 Amendment demands—how made**

21 A person may make an amendment demand in relation to a
22 registration by giving the secured party a notice in the approved
23 form.

24 Note: For how to give the notice to a person registered as a secured party,
25 see subsection 287(2). That subsection allows for notice to be given
26 by publication on the internet in certain circumstances.

27 **@180 Amendment demands—withdrawal**

- 28 (1) A person who has made an amendment demand may withdraw the
29 demand by notice, in the approved form, given to the secured party
30 at any time before a financing change statement is registered to
31 give effect to the demand.

32 Note: For how to give the notice to a person registered as a secured party,
33 see subsection 287(2). That subsection allows for notice to be given
34 by publication on the internet in certain circumstances.

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- 1 (2) If, before giving notice withdrawing an amendment demand under
2 subsection (1), the person withdrawing the demand had applied
3 under subsection @181(2) to register a financing change statement
4 to give effect to the demand:
5 (a) the person must give a copy of the notice withdrawing the
6 amendment demand to the Registrar; and
7 (b) the application to register a financing change statement is
8 taken to be withdrawn.

9 **@181 Amendment demands—application to register financing**
10 **change statement**

11 *Scope*

- 12 (1) This section applies if:
13 (a) a person has given notice of an amendment demand in
14 relation to a registration to a secured party in accordance with
15 section @179; and
16 (b) the secured party has not, within 5 business days after the
17 notice is given, applied to register a financing change
18 statement to give effect to the amendment demand; and
19 (c) the person has not withdrawn the amendment demand under
20 section @180.

21 *Application to register financing change statement*

- 22 (2) The person may apply to the Registrar to register a financing
23 change statement to give effect to the amendment demand.
24 (3) The application must be made in the approved form, including
25 (without limiting section 302 (approved forms)):
26 (a) a copy of the notice of amendment demand; and
27 (b) any relevant associated correspondence with the secured
28 party.

29 Note: A person may commit an offence or be liable to a civil penalty if the
30 person makes a false or misleading statement in an application or
31 provides false or misleading information or documents (see
32 sections 136.1, 137.1 and 137.2 of the *Criminal Code* and section
33 @182 of this Act).

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1 *Notice to secured party and opportunity to make submissions*

2 (4) Unless the application is refused under subsection (5), the Registrar
3 must give written notice of the application to the secured party,
4 including:

- 5 (a) a copy of the application and the documents accompanying
6 the application under subsection (3); and
7 (b) a statement inviting the secured party to show cause why the
8 Registrar should not register a financing change statement in
9 accordance with the application, by written submissions
10 made to the Registrar within 10 business days after the notice
11 is given; and
12 (c) a statement to the effect that the period specified in
13 paragraph (b) may be extended if the secured party:
14 (i) before the end of that period, applies to the Registrar
15 under subsection @182A(4) for an extension; or
16 (ii) applies to a court under section 293 for such an
17 extension.

18 Note: For how to give the notice to a person registered as a secured party,
19 see subsection 287(2). That subsection allows for notice to be given
20 by publication on the internet in certain circumstances.

21 *Frivolous, vexatious or misleading applications*

22 (5) The Registrar may, by written notice to the person, refuse the
23 application if the Registrar considers that the application is, in a
24 material particular:

- 25 (a) frivolous, vexatious or misleading; or
26 (b) manifestly in error.

27 Note: Applications may be made to the Administrative Appeals Tribunal for
28 review of a decision by the Registrar under this subsection to refuse an
29 application to register a financing change statement (see section 191).

30 **@182 False or misleading statements or information—civil penalty**

- 31 (1) A person is liable to a civil penalty if:
32 (a) the person makes a statement, or gives information (whether
33 orally, in a document or in any other way), in, or in
34 connection with, an application under section @181 to

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- 1 register a financing change statement to give effect to an
2 amendment demand; and
3 (b) the person does so knowing that the statement or information:
4 (i) is false or misleading; or
5 (ii) omits any matter or thing without which the statement
6 or information is misleading.

7 Civil penalty: 600 penalty units.

- 8 (2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i)
9 if the statement or information is not false or misleading in a
10 material particular.

11 Note: A defendant bears an evidential burden in relation to the matter in this
12 subsection (see section 96 of the Regulatory Powers Act).

- 13 (3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii)
14 if the statement did not omit any matter or thing without which the
15 statement or information is misleading in a material particular.

16 Note: A defendant bears an evidential burden in relation to the matter in this
17 subsection (see section 96 of the Regulatory Powers Act).

18 **@182A Amendment demands—registration of financing change** 19 **statement**

20 *Scope*

- 21 (1) This section applies if:
22 (a) a person makes an application in accordance with section
23 @181 to register a financing change statement to give effect
24 to an amendment demand; and
25 (b) the application is not refused under subsection @181(5); and
26 (c) the person has not withdrawn the amendment demand under
27 section @180; and
28 (d) no copy of an application to a court under section @182B in
29 relation to the amendment demand has been given to the
30 Registrar.

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- 1 (2) This section stops applying if, and when, a copy of an application
2 made to a court under section @182B in relation to the amendment
3 demand is given to the Registrar.

4 *Main rule—obligation to register financing change statement*

- 5 (3) As soon as practicable after the end of the period of 10 business
6 days after notice of the application is given to the secured party
7 under subsection @181(4), the Registrar must register the
8 financing change statement, subject to subsections (4) and (5).

9 Note: Applications may be made to the Administrative Appeals Tribunal for
10 review of a decision by the Registrar under this subsection to register
11 a financing change statement (see section 191).

- 12 (4) The period specified under subsection (3) may, on written
13 application by the secured party made before the end of the
14 specified period, be extended by the Registrar if the Registrar
15 reasonably considers the extension to be justified.

16 Note: The period specified in subsection (3), as extended (if at all) under
17 subsection (4), may also be extended by a court under section 293.

18 *Exception—amendment not authorised*

- 19 (5) The Registrar must not register the financing change statement if
20 the Registrar believes on reasonable grounds that the amendment is
21 not authorised under section @178, having regard to the following
22 information:

- 23 (a) information in the application under section @181;
24 (b) information in any written submissions by the secured party
25 in accordance with the invitation in the notice of the
26 application given under subsection @181(4);
27 (c) any related information that the Registrar considers relevant.

28 Note: Applications may be made to the Administrative Appeals Tribunal for
29 review of a decision by the Registrar under this subsection to refuse to
30 register a financing change statement (see section 191).

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1 **@182B Amendment demands—court orders**

2 *Application for court order*

3 (1) The following persons may apply to a court, in accordance with
4 subsections (2) and (3), for an order in relation to an amendment
5 demand:

- 6 (a) the secured party;
7 (b) the person who gave the amendment demand.

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

10 (2) The application must be made:

- 11 (a) after the end of 5 business days after the day the notice of the
12 amendment demand is given to the secured party under
13 section @179; and
14 (b) in a case in which, before the application to the court is
15 made, notice of an application to register a financing change
16 statement to give effect to the amendment demand was given
17 to the security party under subsection @181(4)—before the
18 end of:
19 (i) 10 business days after the day the notice under
20 subsection @181(4) was given; or
21 (ii) if that period is extended by the Registrar under
22 subsection @182A(4), or by a court under
23 section 293—the extended period.

24 (3) A copy of the application must be given to the Registrar:

- 25 (a) as soon as practicable after the application is made; or
26 (b) in the case mentioned in paragraph (2)(b)—before the end of
27 the applicable period mentioned in subparagraph (2)(b)(i) or
28 (ii).

29 *Right to appear*

30 (4) The following persons have a right to appear before the court on an
31 application under this section:

- 32 (a) the secured party in relation to the amendment demand;

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1 (b) another person with an interest in the collateral described in
2 the registration.

3 Note: The Registrar also has the power to intervene in the proceeding (see
4 section 218).

5 *Court order*

6 (5) On an effective application under this section, a court may make
7 the following orders:

8 (a) an order declaring whether or not the amendment demand is
9 authorised under section @178;

10 (b) any other order that the court thinks fit.

11 *Action by Registrar*

12 (6) If the court makes an order declaring that the amendment demand
13 is authorised, the Registrar must register a financing change
14 statement to give effect to the demand.

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

17 (7) If the court makes an order declaring that the amendment demand
18 is not authorised, the Registrar must refuse any application (or
19 further application) under section @181 for the registration of a
20 financing change statements to give effect to:

21 (a) the amendment demand; or

22 (b) an amendment demand of any similar kind specified by the
23 court in the order.

24 **@182C Amendment demands—effect of removal of data from** 25 **register**

26 Data removed from the register because of the registration under
27 this Part of a financing change statement to give effect to an
28 amendment demand must not be made available for search in the
29 register by reference to any time before (or after) the time of
30 removal, if the Registrar so decides.

31 Note 1: Incorrectly removed data may be restored under section 186.

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1 Note 2: Applications may be made to the Administrative Appeals Tribunal for
2 review of a decision by the Registrar under this subsection not to
3 make data available for search in the register (see section 191).

4 **44 Paragraph 184(1)(b)**

5 Repeal the paragraph, substitute:

6 (b) without limiting paragraph (a), the application to register the
7 data was made for an improper purpose; or

8 **45 After paragraph 184(1)(d)**

9 Insert:

10 (da) the removal is required by a court order; or

11 **46 Subsection 184(3) (note)**

12 Repeal the note, substitute:

13 Note: Data incorrectly removed by the Registrar may be restored under
14 section 186.

15 **47 Section 186 (heading)**

16 Repeal the heading, substitute:

17 **186 Restoration of data incorrectly removed by the Registrar**

18 **48 Subsection 186(1)**

19 Omit “the data was incorrectly removed from the register under this
20 Act”, substitute “the Registrar incorrectly removed the data from the
21 register”.

22 **49 Section 188 (heading)**

23 Repeal the heading, substitute:

24 **188 Correction of registrations—errors made by the Registrar**

25 **50 At the end of Part 5.7**

26 Add:

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1 **@188A Correction of registrations—migrated data**

2 (1) The Registrar may (at the Registrar’s own initiative) register a
3 financing change statement to amend or remove a registration to
4 correct an error or omission arising from the registration of a
5 financing statement, or the failure to register a financing statement,
6 under section 333 (registration with respect to migrated data).

7 Note: The Registrar may also correct the registration of migrated data under
8 section 334 in some limited circumstances.

9 (2) If a registration is corrected under subsection (1), this Act applies
10 as if the error or omission had never been made.

11 Note 1: The Registrar must give a verification statement to each secured party
12 after the registration of a financing change statement (see section 156).

13 Note 2: Applications may be made to the Administrative Appeals Tribunal for
14 review of the Registrar’s decision to register a financing change
15 statement under subsection (1) (see section 191).

16 **51 After subsection 190(6) (before the notes)**

17 Insert:

18 (7) The Registrar may waive or refund payment of the whole or part of
19 a fee that would otherwise be payable, or has been paid, by a
20 person under this Act:

21 (a) if the Registrar is satisfied that the person became liable for
22 the fee as a result of error or inadvertence on the part of the
23 Registrar; or

24 (b) if the Registrar is satisfied that:

25 (i) the person became liable for the fee as a result of error
26 or inadvertence on the part of an individual; and

27 (ii) payment of the fee would cause undue hardship to the
28 person; or

29 (c) if the Registrar is satisfied that:

30 (i) the person became liable for the fee as a result of error
31 or inadvertence on the part of the person; and

32 (ii) the person took reasonable steps to avoid or mitigate the
33 risk of such error or inadvertence; or

34 (d) in any other circumstances prescribed by regulations made
35 for the purposes of this paragraph.

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- 1 (8) The Registrar may make a waiver or refund under subsection (7)
2 on the Registrar's own initiative or on the application of a person
3 in the approved form.

52 At the end of section 190

4 Add:

- 5
6 Note 3: Applications may be made to the Administrative Appeals Tribunal for
7 review of the Registrar's decision in relation to the waiver or refund of
8 a fee (see section 191).

53 Paragraphs 191(a) to (c)

9 Repeal the paragraphs.
10

54 Paragraphs 191(g) to (j)

11 Repeal the paragraphs, substitute:

- 12 (g) a decision to refuse an application to register a financing
13 change statement to give effect to an amendment demand,
14 under subsection @181(5);
15 (h) a decision to register a financing change statement to give
16 effect to an amendment demand, under subsection
17 @182A(3);
18 (ha) a decision not to register a financing change statement to give
19 effect to an amendment demand, under subsection
20 @182A(4);
21 (hb) a decision that data removed from the register is not to be
22 made available for search in the register, under section
23 @182C;
24

55 After paragraph 191(l)

25 Insert:

- 26 (la) a decision to register a financing change statement to amend
27 or remove a registration to correct an error or omission
28 arising from a registration with respect to migrated data,
29 under section @188A;
30

56 At the end of section 191

31 Add:
32

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- 1 ; (n) a decision to refuse to waive or to refund payment of a fee,
2 under subsection 190(7);
3 (o) a decision to waive or to refund payment of part of a fee,
4 under subsection 190(7).

5 **57 At the end of Division 4 of Part 6.2**

6 Add:

7 **@219A Court order about giving effect to a PPS order**

8 If a court makes an order (a *PPS order*) with respect to a PPS
9 matter that directly or indirectly requires the Registrar to do
10 something, or to refrain from doing something, the Registrar may
11 apply to the court for an order about how to give effect to the PPS
12 order.

13 **58 Section 287 (after the heading)**

14 Insert:

15 *General rule*

16 **59 Section 287**

17 Before “A notice”, insert “(1)”.

18 **60 At the end of section 287**

19 Add:

20 *Notices given by the Registrar*

- 21 (2) If the Registrar is required or permitted to give a notice or
22 document for the purposes of this Act to a person registered as a
23 secured party, the Registrar:
24 (a) must give the notice to the person at the address (the
25 *registered address*) specified in the registration for the giving
26 of notices to the person by one of the methods mentioned in
27 subsection (1); or
28 (b) if there is no registered address for the person, or the
29 Registrar believes on reasonable grounds that the registered

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1 address for the person is incorrect, or otherwise insufficient
2 for giving the notice or document to the person—must
3 publish the notice on a website maintained by the Australian
4 Financial Security Authority for the purposes of this Act.

5 (3) If the Registrar publishes a notice or other document on a website
6 under paragraph (2)(b), and this Act provides for a period after the
7 giving of the notice or document within which something is
8 required or permitted to be done, the period is extended by a period
9 of 28 days.

61 Subsection 333(5)

10 Repeal the subsection (not including the note), substitute:

11 *Registration time*

12 (5) Despite subsection @160(1), the *registration time* for a migrated
13 security interest is the registration commencement time.
14

62 Subsection 336(5)

15 Repeal the subsection (not including the note), substitute:

16 *Registration time*

17 (5) Despite subsection @160(1), the *registration time* for a transitional
18 security interest is the registration commencement time.
19

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Regulatory powers amendments Schedule 6

Schedule 6—Regulatory powers amendments

Personal Property Securities Act 2009

1 Section 3

Omit “Parts 4 and 6 of the Regulatory Powers Act”, substitute “Parts 4 to 7 of the Regulatory Powers Act”.

2 Section 10 (at the end of the definition of *Regulatory Powers Act*)

Add:

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.

3 Subsection 151(1) (note)

Omit “Civil penalty proceedings”, substitute “Enforcement of civil penalty provisions”.

4 Subsection 151(2) (note)

Omit “Civil penalty proceedings”, substitute “Enforcement of civil penalty provisions”.

5 Subsection 172(3) (note)

Omit “Civil penalty proceedings”, substitute “Enforcement of civil penalty provisions”.

6 Subsection 195A(4) (note)

Omit “Civil penalty proceedings”, substitute “Enforcement of civil penalty provisions”.

7 At the end of section 197

Add:

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Schedule 6 Regulatory powers amendments

1 (3) This section does not apply in relation to any of the Registrar’s
2 powers under the Regulatory Powers Act to which Part 6.3 of this
3 Act (enforcement of civil penalty provisions) applies.

4 Note: For the delegation of powers in relation to Part 6.3 of this Act, see
5 section 221 (civil penalty provisions), @221A (infringement notices),
6 222 (enforceable undertakings) and @223 (injunctions).

7 **8 Chapter 6 (heading)**

8 Repeal the heading, substitute:

9 **Chapter 6—Judicial proceedings and civil** 10 **penalty provision enforcement** 11

12 **9 Section 204**

13 Repeal the section, substitute:

14 **@204 Guide to this Chapter**

15 This Chapter deals with the role of the courts in proceedings that
16 relate to security interests in personal property. It also deals with
17 the enforcement of civil penalty provisions.

18 Part 6.2 is about judicial proceedings generally.

19 Part 6.3 applies Parts 4 to 7 of the Regulatory Powers Act, to
20 enable the enforcement of contraventions of civil penalty
21 provisions under this Act by civil penalties, infringement notices,
22 enforceable undertakings or injunctions.

23 **10 Subsection 206(6)**

24 Omit “civil penalties and enforceable undertakings”, substitute
25 “Enforcement of civil penalty provisions”.

26 **11 Part 6.3 (heading)**

27 Repeal the heading, substitute:

EXPOSURE DRAFT

Regulatory powers amendments Schedule 6

Part 6.3—Enforcement of civil penalty provisions

12 Section 220

Repeal the section, substitute:

@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.

EXPOSURE DRAFT

Schedule 6 Regulatory powers amendments

1 **13 Subsection 221(2)**

2 Repeal the subsection, substitute:

3 *Authorised applicant*

4 (2) For the purposes of Part 4 of the Regulatory Powers Act, each of
5 the following persons is an authorised applicant in relation to the
6 civil penalty provisions of this Act:

- 7 (a) the Registrar;
8 (b) a Deputy Registrar.

9 (2A) The Registrar may, in writing, delegate the Registrar's powers
10 under Part 4 of the Regulatory Powers Act in relation to the civil
11 penalty provisions of this Act to an SES employee, or acting SES
12 employee, in the Australian Financial Security Authority.

13 (2B) A person exercising powers under a delegation under
14 subsection (2A) must comply with any directions of the Registrar.

15 **14 At the end of subsection 221(4)**

16 Add "of this Act".

17 **15 After section 221**

18 Insert:

19 **@221A Infringement notices**

20 *Provisions subject to an infringement notice*

21 (1) A civil penalty provision of this Act is subject to an infringement
22 notice under Part 5 of the Regulatory Powers Act.

23 Note: Part 5 of the Regulatory Powers Act creates a framework for using
24 infringement notices in relation to provisions.

25 *Infringement officer*

26 (2) For the purposes of Part 5 of the Regulatory Powers Act, each of
27 the following persons is an infringement officer in relation to the
28 civil penalty provisions of this Act:

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Regulatory powers amendments **Schedule 6**

- 1 (a) the Registrar;
2 (b) a Deputy Registrar.
- 3 (3) The Registrar may, in writing, delegate the Registrar's powers
4 under Part 5 of the Regulatory Powers Act in relation to the civil
5 penalty provisions of this Act to an SES employee, or acting SES
6 employee, in the Australian Financial Security Authority.
- 7 (4) A person exercising powers under a delegation under
8 subsection (3) must comply with any directions of the Registrar.

9 *Relevant chief executive*

- 10 (5) For the purposes of Part 5 of the Regulatory Powers Act, the
11 Registrar is the relevant chief executive in relation to the civil
12 penalty provisions of this Act.
- 13 (6) The Registrar may, in writing, delegate to an SES employee, or
14 acting SES employee, in the Australian Financial Security
15 Authority the Registrar's powers under Part 5 of the Regulatory
16 Powers Act as the relevant chief executive in relation to the civil
17 penalty provisions of this Act.
- 18 (7) A person exercising powers under a delegation under
19 subsection (6) must comply with any directions of the Registrar.

20 *Extension to external Territories*

- 21 (8) Part 5 of the Regulatory Powers Act, as that Part applies in relation
22 to the civil penalty provisions of this Act, extends to Norfolk Island
23 and such other external Territories (if any) as are prescribed by
24 regulations made for the purposes of section 7 of this Act.

25 **16 Subsection 222(2)**

26 Repeal the subsection, substitute:

27 *Authorised person*

- 28 (2) For the purposes of Part 6 of the Regulatory Powers Act, each of
29 the following persons is an authorised person in relation to the civil
30 penalty provisions of this Act:

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Schedule 6 Regulatory powers amendments

- 1 (a) the Registrar;
2 (b) a Deputy Registrar.

3 (2A) The Registrar may, in writing, delegate the Registrar's powers
4 under Part 6 of the Regulatory Powers Act in relation to the civil
5 penalty provisions of this Act to an SES employee, or acting SES
6 employee, in the Australian Financial Security Authority.

7 (2B) A person exercising powers under a delegation under
8 subsection (2A) must comply with any directions of the Registrar.

9 **17 At the end of subsection 222(4)**

10 Add "of this Act".

11 **18 At the end of Part 6.3**

12 Add:

13 **@223 Injunctions**

14 *Enforceable provisions*

15 (1) A civil penalty provision of this Act is enforceable under Part 7 of
16 the Regulatory Powers Act.

17 Note: Part 7 of the Regulatory Powers Act allows a provision to be enforced
18 by obtaining an injunction.

19 *Authorised person*

20 (2) For the purposes of Part 7 of the Regulatory Powers Act, each of
21 the following persons is an authorised person in relation to the civil
22 penalty provisions of this Act:

- 23 (a) the Registrar;
24 (b) a Deputy Registrar.

25 (3) The Registrar may, in writing, delegate the Registrar's powers
26 under Part 7 of the Regulatory Powers Act in relation to the civil
27 penalty provisions of this Act to an SES employee, or acting SES
28 employee, in the Australian Financial Security Authority.

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Regulatory powers amendments **Schedule 6**

- 1 (4) A person exercising powers under a delegation under
2 subsection (3) must comply with any directions of the Registrar.

3 *Relevant court*

- 4 (5) For the purposes of Part 7 of the Regulatory Powers Act, each of
5 the following courts is a relevant court in relation to the civil
6 penalty provisions of this Act:
7 (a) the Federal Court;
8 (b) the Federal Circuit and Family Court of Australia
9 (Division 2);
10 (c) a court of a State or Territory that has jurisdiction in relation
11 to matters arising under this Act.

12 *Additional powers*

- 13 (6) If, under subsection 121(1) of the Regulatory Powers Act, a
14 relevant court grants an injunction restraining a person from
15 engaging in conduct in contravention of a civil penalty provision of
16 this Act, that injunction may also restrain the person from engaging
17 in conduct of a similar kind.

18 *Extension to external Territories*

- 19 (7) Part 7 of the Regulatory Powers Act, as that Part applies in relation
20 to the civil penalty provisions of this Act, extends to Norfolk Island
21 and such other external Territories (if any) as are prescribed by
22 regulations made for the purposes of section 7 of this Act.

EXPOSURE DRAFT

EXPOSURE DRAFT

Schedule 7 Interaction with other laws and other matters

Part 1 Governing law rules

1 **Schedule 7—Interaction with other laws and**
2 **other matters**

3 **Part 1—Governing law rules**

4 **Division 1—Main amendments**

5 ***Personal Property Securities Act 2009***

6 **1 Section 3**

7 Omit:

8 Chapter 7 deals with how this Act interacts with foreign laws, the
9 constitutional operation of this Act and the relationship between
10 this Act and other Australian laws.

11 substitute:

12 Chapter 7 deals with the following:
13 (a) rules for determining whether the law of Australia or the
14 law of another jurisdiction governs a security interest
15 transaction;
16 (b) the constitutional operation of this Act;
17 (c) the relationship between this Act and other Australian
18 laws.

19 **2 Section 6**

20 Repeal the section.

21 **3 Section 10 (definition of *Australian entity*)**

22 Repeal the definition.

23 **4 Sections 39 and 40**

24 Repeal the sections, substitute:

EXPOSURE DRAFT

Interaction with other laws and other matters **Schedule 7**
Governing law rules **Part 1**

1 **@39 Relocation of collateral**

2 *Scope*

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

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

14 *Temporary perfection before and after relocation*

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

26 **@40 Relocation of grantor in relation to intangible property or**

27 **financial property**

28 *Scope*

- 29 (1) This section applies to a security interest in collateral that is
- 30 intangible property, or financial property, if:

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Schedule 7 Interaction with other laws and other matters

Part 1 Governing law rules

- 1 (a) the grantor has been located in a jurisdiction (the *foreign*
2 *jurisdiction*) outside Australia, and either of the following
3 events (the *relocation event*) occurs:
4 (i) the grantor becomes located in Australia;
5 (ii) the grantor transfers the collateral to a person who is
6 located in Australia; and
7 (b) as a result of the relocation event, the perfection (and the
8 effect of perfection or non-perfection) of the security interest
9 becomes governed by the law of Australia, as provided by
10 Part 7.2; and
11 (c) for a period (the *foreign continuous perfection period*)
12 immediately before the relocation event, the security interest
13 had a status under the law of the foreign jurisdiction that is
14 functionally equivalent to the status the security interest
15 would have had if it had been continuously perfected for that
16 period under this Act.

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

- 18 (2) The security interest is taken to have been, and to continue to be,
19 temporarily perfected during the period (the *temporary perfection*
20 *period*):
21 (a) starting at the beginning of the foreign continuous perfection
22 period; and
23 (b) ending at the earlier of the following times:
24 (i) the end of 60 days after the relocation event;
25 (ii) the end of 10 business days after the day the secured
26 party has actual knowledge of the relocation event.

27 *Exceptions*

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

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

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Interaction with other laws and other matters **Schedule 7**
Governing law rules **Part 1**

1 **5 Section 152 (note 1)**

2 Omit “Note 1”, substitute “Note”.

3 **6 Section 152 (note 2)**

4 Repeal the note.

5 **7 Part 7.2 (heading)**

6 Repeal the heading, substitute:

7 **Part 7.2—Governing law rules**

8

9 **8 Section 233**

10 Repeal the section, substitute:

11 **@233 Guide to this Part**

12

13

14

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.

15

16

17

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.

18 **9 After section 234**

19 Insert:

20 **@234A Governing laws—attachment and perfection**

21

22

23

24

25

- (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.

26

Note: For when a security interest is attached under this Act, see section 19.

EXPOSURE DRAFT

Schedule 7 Interaction with other laws and other matters

Part 1 Governing law rules

1 (2) A security interest is taken to be perfected under the law of a
2 jurisdiction other than the Commonwealth if the security interest
3 has a status under that law that is functionally equivalent to the
4 status the security interest would have if it were perfected under
5 this Act.

6 Note: For when a security interest is perfected under this Act, see section 21.

7 (3) A reference in this Part to the effect of perfection or non-perfection
8 of a security interest in the collateral includes a reference to rules
9 about:

- 10 (a) taking the collateral free of the security interest; and
11 (b) the priority of the security interest.

12 Note: For rules under this Act about taking personal property free of a
13 security interest, see Part 2.5. For rules under this Act about priority,
14 see Part 2.6.

15 @234B Governing laws—law relating to conflict of laws

16 In this Part, a reference to the law of a jurisdiction is taken to be a
17 reference to the internal law of that jurisdiction excluding the law
18 relating to the conflict of laws.

19 10 Subsections 235(1) and (2)

20 Repeal the subsections, substitute:

21 *Location of personal property*

22 (1) Personal property is *located* in the particular jurisdiction in which
23 the personal property is situated.

24 Note: Investment instruments registered as mentioned in
25 subsection 1070A(4) of the *Corporations Act 2001* are taken to be
26 situated where the relevant register is kept.

27 11 Section 237

28 Repeal the section.

29 12 Subsection 238(1) (note 1)

30 Repeal the note.

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Interaction with other laws and other matters **Schedule 7**
Governing law rules **Part 1**

1 **13 Subsection 238(1) (note 2)**

2 Omit “Note 2:”, substitute “Note:”.

3 **14 Paragraph 238(2)(a)**

4 Omit “(the *attachment time*)”.

5 **15 Subsection 238(2A)**

6 Repeal the subsection.

7 **16 Subsection 238(3)**

8 Omit “to (2A)”, substitute “, (1A) and (2)”.

9 **17 Subsection 238(3)**

10 Omit “(including the law relating to conflict of laws)”.

11 **18 Subsections 239(5) and (6)**

12 Repeal the subsections.

13 **19 Section 239 (notes 3 and 4)**

14 Repeal the notes.

15 **20 Section 240**

16 Repeal the section, substitute:

17 **@240 Governing laws—financial property**

18 *Validity rules*

- 19 (1) The validity of a security interest in financial property is governed
20 by the law of the jurisdiction in which the grantor is located when
21 the security interest attaches, under that law, to the property.
- 22 (2) However, the validity of a security interest in financial property
23 consisting of an instrument embodying the payment obligation
24 which it represents (for example, a negotiable instrument) is
25 governed by the law of the jurisdiction in which the instrument is
26 located when the security interest attaches.

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Schedule 7 Interaction with other laws and other matters

Part 1 Governing law rules

1 *Perfection rules*

2 (3) At a particular time, the perfection, and the effect of perfection or
3 non-perfection, of a security interest in financial property is
4 governed by the law of the jurisdiction in which the grantor is
5 located at that time.

6 (4) However, at a particular time, the perfection, and the effect of
7 perfection or non-perfection, of a security interest in financial
8 property consisting of an instrument covered by subsection (2) is
9 governed by the law of the jurisdiction in which the instrument is
10 located at that time.

11 *Non-negotiable documents of title*

12 (5) Despite subsections (1) to (4), a security interest in a
13 non-negotiable document of title is governed by the law of the
14 jurisdiction in which the goods to which the document of title
15 relates are located when the security interest attaches, under that
16 law, to the document of title.

17 Note 1: For the priority of a security interest in financial property if there is no
18 foreign register, see section 77.

19 Note 2: For the *location* of personal property, bodies corporate, bodies politic
20 and individuals, see section 235.

21 **@240A Governing laws—intermediated securities**

22 (1) The validity of a security interest in an intermediated security is
23 governed by the law of the jurisdiction in which the intermediary
24 maintains the relevant securities account.

25 (2) At a particular time, the perfection, and the effect of perfection or
26 non-perfection, of a security interest in an intermediated security is
27 governed by the law of the jurisdiction in which the intermediary
28 maintains the relevant securities account at that time.

29 **21 Subsection 241(2)**

30 Repeal the subsection, substitute:

31 (2) At a particular time, the perfection, and the effect of perfection or
32 non-perfection, of a security interest in proceeds is governed by the

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Interaction with other laws and other matters **Schedule 7**
Governing law rules **Part 1**

1 law of the jurisdiction that would otherwise under this Part, at that
2 time, govern the perfection of a security interest in collateral of the
3 same kind as those proceeds.

4 **22 At the end of Part 7.2**

5 Add:

6 **@241A Governing laws—enforcement**

7 *Non-intangible property*

8 (1) The enforcement of a security interest in property other than
9 intangible property is governed by the law of the jurisdiction where
10 enforcement takes place.

11 *Intangible property*

12 (2) The enforcement of a security interest in intangible property is
13 governed by the law of the jurisdiction governing the priority of
14 the security interest.

15 **23 Section 243 (note 1)**

16 Omit “section 6 and”.

17 **Division 2—References to the law relating to conflict of** 18 **laws**

19 *Personal Property Securities Act 2009*

20 **24 Amendments of listed provisions**

21

References to the law relating to conflict of laws

Item	Provision	Omit
1	Subsection 238(1)	(other than the law relating to conflict of laws)
2	Subsection 238(1A)	(other than the law relating to the conflict of laws)

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Schedule 7 Interaction with other laws and other matters

Part 1 Governing law rules

References to the law relating to conflict of laws

Item	Provision	Omit
3	Subsection 238(2)	other than the law relating to the conflict of laws,
4	Subsections 239(1) and (2)	(other than the law relating to conflict of laws)
5	Paragraphs 239(3)(a), (b) and (c)	(other than the law relating to conflict of laws)
6	Subsection 239(4)	(other than the law relating to conflict of laws)
7	Subsection 241(1)	(other than the law relating to conflict of laws)

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Interaction with other laws and other matters **Schedule 7**
Interaction with other laws **Part 2**

1 **Part 2—Interaction with other laws**

2 *Corporations Act 2001*

3 **25 Section 9**

4 Insert:

5 *circulating asset*: see section @51CA.

6 *circulating assets control*: see section @51CB.

7 **26 Section 51C (subparagraph (a)(i) of the definition of**
8 ***circulating security interest*)**

9 Omit “within the meaning of the *Personal Property Securities Act*
10 *2009*”.

11 **27 Section 51C (subparagraph (a)(ii) of the definition of**
12 ***circulating security interest*)**

13 Omit “that Act”, substitute “the *Personal Property Securities Act*
14 *2009*”.

15 **28 After section 51C**

16 Insert:

17 **@51CA Meaning of *circulating asset***

18 *General definition*

- 19 (1) If a grantor grants a security interest in personal property to a
20 secured party, the personal property is a *circulating asset* if:
- 21 (a) the personal property is covered by subsection (6) (unless
22 subsection (2) or (3) applies); or
 - 23 (b) in any other case—the secured party has given the grantor
24 express or implied authority for any transfer of the personal
25 property to be made, in the ordinary course of the grantor’s
26 business, free of the security interest.

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Schedule 7 Interaction with other laws and other matters

Part 2 Interaction with other laws

1

Exceptions

2

- (2) Despite paragraph (1)(a), personal property covered by subsection (6) is not a *circulating asset* if:

3

4

- (a) an effective registration with respect to the property, in relation to the grantor, discloses that the secured party has control of the personal property; and

5

6

7

- (b) the secured party has circulating asset control of the personal property.

8

9

Note: For the meaning of *circulating asset control*, see section @51CB.

10

- (3) Despite subsection (1), personal property covered by subsection (6) is not a circulating asset if:

11

12

- (a) the personal property is goods; and

13

- (b) the security interest is perfected by possession.

14

- (4) For the purposes of paragraph (1)(b), personal property is not a *circulating asset* merely because the secured party has given express authority to transfer specific personal property, or a specific class of personal property, free of a security interest.

15

16

17

18

- (5) Despite subsection (1), if a grantor grants a security interest provided for by a transfer of an account, the account is not a *circulating asset* in relation to the security interest.

19

20

21

Current assets

22

- (6) This subsection covers the following personal property:

23

- (a) an account that arises from 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);

24

25

26

27

- (b) an account that is the proceeds of inventory (within the ordinary meaning of the term “inventory”);

28

29

30

- (c) an ADI account (other than a term deposit);

31

- (d) currency;

32

- (e) inventory (within the ordinary meaning of the term);

33

- (f) a negotiable instrument.
-

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Interaction with other laws and other matters **Schedule 7**
Interaction with other laws **Part 2**

1 Example: An example of an account mentioned in paragraph (a) is an account
2 that is a credit card receivable.

3 *Personal Property Securities Act 2009 terminology*

4 (7) Unless the contrary intention appears, a term used in this section
5 has the same meaning as in the *Personal Property Securities Act*
6 *2009*.

7 Note 1: The following terms are used in this section with the same meaning as
8 in the *Personal Property Securities Act 2009* (as in force from time to
9 time):

- 10 (a) account;
- 11 (b) ADI account;
- 12 (c) currency;
- 13 (d) debtor;
- 14 (e) goods;
- 15 (f) grantor;
- 16 (g) negotiable instrument;
- 17 (h) perfected;
- 18 (i) personal property;
- 19 (j) secured party.

20 Note 2: The term “inventory” is used in this section in its ordinary sense, and
21 does not have the meaning given by the *Personal Property Securities*
22 *Act 2009*.

23 **@51CB Meaning of *circulating asset control***

24 *Circulating asset control—general rules*

- 25 (1) A secured party has ***circulating asset control*** of personal property
26 if:
- 27 (a) the secured party has control of the property within the
28 ordinary meaning of the term “control”; or
 - 29 (b) the secured party has control of the property within the
30 meaning of Part 2.3 of the *Personal Property Securities Act*
31 *2009* (which deals with possession and control of personal
32 property for the purposes of perfection under that Act); or
 - 33 (c) in a case in which the personal property is inventory (within
34 the ordinary meaning of that term) or an account—any of the
35 following provisions applies in relation to the property:

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Schedule 7 Interaction with other laws and other matters

Part 2 Interaction with other laws

- 1 (i) paragraph (a) or (b) of this subsection;
2 (ii) subsection (2), (4) or (6); or
3 (d) in a case in which the personal property is an ADI account—
4 any of the following provisions applies in relation to the
5 property:
6 (i) paragraph (a) of this subsection;
7 (ii) subsection (7).

8 *Circulating asset control—inventory*

- 9 (2) This subsection applies in relation to specific items of inventory
10 (within the ordinary meaning of that term) if:
11 (a) the secured party and the grantor have agreed in writing that
12 the grantor:
13 (i) will allocate those items of inventory to the security
14 interest; and
15 (ii) will not remove any such item of inventory without
16 previously obtaining the specific and express authority
17 of the secured party to do so; and
18 (b) the grantor's usual practice is to comply with the agreement.

19 *Circulating asset control—accounts*

- 20 (3) Subsections (4) to (6) apply to an account of the following kinds:
21 (a) an account mentioned in paragraph @51CA(6)(a);
22 (b) an account that is the proceeds of inventory (within the
23 ordinary meaning of that term).
24 (4) This subsection applies to the account if:
25 (a) the secured party, and the person to whom the account is
26 owed, have agreed in writing that amounts paid in discharge
27 of the account must be deposited into a specified ADI
28 account; and
29 (b) the usual practice is for such amounts to be so deposited; and
30 (c) the secured party has circulating asset control of the ADI
31 account under paragraph (1)(d).

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Interaction with other laws and other matters **Schedule 7**
Interaction with other laws **Part 2**

- 1 (5) However, subsection (4) does not apply to the account if depositing
2 the relevant amount into the specified ADI account results in any
3 person becoming presently liable to pay:
4 (a) the person to whom the account is owed; or
5 (b) if the person to whom the account is owed is a body
6 corporate—a related body corporate.
- 7 (6) This subsection applies to the account if payment by the account
8 debtor to the secured party or the account creditor would discharge
9 the obligation of the account debtor under subsection @81B(6) of
10 the *Personal Property Securities Act 2009* to the extent of the
11 payment.

Circulating asset control—ADI accounts

- 12
13 (7) This subsection applies to an ADI account if:
14 (a) one or more of the following applies:
15 (i) the secured party is the ADI;
16 (ii) the secured party is able to direct disposition of the
17 funds from the account without further consent by the
18 grantor;
19 (iii) the secured party becomes the ADI's customer with
20 respect to the account; and
21 (b) if the secured party is not the ADI—depositing an amount in
22 the ADI account does not result in any person coming under
23 a present liability to pay:
24 (i) the debtor; or
25 (ii) if the debtor is a body corporate—a related body
26 corporate.

27 Note: However, a security interest in an ADI account is only perfected by
28 control if the secured party is the ADI (see sections 21 and 25).

- 29 (8) Subsection (7) may apply to an ADI account even if the grantor
30 retains the right to direct the disposition of funds from the account.

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1 *Personal Property Securities Act 2009 terminology*

2 (9) Unless the contrary intention appears, a term used in this section
3 has the same meaning as in the *Personal Property Securities Act*
4 *2009*.

5 Note: See the notes to section @51CA about terminology used with the
6 same meaning as in the *Personal Property Securities Act 2009* (as in
7 force from time to time).

8 **29 Paragraph 442B(1)(a)**

9 Omit “(within the meaning of the *Personal Property Securities Act*
10 *2009*).

11 **30 Subsection 442B(1) (note 1)**

12 Omit “Note 1”, substitute “Note”.

13 **31 Subsection 442B(1) (note 2)**

14 Repeal the note.

15 *Personal Property Securities Act 2009*

16 **32 Section 10 (definition of *circulating asset*)**

17 Repeal the definition, substitute:

18 *circulating asset*: see section @339.

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

20 **33 Sections 339 to 341A**

21 Repeal the sections, substitute:

22 **@339 References to fixed and floating charges in other laws**

23 *Scope*

24 (1) This section applies to a reference to a charge, or to a fixed charge
25 or a floating charge, over property in a law of the Commonwealth
26 other than this Act, but only to the extent that:

27 (a) the charge has attached to personal property; and

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- 1 (b) title to that personal property is held by the grantor; and
2 (c) the charge is a security interest to which this Act applies.

- 3 (2) However, this section does not apply if the charge referred to is a
4 perfected security interest provided for by the transfer of an
5 account.

6 *Reference to charge*

- 7 (3) A reference to a charge over property is taken to be a reference to a
8 security interest that has attached to:
9 (a) a circulating asset; or
10 (b) personal property that is not a circulating asset.

11 *Reference to fixed charge*

- 12 (4) A reference to a fixed charge over property is taken to be a
13 reference to a security interest that has attached to personal
14 property that is not a circulating asset.

15 *Reference to floating charge*

- 16 (5) A reference to a floating charge over property is taken to be a
17 reference to a security interest that has attached to a circulating
18 asset.

19 *Meaning of circulating asset*

- 20 (6) **Circulating asset** has the same meaning as in the *Corporations Act*
21 *2001*.

22 Note: See sections @51CA and @51CB of the *Corporations Act 2001*.

23 ***Shipping Registration Act 1981***

24 **34 Subsection 3(1) (definition of *PPSA security interest*)**

25 Repeal the definition (including the Note).

26 **35 Part III (heading)**

27 Omit “, security interests”.

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- 1 **36 Subsection 47A(1A)**
- 2 Repeal the subsection.

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Other matters **Part 3**

1 **Part 3—Other matters**

2 *Personal Property Securities Act 2009*

3 **37 Section 3**

4 Omit:

- 5 (c) security interests in personal property that is processed
6 or commingled and their priority (Part 3.4);
7 (d) intellectual property and intellectual property licences
8 (Part 3.5).

9 substitute:

- 10 (c) security interests in personal property that is processed
11 or commingled and their priority (Part 3.4).

12 **38 Section 3**

13 Omit:

14 The Act starts to apply under Part 9.3 at the registration
15 commencement time, which is 1 February 2012 (the first day of the
16 month that is 26 months after this Act was given the Royal
17 Assent), or another time determined by the Minister.

18 Chapter 9 also deals with references to charges and fixed and
19 floating charges in this Act and in security agreements, and
20 provides for the review of the operation of the Act within 3 years
21 after it starts to apply.

22 substitute:

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

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

39 Section 10 (example of the definition of expenses)

Repeal the example.

40 Section 10 (definition of *express amendment*):

Repeal the definition, substitute:

express amendment of this Act: see section 244.

41 Section 10 (definition of *intellectual property*)

Repeal the definition.

42 Section 10 (definition of *located*)

Repeal the definition, substitute:

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

43 Section 10 (definition of *time of execution*)

Repeal the definition.

44 Section 82

Omit:

Part 3.5 deals with security interests in intellectual property.

45 Part 3.5

Repeal the Part.

46 Paragraph 275(6)(a)

Repeal the paragraph, substitute:

(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

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1 **47 At the end of paragraph 275(6)(c)**

2 Add “, other than by the banker’s duty of confidentiality”.

3 **48 Subsection 275(7)**

4 Repeal the subsection.

5 **49 After paragraph 275(9)(d)**

6 Insert:

7 (da) if a judgment is given by a court for payment of a sum of
8 money by the grantor—the judgment creditor;

9 **50 Subsection 293(1)**

10 Repeal the subsection, substitute:

11 (1) On application, a court may make an order extending the number
12 of business days in a period specified in any of the following
13 provisions if the court is satisfied that it is just and equitable to do
14 so:

15 (a) section @62 (priority for perfected purchase money security
16 interests over other perfected security interests), including
17 that subsection as it applies for the purposes of section @63
18 (priority between purchase money security interests—seller,
19 lessors and consignors);

20 (b) subparagraph 64(1)(b)(ii) (priority for non-purchase money
21 security interest in accounts);

22 (c) subparagraph @81B(4)(c)(i) and paragraph @81B(5)(a)
23 (dealings in accounts—protection of rights of account
24 debtor);

25 (d) subsections @118(4) and (9) (seizure by higher priority
26 parties—notice);

27 (e) paragraph @129(2)(c) (disposing of collateral—notice);

28 (f) paragraph @132(2)(a) (retaining collateral—notice);

29 (g) section @134 (retaining collateral—proof of interest);

30 (h) subsections @139(2) and (6) (enforcement against
31 collateral—statement of account);

32 (i) subparagraph @144A(3)(c)(i) and paragraph @144A(4)(a)
33 (enforcement of security interests in negotiable instruments);

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- 1 (j) subparagraph @144B(2)(e)(i) (enforcement against accounts
2 and negotiable instruments—notice to higher priority
3 parties);
4 (k) paragraph 166(2)(c) (defects in registration—temporary
5 effectiveness);
6 (l) subsection @167(2) (individual grantors—secured party
7 required to end registration if security interest ends);
8 (m) subsection @182A(3) (amendment demands—registration of
9 financing change statement);
10 (n) paragraph @182B(2)(b) (amendment demands—court
11 orders);
12 (o) subsection 275(3) (secured party to provide certain
13 information relating to security interest).

14 **51 Section 304 (paragraph beginning “This Chapter”)**

15 Omit “, or a once-only application (the review in Part 9.6)”.

16 **52 Section 304**

17 Omit:

18 Part 9.6 provides for an independent review of the operation of the
19 Act 3 years after it starts to apply.

20 **53 Section 309**

21 Omit:

22 (c) intellectual property licences;

23 **54 Section 313**

24 Repeal the section.

25 **55 Part 9.6**

26 Repeal the Part.

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56 Amendments of listed provisions—definitions in section 10

The definitions of the following terms in section 10 are amended by omitting “has the meaning given by” and substituting “: see”:

- (a) *approved form*;
- (b) *attaches*;
- (c) *continuously perfected*;
- (d) *control*;
- (e) *foreign jurisdiction*;
- (f) *intermediary*;
- (g) *intermediated security*;
- (h) *lower court*;
- (i) *migrated security interest*;
- (j) *perfected*;
- (k) *PPS lease*;
- (l) *PPS matter*;
- (m) *proceeds*;
- (n) *purchase money security interest*;
- (o) *receiving court*;
- (p) *referred PPS matters*;
- (q) *referring State*;
- (r) *registered data conditions*;
- (s) *registration commencement time*;
- (t) *registration event*;
- (u) *relevant superior court*;
- (v) *securities account*;
- (w) *superior court*;
- (x) *third party data*;
- (y) *third party data conditions*;
- (z) *transfer matter*;
- (za) *transferring court*;
- (zb) *transitional register*;
- (zc) *transitional security agreement*;
- (zd) *transitional security interest*;

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1

(ze) *verification statement.*

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