

EXPOSURE DRAFT



EXPOSURE DRAFT

Personal Property Securities Regulations 2023

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2023

David Hurley
Governor-General

By His Excellency's Command

Mark Dreyfus KC [DRAFT ONLY—NOT FOR SIGNATURE]
Attorney-General

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

Part 1—Preliminary	1
^{^1} Name [1.1]	1
^{^2} Commencement [new]	1
^{^3} Authority [new]	1
^{^4} Schedule 1 [new]	2
^{^5} Definitions [1.6]	2
Part 2—General application and definitions used in the Act	5
^{^6} Application in the external Territories [1.3]	5
^{^7} Meaning of <i>security interest</i> —interests excluded [1.4]	5
^{^8} Meaning of <i>PPS lease</i> —leases excluded [1.9]	5
^{^9} Meaning of <i>personal property</i> —interests not excluded [1.5]	6
Part 3—Taking personal property free of security interests	7
^{^10} Taking vehicles free of security interest—vehicle dealers [2.2]	7
^{^11} Taking investment instrument or intermediated security free of security interest in the ordinary course of trading—financial markets [new]	7
Part 4—Personal Property Securities Register	8
Division 1—Establishment of the register	8
^{^12} Personal Property Securities Register—suspension of access [5.1]	8
^{^13} What the register contains—data with respect to additional personal property [5.3]	8
Division 2—Registration: details of secured parties and grantors	9
^{^14} General rules for registered details of secured parties and grantors [(1)-(3) are new; for (4)-(5), see Sch 1, cl 4.1 (item 5)]	9
^{^15} Individual secured parties [Sch 1, cl 1.2]	9
^{^16} Individual grantors [Sch 1, cl 1.2]	10
^{^17} Corporate secured parties and grantors [Sch 1, cl 1.3]	11
^{^18} Partnership security interests—grantor’s details [Sch 1, cl 1.4]	12
^{^19} Body politic secured parties and grantors [Sch 1, cl 1.6]	13
Division 3—Registration: description of collateral and proceeds	14
^{^20} How to describe collateral [Sch 1, cl 2.3]	14
^{^21} Serial-numbered property—further description [Sch 1, cl 2.2]	15
^{^22} Serial-numbered property—individual and other grantors [new]	16
^{^23} How to describe proceeds [Sch 1, cl 1.4]	17
Division 4—Registration: other prescribed matters	18
^{^24} Circulating asset control [Sch 1, cl 4.1, item 2]	18
^{^25} Financing statements—personal property prescribed by section ^{^13} [Sch 2]	18
^{^26} Verification statements—publication as alternative [5.6]	19
Division 5—Searching the register	20
^{^27} Search—access to data prohibited [5.7]	20
^{^28} Search—criteria [5.8]	20
^{^29} Search—access to third party data [5.8]	20
Division 6—Removal of data from the register	21
^{^30} Removal of data—property prescribed by section ^{^13} [5.4]	21
Part 5—Relationship between Australian laws	22
^{^31} Concurrent operation of provisions of the <i>Corporations Act 2001</i> —resolution of inconsistency [7.1]	22

EXPOSURE DRAFT

Part 6—Transitional arrangements	23
Division 1—Transitional arrangements for the commencement of this instrument	23
Schedule 1—Repeals	24
<i>Personal Property Securities Regulations 2010</i>	24

EXPOSURE DRAFT

Preliminary **Part 1**

[Drafting notes:

- **This instrument will replace the Personal Property Securities Regulations 2010, which are repealed by Schedule 1 at the end.**
- **Bracketed and highlighted references to corresponding provisions of the repealed 2010 regulations are indicated in the heading of each section (eg “[1.1]”). If there is no corresponding provision, the provision is described as “[new]”.**
- **The draft includes references to provisions of the Personal Property Securities Act 2009 (“the Act”) with @ signs (eg “paragraph @12A(1)(q) of the Act”). These refer to new sections to be inserted or substituted by the Act, even if the @ section is substituted for an existing section with the same number.]**

Part 1—Preliminary

^1 Name [1.1]

This instrument is the *Personal Property Securities Regulations 2023*.

^2 Commencement [new]

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

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	At the same time as Schedules 1 to 7 to the <i>Personal Property Securities Amendment (Framework Reform) Act 2023</i> commence.	

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

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

^3 Authority [new]

This instrument is made under the *Personal Property Securities Act 2009*.

EXPOSURE DRAFT

Part 1 Preliminary

Section ^4

^4 Schedule 1 [new]

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

^5 Definitions [1.6]

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) account;
- (b) circulating asset control;
- (c) collateral;
- (d) description;
- (e) financial property;
- (f) financing statement;
- (g) goods;
- (h) grantor;
- (i) intangible property;
- (j) intellectual property licence;
- (k) register;
- (l) secured party;
- (m) serial number;
- (n) vehicle;
- (o) VIN (short for vehicle identification number).

In this instrument:

ABN (short for Australian Business Number) has the same meaning as in the *A New Tax System (Australian Business Number) Act 1999*.

ACN (short for Australian Company Number) has the same meaning as in the *Corporations Act 2001*.

Act means the *Personal Property Securities Act 2009*.

aircraft means a machine or craft that:

- (a) can derive support in the atmosphere from the reactions of the air, other than the reactions of the air against the earth's surface; and
- (b) has nationality and registration marks assigned to it under the Chicago Convention.

ARB (short for Australian Registered Body Number) has the same meaning as in the *Corporations Act 2001*.

ARF (short for Australian Registered Fund Number) has the same meaning as in the *Corporations Act 2001*.

ARS (short for Australian Registered Scheme Number) has the same meaning as in the *Corporations Act 2001*.

ASIC means the Australian Securities and Investments Commission.

associated data: see subsection 14(4) (general rules for registered details of secured parties and grantors).

Australian Business Register has the same meaning as in the *A New Tax System (Australian Business Number) Act 1999*.

CCIV (short for corporate collective investment vehicle) has the same meaning as in the *Corporations Act 2001*.

Chicago Convention means:

- (a) the Convention on International Civil Aviation done at Chicago on 7 December 1944, the English text of which is set out in Schedule 1 to the *Air Navigation Act 1920*; and
- (b) the Protocols amending that Convention that are referred to in subsection 3A(2) of that Act, the English texts of which are set out in Schedules to that Act; and
- (c) the Annexes to that Convention that relate to international standards and recommended practices and that are adopted in accordance with that Convention.

design means the right to do any of the things mentioned in paragraphs 10(1)(a) to (f) of the *Designs Act 2003* in relation to a design that is registered under that Act.

hull identification number, in relation to a watercraft, means a number or code that:

- (a) has the purpose of enabling the watercraft to be uniquely identified; and
- (b) is allocated to the watercraft for that purpose by any of the following entities:
 - (i) a registration authority of a State or Territory;
 - (ii) a person authorised by a registration authority of a State or Territory;
 - (iii) the watercraft's manufacturer; and
- (c) is permanently attached to or marked on, and located in positions on, the hull of the watercraft in a way required or recommended by the entity that allocated the number or code to the watercraft.

patent means the right to exploit or work an invention, or to authorise another person to exploit or work an invention, for which a patent is in effect under the *Patents Act 1990*.

PCT number (short for Patent Cooperation Treaty number), for a patent, means:

- (a) an international application number for the patent, issued under paragraph 30(2)(b) of the Patent Cooperation Treaty done at Washington 19 June 1970, as in force for Australia at the time this instrument commences; or
- (b) if there is no international application number for the patent—an international publication number issued for the patent by the World Intellectual Property Organization.

EXPOSURE DRAFT

Part 1 Preliminary

Section 5

Note: The Patent Cooperation Treaty is in Australian Treaty Series 1980 No. 6 ([1980] ATS 6) and could in 2023 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

plant breeder's rights means the right to do, or to license another person to do, an act referred to in section 11 of the *Plant Breeder's Rights Act 1994* in relation to propagating material of a plant variety.

pooling arrangement: see subsection 8(2) (meaning of **PPS lease**—exclusion).

proceeds of crime law: see subsection 13(2) (what the register contains—data with respect to additional personal property).

registered scheme has the same meaning as in the *Corporations Act 2001*.

responsible entity has the same meaning as in the *Corporations Act 2001*.

serial-numbered property means property that is:

- (a) a kind of personal property specified in column 1 of an item in the table in section 21; and
- (b) nominated in a financing statement as serial-numbered property.

sub-fund, of a CCIV, has the same meaning as in the *Corporations Act 2001*.

trade mark means the rights held by a person who is the registered owner of a trade mark that is registered under the *Trade Marks Act 1995*.

watercraft means a boat or vessel, other than a seaplane, that:

- (a) is used, or intended to be used, in navigation by water or for any other purpose on water; and
- (b) has:
 - (i) a hull identification number; or
 - (ii) an official number (within the meaning of the *Shipping Registration Regulations 2019*).

EXPOSURE DRAFT

General application and definitions used in the Act **Part 2**

Part 2—General application and definitions used in the Act

^6 Application in the external Territories [1.3]

For the purposes of subsection 7(3) of the Act, the following external Territories are prescribed:

- (a) the Territory of Christmas Island;
- (b) the Territory of Cocos (Keeling) Islands.

^7 Meaning of *security interest*—interests excluded [1.4]

For the purposes of paragraph @12A(1)(q) of the Act, the following kinds of interests are excluded from the definition of *security interest*:

- (a) an interest arising out of the operation of section 260-5 in Schedule 1 to the *Taxation Administration Act 1953*;
- (b) an interest in an authority, lease, licence or permit of any kind that is created under the *Offshore Minerals Act 1994* or the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*;
- (c) an interest granted by a company, within the meaning of the *Companies Act 1985* (Norfolk Island) as in force at the commencement of this instrument, that is incorporated under that Act and is not registered under Part 5B.2 of the *Corporations Act 2001*.

Note: These interests are excluded from the definition of *security interest* for the purposes of the Act (including this instrument).

^8 Meaning of *PPS lease*—leases excluded [1.9]

- (1) For the purposes of paragraph @13(3)(c) of the Act, a lease of personal property that is part of a pooling arrangement is not a *PPS lease*.
- (2) A *pooling arrangement* is an arrangement that includes one or more lease arrangements in relation to personal property that is goods, and under which:
 - (a) the goods are pooled for the collective use, from time to time, of the parties to one or more lease or hire arrangements; and
 - (b) none of the lease or hire arrangements, in substance, secures payment or performance of an obligation; and
 - (c) possession of the goods can be passed between multiple users, without the prior approval of the owner, whether or not the goods are passed subject to conditions; and
 - (d) like goods that are, by nature or usage of trade, the equivalent of the goods leased or hired under one of the lease or hire arrangements can be returned, in place of the goods originally leased or hired.

EXPOSURE DRAFT

Part 2 General application and definitions used in the Act

Section ^9

^9 Meaning of *personal property*—interests not excluded [1.5]

For the purposes of subsection @13B(2) of the Act, despite paragraphs @13B(1)(b) and (c) of the Act, the following interests are, for the purposes of the whole of the Act, not excluded by section @13B of the Act from the definition of *personal property*:

- (a) a mortgage-backed security within the meaning of the *Duties Act 2001* (Qld) as in force at the commencement of this instrument;
- (b) a real property mortgage loan that is transferred to a person in connection with the issue by the person of such a mortgage-backed security.

Note 1: See the definition of *mortgage-backed security* in section 286 of the *Duties Act 2001* (Qld), as in force at the commencement of this instrument. The definition applies to mortgages or charges over land regardless of whether the land is situated in Queensland or elsewhere (see section 287 of that Act).

Note 2: Paragraphs @13B(1)(b) and (c) of the *Personal Property Securities Act 2009* provide generally that certain interests relating to the creation or transfer of interests in land are excluded from the definition of *personal property* in section @13A of the Act. However, subsection @13B(2) of the Act provides that the regulations may provide that such interests are not so excluded.

Accordingly, the effect of this section is that the interests mentioned in paragraphs ^9(a) and (b) of this instrument are *personal property* if they are covered by subsection @13A(1) of the definition of *personal property* in the Act.

Part 3—Taking personal property free of security interests

^10 Taking vehicles free of security interest—vehicle dealers [2.2]

For the purposes of subsection 45(3) of the Act, this section applies to the seller or lessor of a vehicle if:

- (a) the seller or lessor holds a licence (however described) to deal or trade in such vehicles; and
- (b) the licence was issued by a licensing authority in the State or Territory where the sale or lease happens.

^11 Taking investment instrument or intermediated security free of security interest in the ordinary course of trading—financial markets [new]

For the purposes of section 49 of the Act, the following financial markets are prescribed:

- (a) a prescribed financial market within the meaning of the *Corporations Act 2001*;
- (b) an approved foreign market as defined for the purposes of the *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669*.

EXPOSURE DRAFT

Part 4 Personal Property Securities Register

Division 1 Establishment of the register

Section ^12

Part 4—Personal Property Securities Register

Division 1—Establishment of the register

^12 Personal Property Securities Register—suspension of access [5.1]

For the purposes of paragraph 147(5)(b) of the Act, the Registrar may suspend the operation of the register for up to 4 hours at a time, but only after publishing details of the suspension in accordance with subsection 147(7) of the Act at least 7 days before the suspension.

^13 What the register contains—data with respect to additional personal property [5.3]

- (1) For the purposes of paragraph 148(c) of the Act, the following are prescribed:
- (a) a vehicle that has been impounded, immobilised or forfeited, or is subject to an impoundment, immobilisation or forfeiture application, under a law of the Commonwealth, a State or a Territory that provides for impoundment, immobilisation or forfeiture of a vehicle because it is being used, or has been used, in the commission of certain offences;
 - (b) personal property that is subject to a notice or order, or is confiscated or forfeited, under a proceeds of crime law;
 - (c) personal property that is subject to an order of a court or tribunal (however described), other than under a proceeds of crime law, that:
 - (i) prevents or restricts a person dealing with the property; or
 - (ii) enforces another order of a court or tribunal (however described); or
 - (iii) orders the sale or other disposal of all or part of the property;
 - (d) personal property that:
 - (i) is not mentioned in paragraph (a), (b) or (c); and
 - (ii) immediately before the registration commencement time, could have been registered on a transitional register maintained under a law of the Commonwealth, a State or a Territory.
- Note: If data relating to personal property covered by this subsection is registered, in certain circumstances the Registrar may remove the data from the register (see section 184 of the Act and section ^30 of this instrument).
- (2) A *proceeds of crime law* is:
- (a) the *Mutual Assistance in Criminal Matters Act 1987*; or
 - (b) the *Proceeds of Crime Act 1987*; or
 - (c) the *Proceeds of Crime Act 2002*; or
 - (d) a law of a State or Territory that is a corresponding law within the meaning of the *Proceeds of Crime Act 2002*.

EXPOSURE DRAFT

Division 2—Registration: details of secured parties and grantors

^14 General rules for registered details of secured parties and grantors [(1)-(3) are new; for (4)-(5), see Sch 1, cl 4.1 (item 5)]

Nominees of secured parties

- (1) For the purposes of item 1 of the table in subsection @153(1) of the Act, this Division applies in relation to a person nominated by a secured party (mentioned in paragraph (b) of the item) in the same way as it applies in relation to a secured party.

Trustees

- (2) If this Division applies in relation to the trustee of a trust:
 - (a) in the case of a security interest taken, or to be taken, in property of the trust—this Division applies in relation to the trustee in the same way as it applies in relation to any other grantor; and
 - (b) in the case of a security interest taken, or to be taken, by the trustee—this Division applies to the trustee in the same way as it applies in relation to any other secured party.

Foreign characters and numbers—transliteration etc.

- (3) If the source evidencing the details for a secured party or grantor prescribed by section ^15 or ^16 is set out in characters other than roman characters, or in numerals other than Arabic or roman numerals, for the purposes of the Act, the financing statement is taken to include such details if it incorporates:
 - (a) in the case of characters—a reasonable transliteration of the original characters into roman characters; or
 - (b) in the case of numerals—the Arabic numerals corresponding to the original numerals.

Associated data

- (4) If this Division provides that associated data is prescribed in addition to an entity's ACN, ARBN, ARFN or ARSN, the *associated data* is the data associated with that number as evidenced by a business register kept by ASIC.
- (5) If this Division requires that associated data is prescribed in addition to an entity's ABN, the associated data is the data associated with that number as evidenced by the Australian Business Register.

Example: For the purposes of subsection (4) or (5), associated data may include the entity's name, among other data.

^15 Individual secured parties [Sch 1, cl 1.2]

- (1) For the purposes of item 1 of the table in subsection @153(1) of the Act, this section applies to a secured party who is an individual.

EXPOSURE DRAFT

Part 4 Personal Property Securities Register

Division 2 Registration: details of secured parties and grantors

Section ^16

Note: This section applies to an individual secured party even if the individual is a sole trader with an ABN, or the trustee of a trust with an ABN. Details of the ABN are not required by this section to be registered in these cases.

- (2) The prescribed details for the secured party are the individual's surname and given names, as evidenced by the source mentioned in an item of the following table, if:
- (a) the item applies to the individual; and
 - (b) the item has the lowest item number of all the items that apply to the individual.

Secured party is an individual		
Item	Individual	Source
1	An individual who holds a current driver's licence issued by a State or Territory licensing authority	The driver's licence
2	An individual who holds a current proof of identity or current proof of age card issued by a State or Territory body	The proof of identity or proof of age card
3	An individual who holds a current Australian passport	The passport
4	An individual who holds a current visa, issued by the Australian Government	The visa
5	An individual who holds a current passport (other than an Australian passport) issued by the jurisdiction in which the individual ordinarily resides	The passport
6	Any other individual	The individual's birth certificate

^16 Individual grantors [Sch 1, cl 1.2]

- (1) For the purposes of paragraph (b) of item 2 of the table in subsection @153(1) of the Act, this section applies in relation to the following details of a grantor who is an individual:

- (a) the individual's surname and given names;
- (b) the individual's date of birth.

Note 1: This section applies to an individual grantor even if the individual is a sole trader with an ABN, or the trustee of a trust with an ABN. Details of the ABN are not required by this section to be registered in these cases.

Note 2: If the grantor is a partner in a partnership:

- (a) this section applies if the interest in the collateral secured (or to be secured) is the grantor's net interest in the partnership (see subparagraph (d)(i) of item 2 of the table in subsection @153(1) of the Act); and
- (b) section ^18 of this instrument applies in any other case.

- (2) The details must be evidenced by the source mentioned in an item of the following table, if:
- (a) in the case of the individual's surname and given names:

EXPOSURE DRAFT

Personal Property Securities Register **Part 4**
Registration: details of secured parties and grantors **Division 2**

- (i) the item applies to the individual; and
 - (ii) the item has the lowest item number of all the items that apply to the individual; and
- (b) in the case of the individual's date of birth:
- (i) the item applies to the individual; and
 - (ii) the source includes details of the date of birth; and
 - (iii) the item has the lowest item number of all the items that apply to the individual.

Grantor is an individual

Item	Individual	Source
1	An individual who holds a current driver's licence issued by a State or Territory licensing authority	The driver's licence
2	An individual who holds a current proof of identity or current proof of age card issued by a State or Territory body	The proof of identity or proof of age card
3	An individual who holds a current Australian passport	The passport
4	An individual who holds a current visa, issued by the Australian Government	The visa
5	An individual who holds a current passport (other than an Australian passport) issued by the jurisdiction in which the individual ordinarily resides	The passport
6	Any other individual	The individual's birth certificate

[^]17 Corporate secured parties and grantors [Sch 1, cl 1.3]

- (1) For the purposes of item 1, and paragraph (c) of item 2, of the table in subsection @153(1) of the Act, this section applies to a secured party or grantor that is a body corporate, subject to subsection (2).

Note 1: This section applies to a body corporate even if the body corporate has an ABN, or is the trustee of a trust with an ABN. Details of the ABN are not required by this section to be registered in these cases.

Note 2: If a scheme custodian (within the meaning of the *Corporations Act 2001*) grants a security interest over the assets of a registered scheme on behalf of a responsible entity, the prescribed details for the grantor are those of the responsible entity for the scheme rather than those of the scheme custodian.

Note 3: If the body corporate is a grantor that is a partner in a partnership:

- (a) this section applies if the interest in the collateral secured (or to be secured) is the grantor's net interest in the partnership (see subparagraph (d)(i) of item 2 of the table in subsection @153(1) of the Act); and
- (b) section [^]18 of this instrument applies in any other case.

- (2) The prescribed details for the body corporate are the details mentioned in an item of the following table, as evidenced by the source mentioned in the item, if:

EXPOSURE DRAFT

Part 4 Personal Property Securities Register

Division 2 Registration: details of secured parties and grantors

Section ^18

- (a) the item applies to the body corporate; and
- (b) the item has the lowest item number of all the items that apply to the body corporate.

Secured party or grantor is a body corporate

Item	Body corporate	Details	Source
1	A body corporate that is the responsible entity of a registered scheme that has an ARSN	The ARSN and associated data	A business register kept by ASIC
2	A body corporate that has an ACN	The ACN and associated data	A business register kept by ASIC
3	A body corporate that is a CCIV, if: (a) the CCIV is the secured party or grantor for a sub-fund of the CCIV; and (b) the sub-fund has an ARFN	The sub-fund's ARFN and associated data	A business register kept by ASIC
4	A body corporate that has an ARBN	The ARBN and associated data	A business register kept by ASIC
5	Any other body corporate	The name of the body corporate provided by the law under which the body corporate is incorporated	The law under which the body corporate is incorporated

^18 Partnership security interests—grantor's details [Sch 1, cl 1.4]

- (1) For the purposes of subparagraph (d)(ii) of item 2 of the table in subsection @153(1) of the Act, this section applies if the grantor is a partner in a partnership.

Note: However, section ^16 or ^17 of this instrument applies if the interest in the collateral secured (or to be secured) is the grantor's net interest in the partnership (see subparagraph (d)(i) of item 2 of the table in subsection @153(1) of the Act).

- (2) The prescribed details for the grantor are the details mentioned in an item of the following table, as evidenced by the source mentioned in the item, if:
- (a) the item applies to the grantor; and
 - (b) the item has the lowest item number of all the items that apply to the grantor.

Security interests granted on behalf of partnerships

Item	Partnership	Details	Source
1	A partnership that has an ABN	The ABN and associated data	The Australian Business Register
2	A partnership that has a	The registered name	The law of the jurisdiction

EXPOSURE DRAFT

Personal Property Securities Register **Part 4**
Registration: details of secured parties and grantors **Division 2**

Security interests granted on behalf of partnerships

Item	Partnership	Details	Source
	registered name in the jurisdiction in which it is established		in which the partnership is established
3	A partnership that has no registered name in the jurisdiction in which it is established	The name of the partnership, and, for at least one of the partners: (a) in the case of a partner who is an individual—the individual’s surname, given names and date of birth; and (b) in the case of a partner that is a body corporate—the details required under section ^17	The source applicable under section ^16 (for a grantor who is an individual) or ^17 (for a grantor that is a body corporate) in relation to any partner whose details are provided for this item
4	Any other partnership	For each partner: (a) in the case of a partner who is an individual—the individual’s surname, given names and date of birth; and (b) in the case of a partner that is a body corporate—the details required under section ^17	The source applicable under section ^16 (for a grantor who is an individual) or ^17 (for a grantor that is a body corporate) in relation to each partner

^19 Body politic secured parties and grantors [Sch 1, cl 1.6]

For the purposes of item 1, and paragraph (e) of item 2, of the table in subsection @153(1) of the Act, if the secured party or grantor is a body politic, the prescribed details are:

- (a) if the body politic has an ABN—the ABN and associated data; or
- (b) in any other case—the name of the body politic, as evidenced by the constitution, or constituting law (if any) of the body politic.

EXPOSURE DRAFT

Part 4 Personal Property Securities Register

Division 3 Registration: description of collateral and proceeds

Section ^20

Division 3—Registration: description of collateral and proceeds

^20 How to describe collateral [Sch 1, cl 2.3]

Collateral classes and further description

- (1) For the purposes of paragraph (a) of item 4 of the table in subsection @153(1) of the Act, collateral must be described in a financing statement:
- (a) by nominating one or more collateral classes, as specified in column 1 of an item of the following table, to which the collateral belongs; and
 - (b) by a further description (if any) specified for collateral belonging to that class in column 2 of that item.

How to describe collateral		
Item	Column 1 Collateral class	Column 2 Further description
1	All present and after-acquired property	None
2	All present and after-acquired property, except specified items or kinds of personal property	A description of personal property not covered by the registration
3	Serial-numbered property	A further description by serial number as required by section ^21
4	Accounts	If the security interest is (or is to be) a non-purchase money security interest taken in the account as original collateral—a further description of the account as an account in relation to which section 64 of the Act applies
5	Intangible property, and financial property	A further description of the property
6	Goods	Either: (a) a description of the goods covered by subsection (2); or (b) a further description of the goods

Note 1: A description of collateral must be by item or kind (see the definition of *description* in section 10 of the Act).

Note 2: The description in item 4 would identify the security interest as being an account financier's interest that has, or may have, priority over certain security interests under section 64 of the Act.

Description of certain goods

- (2) For the purposes of paragraph (a) of item 6 of the table in subsection (1) of this section, this subsection covers any of the following descriptions of goods:
- (a) goods leased by the secured party to the grantor;
 - (b) goods sold by the secured party to the grantor on retention of title terms;

EXPOSURE DRAFT

- (c) goods delivered by the secured party to the grantor under a commercial consignment.

Description of multiple items or kinds of collateral

- (3) For the purposes of paragraph (b) of item 4 of the table in subsection @153(1) of the Act:
- (a) except in the cases mentioned in paragraphs (b) and (c) of this subsection—a financing statement may describe more than one item or kind of collateral regardless of collateral class; and
 - (b) in the case of collateral nominated as belonging to either of the following collateral classes, the financing statement must not describe the collateral by nominating any other collateral class:
 - (i) the collateral class “All present and after-acquired property”;
 - (ii) the collateral class “All present and after-acquired property except specified items or kinds of personal property”; and
 - (c) a financing statement in relation to an individual grantor which is required by subsection ^22(1) to describe the collateral by nominating the collateral class “Serial-numbered property”:
 - (i) must describe only a single item of serial-numbered property; and
 - (ii) must not describe any other collateral (regardless of collateral class).

^21 Serial-numbered property—further description [Sch 1, cl 2.2]

If collateral of the kind specified in column 1 of an item of the following table is nominated in a financing statement as serial-numbered property, the financing statement must include the serial number specified in column 2 of that item.

Serial-numbered property		
Item	Column 1 Kind of collateral	Column 2 Serial number
1	Aircraft	The nationality and registration mark of the aircraft under the Chicago Convention
2	Design	Either: <ul style="list-style-type: none">(a) the design number issued by IP Australia; or(b) if it does not have a design number—the design application number issued by IP Australia
3	Patent	One of the following (as applicable): <ul style="list-style-type: none">(a) the patent number issued by IP Australia;(b) if it does not have a patent number—the patent application number issued by IP Australia;(c) if it does not have a patent number or a patent application number—the PCT number

EXPOSURE DRAFT

Part 4 Personal Property Securities Register

Division 3 Registration: description of collateral and proceeds

Section ^22

Serial-numbered property		
Item	Column 1 Kind of collateral	Column 2 Serial number
4	Plant breeder's rights	Either: (a) the plant-breeder's right number issued by IP Australia; or (b) if it does not have a plant breeder's right number—the plant breeder's right application number issued by IP Australia
5	Trade mark	Either: (a) the trade mark number issued by IP Australia; or (b) if it does not have a trade mark number—the trade mark application number issued by IP Australia
6	Intellectual property licence over property specified in any of items 2 to 5	The serial number for the relevant item
7	Vehicle	The VIN
8	Watercraft	Either: (a) the official number (within the meaning of the <i>Shipping Registration Regulations 2019</i>); or (b) if it does not have an official number—the hull identification number

^22 Serial-numbered property—individual and other grantors [new]

Individual grantors

- (1) If the security interest in respect of which a financing statement is to be registered is (or is to be) granted by an individual, an item of personal property specified in column 1 of the table in section ^21 must be nominated under section ^20 as belonging to the collateral class “Serial-numbered property”.

Other grantors

- (2) In any other case, an item of personal property specified in column 1 of the table in section ^21 may be nominated under section ^20 as belonging to either or both of the following:
 - (a) the collateral class “Serial-numbered property”;
 - (b) any other collateral class that is applicable to the personal property.

EXPOSURE DRAFT

^23 How to describe proceeds [Sch 1, cl 1.4]

Proceeds classes and further description

- (1) For the purposes of paragraph (a) of item 4 of the table in subsection @153(1) of the Act, proceeds must be described in a financing statement:
- (a) by nominating a proceeds class specified in column 1 of an item of the following table to which the proceeds belong; and
 - (b) by a further description specified for proceeds belonging to that class in column 2 of that item.

How to describe proceeds		
Item	Column 1 Proceeds class	Column 2 Further description
1	All present and after-acquired property	None
2	All present and after-acquired property, except specified items or kinds of personal property	A description of personal property not covered by the registration
3	Other proceeds	A further description of the personal property constituting the other proceeds

Note: A description of proceeds must be by item or kind (see the definition of *description* in section 10 of the Act).

Whether more than one item or kind of proceeds may be described using the same proceeds class

- (2) For the purposes of paragraph (b) of item 4 of the table in subsection @153(1) of the Act:
- (a) in the case of proceeds nominated as belonging to either of the following proceeds classes, the financing statement must not describe the proceeds by nominating any other proceeds class:
 - (i) the proceeds class “All present and after-acquired property”;
 - (ii) the proceeds class “All present and after-acquired property except specified items or kinds of personal property”;
 - (b) in the case of proceeds nominated as belonging to the proceeds class “Other proceeds”, a financing statement may describe more than one item or kind of proceeds.

EXPOSURE DRAFT

Part 4 Personal Property Securities Register
Division 4 Registration: other prescribed matters

Section ^24

Division 4—Registration: other prescribed matters

^24 Circulating asset control [Sch 1, cl 4.1, item 2]

For the purposes of item 6 of the table in subsection @153(1) of the Act, a financing statement may include a statement disclosing whether or not the collateral is, or may be, subject to circulating asset control.

^25 Financing statements—personal property prescribed by section ^13 [Sch 2]

Details of person who owns or has interest in property

- (1) For the purposes of item 1 of the table in section 154 of the Act, and subject to subsection (2) of this section:
 - (a) the prescribed details of a person who owns or has an interest in personal property prescribed by section ^13 of this instrument are the details that would be applicable in relation to the person, under the Act and Division 2 of this Part, if the property were collateral secured by a security interest granted by that person; and
 - (b) those prescribed details must be evidenced accordingly.
- (2) If the property is the subject of an order of a court or tribunal (as mentioned in paragraph ^13(1)(b) or (c)), the prescribed details for the purposes of item 1 of the table in section 154 of the Act are:
 - (a) unless paragraph (b) of this subsection applies—the individual’s surname and given names, and date of birth, as evidenced:
 - (i) by the order of the court or tribunal; or
 - (ii) to the extent that the details cannot be evidenced in that way—by the applicable source under section ^16 of this instrument, as otherwise applied by subsection (1) of this section; or
 - (b) if the individual is a partner in a partnership, and the interest is not the individual’s net interest in the partnership—the details prescribed by section ^18 of this instrument:
 - (i) as otherwise applied by subsection (1) of this section; and
 - (ii) as evidenced accordingly.
- (3) Section ^14 (general rules) applies in relation to prescribed details under subsection (1) or (2) in the same way as that section applies in relation to the corresponding details under Division 2.

Details of property

- (4) For the purposes of paragraph (a) of item 2 of the table in section 154 of the Act, personal property prescribed by section ^13 of this instrument is required or permitted to be described in a financing statement in the same way as collateral in which a security interest is (or is to be) granted is required or permitted to be described, in a financing statement, under Division 3 of this Part.

EXPOSURE DRAFT

Personal Property Securities Register **Part 4**
Registration: other prescribed matters **Division 4**

Note: Section 154 of the Act deals with the registration of certain personal property, prescribed by section ^13 of this instrument, in respect of which there is no security interest.

^26 Verification statements—publication as alternative [5.6]

For the purposes of subsection 158(1) of the Act, a prescribed way of publishing a single verification statement in relation to a number of registration events is:

- (a) on a website maintained by the Registrar; and
- (b) with any details of the date of birth of a grantor omitted from the statement.

EXPOSURE DRAFT

Part 4 Personal Property Securities Register

Division 5 Searching the register

Section ^27

Division 5—Searching the register

^27 Search—access to data prohibited [5.7]

- (1) For the purposes of paragraph 170(3)(d) of the Act, access to data on the register is prohibited if:
 - (a) a court has ordered that access to the data is not permitted; or
 - (b) the Registrar considers that it is in the public interest that access to the data should not be permitted.
- (2) For the purposes of considering whether access to the data should not be permitted under paragraph (1)(b), the Registrar must take into account the following matters:
 - (a) whether it is necessary not to permit access to the data to prevent or lessen a serious and imminent threat to the life or health of:
 - (i) any individual whose personal details are recorded in the relevant financing statement; or
 - (ii) another person;
 - (b) the interests of the person who has applied for access to the data;
 - (c) the interests of the secured party in ensuring that notice of the relevant security interest is accessible on the register;
 - (d) if the grantor is an individual—whether, in all the circumstances, the public interest in protecting the privacy of the grantor’s information outweighs the public interest in providing access to the data.

^28 Search—criteria [5.8]

For the purposes of subsection 171(2) of the Act, the way in which the results of a search are to be worked out must allow for case-insensitive searching.

^29 Search—access to third party data [5.8]

For the purposes of subsection 176C(1) of the Act, Austroads Ltd (ABN 16 245 787 323) is a prescribed person.

Note: Under subsection 176C(1) of the Act, a prescribed person becomes a *third party*. The Registrar may make an arrangement with a third party so that actions mentioned in that subsection, relating to data held by the third party, may be taken.

Division 6—Removal of data from the register

^30 Removal of data—property prescribed by section ^13 [5.4]

- (1) For the purposes of paragraph 184(1)(c) of the Act, the Registrar must remove data in any of the following from the register in the circumstances mentioned:
- (a) a registered financing statement or financing change statement for a vehicle mentioned in paragraph ^13(1)(a) of this instrument, unless the application for registration was made by:
 - (i) the Commissioner of the Australian Federal Police; or
 - (ii) the head (however described) of the police force or service of a State or Territory;
 - (b) a registered financing statement or financing change statement for personal property mentioned in paragraph ^13(1)(b) of this instrument, unless the application for registration was made by:
 - (i) an appropriate officer (within the meaning of the *Proceeds of Crime Act 1987*); or
 - (ii) an authorised officer (within the meaning of the *Proceeds of Crime Act 2002*); or
 - (iii) an authorised person (however described) under a law of a State or Territory that is a corresponding law within the meaning of the *Proceeds of Crime Act 2002*, whose duties correspond to the duties of an authorised officer under that Act;
 - (c) a registered financing statement or financing change statement for personal property that is subject to an order of a court or tribunal (however described) mentioned in paragraph ^13(1)(c) of this instrument, unless the application for registration was made by:
 - (i) the person who applied for the order; or
 - (ii) if the order was made at the initiative of the court or tribunal—the person in whose favour the order was made;
 - (d) a registered financing statement or financing change statement for any personal property mentioned in paragraph ^13(1)(d) of this instrument, unless the application for registration was made by:
 - (i) a person authorised to register such property on a transitional register; or
 - (ii) a person authorised by an agency covered by subsection (2) to register data in relation to such property.
- (2) This subsection covers an agency that, at the time of the application mentioned in paragraph (1)(d), administered:
- (a) a law of the Commonwealth, a State or a Territory under which a transitional register was established; or
 - (b) any other law of the Commonwealth, a State or a Territory that provided for registration of personal property on a transitional register.

EXPOSURE DRAFT

Part 5 Relationship between Australian laws

Section ^31

Part 5—Relationship between Australian laws

^31 Concurrent operation of provisions of the *Corporations Act 2001*— resolution of inconsistency [7.1]

For the purposes of subsection 255(1) of the Act, paragraph 32(1)(a) of the Act does not apply to the following:

- (a) a transfer or cancellation of securities provided by a compromise or arrangement under Part 5.1 of the *Corporations Act 2001*;
- (b) a transfer of shares in a company, under section 444GA of the *Corporations Act 2001*, by the administrator of a deed of company arrangement;
- (c) a transfer or cancellation of interests in a registered managed investment scheme provided by a resolution under section 601GC of the *Corporations Act 2001*;
- (d) a compulsory acquisition of securities under Part 6A.1 or 6A.2 of the *Corporations Act 2001*.

EXPOSURE DRAFT

Transitional arrangements **Part 6**
Transitional arrangements for the commencement of this instrument **Division 1**

Part 6—Transitional arrangements

Division 1—Transitional arrangements for the commencement of this instrument

[Drafting note: Transitional provisions relating to the repeal of the existing Personal Property Securities Regulations 2010 and the making of the Personal Property Securities Regulations 2023 are to be included here.]

EXPOSURE DRAFT

Schedule 1 Repeals

Schedule 1—Repeals

Personal Property Securities Regulations 2010

1 The whole of the instrument

Repeal the instrument.