

# Index of recommendations made by the Whittaker Review and the Government's response

## About this index

This index includes the Government's response to all 394 recommendations made by the Whittaker Review. The index is broken down by the chapters of the Whittaker Review.

The Government has accepted 345 recommendations, including recommendations that have been partially accepted. The Government has rejected 29 recommendations and rejected but clarified nine recommendations.

The Government has accepted to consider and consult on 19 recommendations and is seeking further views on 16 of these recommendations before settling on a finalised position.

For recommendations that have been accepted or where clarifications have been made, the index provides the references to the relevant section in the Amendment Bill and proposed new PPS Regulations.

For recommendations that have been rejected, the index provides an explanation of why that recommendation was rejected.

## Contents

Chapter 4: Recommendations 1 to 50	Page 2
Chapter 5: Recommendations 51 to 84	Page 8
Chapter 6: Recommendations 85 to 167	Page 13
Chapter 7: Recommendations 168 to 273	Page 24
Chapter 8: Recommendations 274 to 335	Page 37
Chapter 9: Recommendations 336 to 385	Page 45
Chapter 10: Recommendations 386 to 394	Page 51

## Chapter 4: Recommendations 1 to 50

Rec No.	Recommendation	Response	Category	Status
1.	That the Act not be repealed, but rather that it be amended to enable it to better achieve its potential.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
2.	That the definition of “interest” in s 10 of the Act be deleted.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 1</b> Item 4 – Section 10
3.	That s 12(2) be retained.	<b>Accept in part</b>	<b>Technical Amendment</b>	<b>Act – Schedule 1</b> Item 7 – Subsection 12(2) Information regarding examples of transactions that give rise to a security interest has been included in the EM – Schedule 1, Item 7.
4.	That s 12(2)(d) be amended to read: “(d) an agreement to sell subject to retention of title;”.	<b>Accept in part</b>	<b>Technical Amendment</b>	<b>Act – Schedule 1</b> Item 6 – Subsection 12(1) (note) Item 7 – Subsection 12(2) Item 8 – Subsection 12(5) Item 9 – Section 12A  Items 6-8 amend section 12 to provide a high-level definition of security interest, while item 9 (section 12A) provides specific exceptions. Information regarding examples of transactions that give rise to a security interest has been included in the EM – Schedule 1, Item 7.
5.	That s 12(2)(g) be retained.	<b>Accept in part</b>	<b>Technical Amendment</b>	<b>Act – Schedule 1</b> Item 6 – Subsection 12(1) (note) Item 7 – Subsection 12(2) Item 8 – Subsection 12(5) Item 9 – Section 12A  Items 6-8 amend section 12 to provide a high-level definition of security interest, while item 9 (section 12A) provides specific exceptions. Information regarding examples of transactions that give rise to a security interest has been included in the EM – Schedule 1, Item 7.

Rec No.	Recommendation	Response	Category	Status
6.	That section 12(2)(j) be amended to read: “(j) a transfer of an account;”.	<b>Accept in part</b>	<b>Technical Amendment</b>	<b>Act – Schedule 1</b> Item 6 – Subsection 12(1) (note) Item 7 – Subsection 12(2) Item 8 – Subsection 12(5) Item 9 – Section 12A  Items 6-8 amend section 12 to provide a high-level definition of security interest, while item 9 (section 12A) provides specific exceptions. Information regarding examples of transactions that give rise to a security interest has been included in the EM – Schedule 1, Item 7.
7.	That s 12(2)(k) be deleted.	<b>Accept in part</b>	<b>Technical Amendment</b>	Act – Schedule 1 Item 7 – Subsection 12(2)
8.	That s 12(2)(l) be deleted.	<b>Accept in part</b>	<b>Technical Amendment</b>	Act – Schedule 1 Item 7 – Subsection 12(2)
9.	That s 12(3)(a), which provides that a transfer of an account can be a security interest whether or not it in substance secures payment or performance of an obligation, be retained.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
10.	That the definition of “account” in s 10 of the Act be amended to clarify: <ul style="list-style-type: none"> <li>that it is limited to monetary obligations of the types that commercially would be described as being the transferor’s “trade receivables” or “book debts”; and</li> <li>that it does not capture corporate loans.</li> </ul>	<b>Reject</b>	<b>No Legislative Amendment Required</b>	Due to the intersections with circulating asset provisions, there is a need to further consider and test through stakeholder feedback. The current definition of “account” will be retained at this stage.
11.	That Government separately consider, in consultation with the States and Territories, whether the concept of an “account” under the Act should be expanded to include monetary obligations generally.	<b>Accept to consider / consult</b>	<b>No Legislative Amendment Required</b>	The department is seeking state and territory input in relation to this recommendation. Please refer to part 4 of the discussion paper for further information.
12.	That the Act not be amended to provide that s 12(3)(a) does not apply to an outright legal transfer of an account.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
13.	That the Act be amended to confirm that a novation of an account is not a “transfer” for the purposes of s 12(3)(a) of the Act, unless it is clear that a corporate loan obligation is not an “account”.	<b>Reject</b>	<b>No Legislative Amendment Required</b>	Due to intersections with recommendation 10, this recommendation will not be progressed at this time.
14.	That the Act not be amended to clarify whether a declaration of trust can be a “transfer” for the purposes of the Act.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>

Rec No.	Recommendation	Response	Category	Status
15.	That the definition of “chattel paper” in section 10, and all references in the Act to chattel paper (including s 71), be deleted.	Accept	Technical Amendment	Act – Schedule 1 Item 28 – Section 10
16.	That s 12(3)(b) be retained.	Accept	Status Quo	N/A
17.	That paragraph (e) of the definition of “commercial consignment” in s 10 of the Act be amended to read: (e) a consignee for sale, lease or other disposal if the consignee is or should reasonably be generally known to be selling or leasing goods of others.	Accept in part	Technical Amendment	Act – Schedule 1 Item 3 – Section 10 – definition of <i>commercial consignment</i>
18.	That s 12(3)(c) be retained, so that the Act will continue to apply to some types of longer-term leases, whether or not they operate in substance as security for payment or performance of an obligation.	Accept in part	Technical Amendment	Act – Schedule 1 Item 6 – Subsection 12(1) (note) Item 7 – Subsection 12(2) Item 8 – Subsection 12(5) Item 9 – Section 12A  Items 6-8 amend section 12 to provide a high-level definition of security interest, while item 9 (section 12A) provides specific exceptions. Information regarding examples of transactions that give rise to a security interest has been included in the EM – Schedule 1, Item 7.
19.	That paragraph (1)(e) of the definition of “PPS lease” in s 13 of the Act be deleted.	Dealt with in 2017	Dealt with in 2017	N/A
20.	That the definition of PPS lease in s 13 be amended to remove all references to “bailments”.	Accept	Technical Amendment	Act – Schedule 1 Item 13 – Subsection 13(3)
21.	That: • s 13(1)(b) of the Act be deleted; and • the words “for an indefinite term or” be inserted at the start of s 13(1)(d).	Dealt with in 2017	Dealt with in 2017	N/A
22.	That references in s 13 of the Act to “one year” not be changed.	Dealt with in 2017	Dealt with in 2017	N/A
23.	That the Act not be amended to provide that a lease is not a PPS lease if it ends within one year.	Dealt with in 2017	Dealt with in 2017	N/A
24.	That s 13(2)(a) not be amended to insert “of that kind” after the phrase “regularly engaged in leasing goods”.	Accept	Status Quo	N/A
25.	That the Act not be amended to include a definition of “property”.	Accept	Status Quo	N/A
26.	That the definition of “personal property” in s 10 be amended by deleting the language “(including a licence)”.	Reject	No Legislative Amendment Required	State and territory consultations indicated a preference to maintain the reference to licence to ensure consistency with current state and territory legislation.

Rec No.	Recommendation	Response	Category	Status
27.	That the first 4 lines of the definition of “licence” in s 10 be amended to read: “Licence means either of the following (whether or not the right, entitlement, authority or licence is exclusive), if it is personal property:”.	<b>Reject</b>	<b>No Legislative Amendment Required</b>	State and territory consultations indicated a preference to maintain the current definition of licence.
28.	That the definition of “land” in s 10 be deleted.	<b>Reject</b>	<b>No Legislative Amendment Required</b>	State and territory consultations indicated a preference to maintain the current definition.
29.	That the definition of “crops” in s 10 not be amended to clarify when it may include trees.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
30.	That Government ask the States and Territories to consider enacting legislation that clarifies the circumstances in which “trees” can be “crops”.	<b>Accept to consider / consult</b>	<b>No Legislative Amendment Required</b>	The department is seeking state and territory input in relation to this recommendation. Please refer to part 4 of the discussion paper for further information.
31.	That Government ask the States and Territories to agree that the Act be amended to delete the provisions that allow statutory rights to be removed from the reach of the Act.	<b>Accept to consider / consult</b>	<b>No Legislative Amendment Required</b>	The department is seeking state and territory input in relation to this recommendation. Please refer to part 4 of the discussion paper for further information.
32.	That s 8(1) be split into two provisions: one listing interests that are not “security interests” for the purposes of the Act, and the other listing interests that are not “personal property” for the purposes of the Act.	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 1</b> Item 2 – Section 8 repealed Item 9 – Section 12A Item 10 – Section 13A
33.	That s 8(1)(e) of the Act not be amended.	<b>Accept</b>	<b>Status Quo</b>	<b>Act – Schedule 1</b> Item 9 – Paragraph 12A(1)(n)
34.	That Government consult further with appropriate experts in real property law to determine whether s 8(1)(f)(ii) of the Act can be recast more simply, and so that it neither overlaps with relevant real property law, nor allows for gaps between the Act and that law.	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 1</b> Item 10 – Paragraph 13B(1)(c)
35.	That the language “(including a successive transfer)” be deleted from s 8(1) (f)(iii).	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 1</b> Item 2 – section 8 Item 9 – After section 12, paragraph 12A(1)(g)
36.	That s 8(1)(f)(iv) be deleted.	<b>Reject</b>	<b>No Legislative Amendment Required</b>	Due to intersections with other policy considerations, the existing exclusion regarding transfers of remuneration will be retained.

Rec No.	Recommendation	Response	Category	Status
37.	That s 8(1)(f)(v) be limited in its application to transfers of interests in policies of life insurance that are registrable under ss 200 and 201 of the <i>Life Insurance Act 1995</i> .	<b>Reject</b>	<b>No Legislative Amendment Required</b>	Due to intersections with other policy considerations, the existing exclusion regarding transfers of an interest by way of contract of annuity or policy of insurance will be retained.
38.	That Government consider further whether transfers by way of security of interests in life insurance policies could also be brought within the Act.	<b>Accept to consider / consult</b>	<b>No Legislative Amendment Required</b>	The department is seeking stakeholder input in relation to this recommendation. Please refer to part 4 of the discussion paper for further information.
39.	That ss 8(1)(f)(vii), 8(1)(f)(viii) and 8(4) be deleted.	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 1</b> Item 2 – Section 8 repealed
40.	That Government explore with the States and Territories whether ss 8(1)(i) and 8(5) could be amended so that water rights are only excluded from the Act if they are able to be recorded under a statutory registration scheme that complies with the expectations set out in the 2005 Intergovernmental Agreement on a National Water Initiative.	<b>Accept to consider / consult</b>	<b>No Legislative Amendment Required</b>	The department is seeking state and territory input in relation to this recommendation. Please refer to part 4 of the discussion paper for further information.
41.	That the definition of “fixture” in s 10 be deleted.	<b>Redundant</b>	<b>No Legislative Amendment Required</b>	This recommendation is no longer relevant because it has been superseded by case law.
42.	That Government explore with the States and Territories whether a regime can be developed, potentially along the lines of the principles applied in the Canadian PPSAs, that would allow fixtures to be brought within the Act.	<b>Accept to consider / consult</b>	<b>No Legislative Amendment Required</b>	The department is seeking state and territory input in relation to this recommendation. Please refer to part 4 of the discussion paper for further information.
43.	That ss 8(1)(a) and (b) be deleted, and that s 109 be amended to provide that Chapter 4 does not apply to security interests of the type described in s 8(6).	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 1</b> Item 2 – Section 8 repealed Item 9 – Section 12A <b>Act – Schedule 4</b> Item 1 – Subsection 109(5)  The department understands that the reference to paragraphs 8(1)(a) and (b) is an error, and is supposed to refer to paragraphs 8(1)(ja) and subsection 8(6).
44.	That s 8(1)(jb) be deleted.	<b>Reject</b>	<b>No Legislative Amendment Required</b>	Due to intersections with other policy considerations, the existing exclusion regarding interests held in superannuation will be retained.

Rec No.	Recommendation	Response	Category	Status
45.	That the Act not be amended to exclude or otherwise modify the rules for a lease of fit-out or other goods as part of a lease of real property, beyond what is already provided in s 13(2)(c).	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
46.	That the Act not be amended to exclude turnover trusts.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
47.	That the Act not be amended to clarify whether the making of a deposit under an agreement for the sale of property will give rise to a security interest.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
48.	That the Act not be amended at this time to clarify whether securities lending arrangements are subject to the Act.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
49.	That Government consider further, in consultation with industry, whether (and if so, how) securities lending arrangements, and potentially other similar arrangements, should be excluded from the Act.	<b>Accept to consider / consult</b>	<b>No Legislative Amendment Required</b>	The department is seeking stakeholder input in relation to this recommendation. Please refer to part 4 of the discussion paper for further information.
50.	That the Act not be amended to provide that it does not apply to transactions or property below minimum thresholds.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>

## Chapter 5: Recommendations 51 to 84

Rec No.	Recommendation	Response	Category	Status
51.	That Government: <ul style="list-style-type: none"> <li>• provide stakeholders with an opportunity to present further arguments in support of the competing models that have been proposed to explain the reach of the concept of “rights in the collateral” in s 19(2)(a), including by allowing proponents of the “possession” model to complete a corresponding version of the table that is attached to this report as Annexure C;</li> <li>• decide on the basis of the discussion in this report and that further input, which of those two models it prefers; and</li> <li>• include an explanation of the preferred model in the Explanatory Memorandum for the legislation that amends the Act to implement other recommendations in this report.</li> </ul>	<b>Accept in part</b>	<b>No Legislative Amendment Required</b>	<b>Schedule 3 – Explanatory Memorandum – Paragraph 105</b>
52.	That s 19(5) be amended to clarify that it applies to all security interests that arise in circumstances where the secured party has title to the collateral as a matter of general law.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 2</b> Item 9 – Subsections 19(5) and (6)
53.	That s 19(2)(a) be amended to read: “(a) the grantor has rights in the collateral; and”.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 2</b> Item 8 – Subsection 19(2)(a)
54.	That s 19 not be amended to state that a security interest can only arise under a security agreement.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
55.	That ss 18(2) and (4) be retained.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
56.	That s 18(4) be amended to read: “(4) A security interest may secure payment or other obligations that are incurred after the security interest is granted.”	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 2</b> Item 7 – Subsection 18(4)



Rec No.	Recommendation	Response	Category	Status
57.	That s 20(2) be recast along these lines: “(2) (a) A security agreement covers collateral in accordance with this subsection if the items described in paragraph (b) are evidenced by writing that is: (i) signed by the grantor (see subsection (3)); or (ii) adopted or accepted by the grantor by an act, or omission, that reasonably appears to be done with the intention of adopting or accepting the writing. (b) The items referred to in paragraph (a) are: (i) the security interest that is provided for by the security agreement; and (ii) a description of the collateral that is sufficient to enable it to be identified.”	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 2</b> Item 11 – Subsection 20(2) Item 6 – Section 15, section 15A
58.	That ss 20(4) and (5) be deleted.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 2</b> Item 13 – Subsections 20(4) and (5)
59.	That s 20(2) be amended to make it clear that the requirements in the section need only be satisfied with the original grantor of a security interest over collateral, and not with a person who subsequently becomes the grantor as the result of the collateral being transferred to it.	<b>Reject</b>	<b>No Legislative Amendment Required</b>	This recommendation is not proposed to be pursued as it was considered that there is sufficient clarity in the current provisions.
60.	That the language “(other than possession as a result of seizure or repossession)” in s 21(2)(b) be retained.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
61.	That the language “(other than as a result of seizure or repossession)” be inserted after “the collateral” in s 20(1)(b)(i).	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 2</b> Item 10 – Subparagraph 20(1)(b)(i)
62.	That s 24(6) be amended to clarify that it only applies to a security interest over a registrable investment instrument.	<b>Accept in part</b>	<b>Technical Amendment</b>	<b>Act – Schedule 2</b> Item 19 – Subsections 24(4) to (6) Item 20 – Section 27
63.	That the Act retain the concept of an intermediated security.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>

Rec No.	Recommendation	Response	Category	Status
64.	That Government explore, in consultation with experts in the financial investments industry, how the mechanisms for perfecting by control over an intermediated security can be structured to better achieve the publicity objective of perfection, such as by ensuring that a secured party will only be perfected by control if it is able to ensure that the intermediated security cannot be dealt with without its consent.	Accept	Significant Amendment	Act – Schedule 2 Item 20 – Sections 26 to 29
65.	That Government explore, in consultation with experts in the financial investments industry, whether and if so how the concept of an intermediated security can be simplified.	Accept	Significant Amendment	Act – Schedule 2 Item 6 – Section 15
66.	That the Act be amended to make it clear that an intermediary can perfect a security interest by control over intermediated securities held with it.	Accept	Significant Amendment	Act – Schedule 2 Item 20 – Section 26
67.	That the Act be amended so that shares or other securities listed on the Australian Stock Exchange and held through the CHES system are investment instruments, rather than intermediated securities.	Accept	Significant Amendment	Act – Schedule 2 Item 5 – Section 10 (definition of <i>investment instrument</i> ) Item 6 – Section 15
68.	That Government explore, in consultation with experts in the financial investments industry, whether the Act should be amended to allow a secured party to perfect by control over cash that is held through an intermediary in the same way as it can perfect by control over other financial assets.	Accept	Significant Amendment	Act – Schedule 2 Item 3 – Section 10 – definition of <i>financial product</i>
69.	That Government explore, in consultation with experts in the financial investments industry, whether the definition of “investment instrument” in s 10 could be simplified, for example along the same lines as paragraph (b) of the definition of “financial product” in s 10 of the Act.	Accept	Significant Amendment	Act – Schedule 2 Item 5 – Section 10 – definition of <i>investment instrument</i>

Rec No.	Recommendation	Response	Category	Status
70.	That Government explore, in consultation with experts in the financial investments industry, how the mechanisms for perfecting by control over an investment instrument can be structured to better achieve the publicity objective of perfection, such as by ensuring that a secured party will only have control if it is able to ensure that the investment instrument cannot be dealt with without its consent.	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 2</b> Item 20 – Sections 26 to 29
71.	That Government explore, in consultation with experts in the financial investments industry, how to make the mechanisms for perfection by control in ss 26 and 27 as consistent as is possible.	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 2</b> Item 20 – Sections 26 to 29
72.	That the term “ADI account” be replaced with a more generic term such as “bank account”, and that the definition of the term in s 10 be expanded to include accounts that are held with other financial institutions, for example if they are subject to a corresponding regulatory framework in another country.	<b>Accept in part</b>	<b>Technical Amendment</b>	<b>Act – Schedule 2</b> Item 1 – Section 10 – definition of <i>ADI</i>
73.	That the Act not be amended to allow a secured party other than the ADI itself to perfect by control over an ADI account.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
74.	That a security interest held by an ADI in an ADI account with it continue to be automatically perfected by control.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
75.	That Government explore, in consultation with experts in the law of negotiable instruments, whether ss 21(2)(c)(iv) and 29 are meaningful, or should be deleted.	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 2</b> Item 14 – Subparagraphs 21(2)(c)(iii) Item 15 – Subparagraphs 21(2)(c)(iv), (v) and (vi) Item 20 – Sections 26 to 29
76.	That Government explore, in consultation with experts in the law and practice of letters of credit, whether ss 21(2)(c)(v) and 28 are appropriate, or whether they should be deleted.	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 2</b> Item 14 – Subparagraphs 21(2)(c)(iii) Item 15 – Subparagraphs 21(2)(c)(iv), (v) and (vi)
77.	That s 21(2)(c)(vi) be deleted.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 2</b> Item 14 – Subparagraphs 21(2)(c)(iii) Item 15 – Subparagraphs 21(2)(c)(iv), (v) and (vi)

Rec No.	Recommendation	Response	Category	Status
78.	That the Act not be amended to enable a person with a security interest over a performance bond or bank guarantee to perfect the security interest by control.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
79.	That the references in ss 22(4), 33(2), 34(1), 35(2), 36(2), 38(3), 39(3)(b)(ii) and 40(3)(b)(ii) to “5 business days” be replaced with “10 business days”.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 2</b> Item 21 – Section 30 Item 22 – Subsection 33(2) Item 24 – Subparagraphs 34(1)(c)(i) and (ii) Item 27 - Subsection 35(2) Item 30 – Subsection 36(2) <b>Act – Schedule 3</b> Item 27 – Sections 37 and 38 <b>Act – Schedule 7</b> Item 4 – Sections 39 and 40
80.	That the references in ss 39(3)(b)(i) and 40(3)(b)(i) to “56 days” be replaced with “60 days”.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 7</b> Item 4 – Subparagraphs 39(3)(b)(i) and 40(3)(b)(i)
81.	That ss 22, 39 and 40 be amended to provide that temporary perfection simply expires at the end of the period provided for in the section.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 2</b> Item 16 – Paragraph 22(2)(b) Item 17 – Subsection 22(3) and (4)
82.	That the Act not be amended to enable a transferee of an account or chattel paper to perfect its security interest by giving notice of the transfer to the obligor, or by taking other steps that would require the obligor to make payments to the transferee (or someone on its behalf).	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
83.	That s 56 be amended to reflect the language of s 23(1) of the Saskatchewan PPSA, but in a way that still permits a security interest to be continuously perfected by a series of financing statements.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 2</b> Item 32 – Section 56
84.	That the Act not be amended to include a provision of the type found in s 35(7) of the Saskatchewan PPSA.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>

## Chapter 6: Recommendations 85 to 167

Rec No.	Recommendation	Response	Category	Status
85.	That the layout of the Register, and the order and manner in which it asks questions of a registrant or a searcher, be reviewed in order to make the Register as simple and easy to use as possible, particularly from the perspective of an unsophisticated user.	<b>Accept</b>	<b>No Legislative Amendment Required</b>	<b>N/A</b>
86.	That the Act be amended so that: <ul style="list-style-type: none"> <li>• a registration does not need to indicate whether the collateral is consumer property or commercial property;</li> <li>• all registrations against individuals, or against serial-numbered property that may not identify the grantor because the grantor is an individual, must have a maximum term of 7 years; and</li> <li>• a registration that is made against only serial-numbered property and that identifies the serial number may not identify the grantor, if the grantor is an individual.</li> </ul>	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 5</b> Item 23 – Section 153
87.	That the definitions of “consumer property” and “commercial property” in s 10 of the Act be deleted.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 5</b> Item 6 – Section 10
88.	That item 1 of the table in clause 4.1 of Schedule 1 to the Regulations be deleted.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 5</b> Item 23 – Section 153 – <i>Item 4 of table – The collateral and proceeds Regulations</i> Sections 14, 20 (4)-(5) and 24
89.	That item 2 of the table in clause 4.1 of Schedule 1 to the Regulations be deleted.	<b>Accept in part</b>	<b>Significant Amendment</b>	<b>Regulations</b> Section 24
90.	That item 6 of the table in s 153(1) be deleted.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 5</b> Item 23 – Section 153
91.	If item 7 of the table in s 153(1) is retained, that it be made clear that a registration that does not tick the PMSI box can nonetheless perfect a PMSI, but on the basis that the PMSI cannot benefit from the super-priority afforded by s 62.	<b>Redundant</b>	<b>No Legislative Amendment Required</b>	This recommendation relates to recommendation 241, which recommends that item 7 of the table in section 153(1) be deleted. That recommendation has been accepted and item 7 removed.
92.	That item 4(c) of the table in s 153(1) and the functionality of the Register be amended to enable a registration to be made against a number of collateral classes at the same time, using a common free text field.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 5</b> Item 23 – Section 153 – <i>Item 4 – The collateral and proceeds Regulations</i> Subsection 20(3)

Rec No.	Recommendation	Response	Category	Status
93.	That the collateral classes on the Register be changed to the following 6 classes: <ul style="list-style-type: none"> <li>• serial-numbered property (with appropriate sub-classes for the different types of serial-numbered property);</li> <li>• other goods;</li> <li>• accounts;</li> <li>• other intangible property;</li> <li>• all present and after-acquired property;</li> <li>• all present and after-acquired property except.</li> </ul>	Accept	Significant Amendment	Regulations Section 20
94.	That the Act be amended to make it clear that a registration that contains text that describes collateral is only effective to perfect a security interest in the collateral that is so described.	Accept	Technical Amendment	Act – Schedule 5 Item 33 – Subsection 163(1A)
95.	That the Act not be amended to oblige a registrant to include details of collateral in the free text field as a condition to making it an effective registration.	Accept in part	Significant Amendment	Act – Schedule 5 Item 23 – Section 153 – <i>Item 4 of table – The collateral and proceeds</i> Regulations Sections 21 and 22
96.	That the Act not be amended to prohibit the practice of registering a financing statement against the “allpap except” collateral class, and then describing the “except” so that the registration operates in effect to perfect a security interest over “all present and after-acquired property except property that the secured party does not have a security interest over”.	Accept	Status Quo	N/A
97.	That the Register functionality not be amended to activate the free text field for a registration against the collateral class “allpaap”.	Accept	Status Quo	N/A
98.	That item 4(d) of the table in s 153(1), and clause 2.4 of Schedule 1 to the Regulations, be deleted.	Reject	No Legislative Amendment Required	It is considered important that registrants continue to identify and describe proceeds.
99.	That clause 2.2 of Schedule 1 to the Regulations not be amended.	Accept in part	Significant Amendment	Regulations Section 21
100.	That the table in s 153(1) be amended to provide that a registration against serial-numbered property have the same registration period as for any other collateral, for the relevant type of grantor.	Accept	Significant Amendment	Act – Schedule 5 Item 23 – Section 153 – <i>Item 5 of table – The end time for registration</i>

Rec No.	Recommendation	Response	Category	Status
101.	That Government explore whether the current definition of “motor vehicle” in reg 1.7 of the Regulations could be amended so that a vehicle is a motor vehicle (and is only a motor vehicle) for the purposes of the Act and the Regulations if it has a vehicle identification number.	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 3</b> Item 8 – Section 10 – definitions of <i>vehicle</i> and <i>vehicle identification number</i>
102.	That the Regulations be amended to clarify that a registration made against the collateral class “motor vehicle” before 1 July 2014 will continue to be effective to perfect a security interest taken under a security agreement entered into before 1 July 2014 in a “motor vehicle” within the meaning of that term that applied under the Act before 1 July 2014, despite commencement of the Personal Property Securities (Motor Vehicles) Regulation 2014.	<b>Accept</b>	<b>Technical Amendment</b>	<i>This will be the subject of a specific transitional provision</i>
103.	That item 2.2(1) of Schedule 1 to the Regulations be amended so that a registration to perfect a security interest over aircraft may include the aircraft’s serial number, but is not required to.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Regulations</b> Section 21 – <i>Item 1 of table – Aircraft</i>
104.	That Government consider whether clause 2.2(3)(d) of Schedule 1 to the Regulations should be amended to provide that the serial number for a watercraft that does not have an official number is its International Maritime Organisation (IMO) number, if it has one.	<b>Accept to consider / consult</b>	<b>No Legislative Amendment Required</b>	The department is seeking stakeholder input in relation to this recommendation. Please refer to part 4 of the discussion paper for further information.
105.	That items 2.2(1)(a)(ii)(E) and (c)(iii)(E) of Schedule 1 to the Regulations not be deleted.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
106.	That the Act and the Regulations not be amended to allow a secured party to permanently perfect a security interest over a patent by registering against its patent application number.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
107.	That item 2 of the table in clause 1.2 of Schedule 1 to the Regulations be deleted.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Regulations</b> Section 16
108.	That items 3 to 8 of the table in clause 1.2 of Schedule 1 to the Regulations not be amended.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>

Rec No.	Recommendation	Response	Category	Status
109.	That item 5 of the table in clause 1.3 of Schedule 1 to the Regulations be amended to provide that the identifying details for a body corporate that is not captured by any of items 1 to 4 of the table be its name under the law under which it is incorporated.	Accept	Technical Amendment	Regulations Section 17
110.	That the Regulations be amended so that a registration to perfect a security interest over trust assets should be made against the relevant details for the trustee, rather than the ABN or other identifying details for the trust.	Accept	Technical Amendment	Regulations Subsection 14(2)
111.	That a registration relating to assets of a trust not be required to include the name of the trust.	Accept	Status Quo	N/A
112.	If the Regulations continue to require that registrations be made against a trust's ABN, that clause 1.5(1)(b) of Schedule 1 to the Regulations be amended to make it clear that it applies "to any trustee of a trust that is not a body corporate".	Redundant	No Legislative Amendment Required	This recommendation is included as an alternative outcome to recommendation 110. That recommendation has been accepted, and this recommendation is therefore redundant.
113.	That Government consider whether a registration should be able to be made against a scheme's ARSN if the security interest is granted by the scheme custodian, rather than the responsible entity.	Accept	Technical Amendment	Regulations Section 17 – <i>Item 1 of table</i>
114.	That the current distinction drawn in clause 1.4 of Schedule 1 to the Regulations, between the assets of a partnership and a partner's net interest in the partnership, be maintained and clarified.	Accept	Technical Amendment	Regulations Section 18
115.	That the Regulations be amended to provide that a registration to perfect a security interest over assets of a partnership be made against the following grantor details; <ul style="list-style-type: none"> <li>the partnership's ABN, if it has one;</li> <li>failing that, the partnership's registered name in its place of establishment;</li> <li>if the partnership has no registered name in its place of establishment, the name of the partnership and the name of at least one of the partners; and</li> <li>if the partnership has no name, the names of all partners.</li> </ul>	Accept	Technical Amendment	Regulations Section 18 - <i>Table</i>



Rec No.	Recommendation	Response	Category	Status
116.	That it be made clear that a registration against multiple grantors is only effective to perfect a security interest that is granted by them jointly.	Accept	Technical Amendment	Act – Schedule 5 Item 23 – Section 153, item 2 of the table
117.	That the Register continue to use an exact-match methodology for searches.	Accept	Status Quo	N/A
118.	That the Regulations be amended to provide, in circumstances where a grantor’s or secured party’s name or other identification details would otherwise need to be entered on the Register in letters that are not accepted by the Register, that the registrant be able instead to use any reasonable transliteration of that name or other identifying details for the purposes of the registration.	Accept	Technical Amendment	Regulations Subsection 14(3)
119.	That paragraph (b) of the definition “secured party” in s 10 be deleted.	Accept	Technical Amendment	Act – Schedule 5 Item 1 – Section 10 – paragraph (b) of the definition of <i>secured part</i>
120.	That item 1(b) of the table in s 153(1) be amended to read: “(b) a person, nominated by the secured party before the financing statement is registered, who has authority to act on behalf of the secured party in matters relating to the registration.”	Accept	Technical Amendment	Act – Schedule 5 Item 23 – Section 153 – <i>Item 1 of table</i>
121.	That the Registrar be asked to explore whether the “Secured Party Group” functionality on the Register could be altered to allow the identity of secured parties in a Secured Party Group to be changed, but that this not be pursued if there are material impediments to doing so.	Accept to consider / consult	No Legislative Amendment Required	Further consideration has been undertaken by AFSA and it is considered that no further change is necessary as existing functionality can be utilised and there is a risk that new functionality would create confusion for users.
122.	That the expression “GONI” on the Register be replaced with a term that more clearly indicates its purpose, such as: “secured party’s internal reference number”.	Reject	No Legislative Amendment Required	The ‘Giving of Notice Identifier’ (GONI) is considered to be sufficiently clear.
123.	That the Act not be amended to impose a maximum registration period of 7 years for all registrations.	Accept in part	Significant Amendment	Act – Schedule 5 Item 23 – Section 153 – <i>Item 5 of table – The end time for registration</i>
124.	That s 153(1) be amended to clarify that data entered on the Register will be a financing statement if the data populates the fields referred to in the table in that section, whether or not the data as so entered is accurate.	Accept	Technical Amendment	Act – Schedule 5 Item 23 – Section 153 Item 25 – Section 154

Rec No.	Recommendation	Response	Category	Status
125.	That ss 164(1)(a) and (b) be amended to read: “(a) a defect mentioned in section 165; or (b) any other defect in any data relating to the registration, other than a defect of a kind prescribed by the regulations, if the defect is seriously misleading.”	Accept	Technical Amendment	Act – Schedule 5 Item 36 – Paragraphs 164(1)(a) and (b)
126.	That the Act not be amended to include a definition of “seriously misleading”.	Accept	Status Quo	N/A
127.	That s 165(c) be deleted.	Accept	Significant Amendment	Act – Schedule 5 Item 38 – Paragraph 165(c)
128.	That s 151(1) be retained, and that the Act not be amended to require a registrant to obtain a person’s consent before registering a financing statement against the person or their property.	Accept	Status Quo	N/A
129.	That s 151(1) be amended to provide that a person may register a financing statement if the person believes on reasonable grounds that the person described in the statement as the secured party is or may be, or may become, a secured party in relation to the collateral.	Accept	Technical Amendment	Act – Schedule 5 Item 21 – Subsection 151(1)
130.	That s 151(1) be amended to provide that a registrant must include a further description of the collateral in the free text field, using the information that is reasonably available to the registrant at the time the registration is made, but that the section not specify the level of detail that the further description needs to satisfy.	Reject but clarify	Significant Amendment	Act – Schedule 5 Item 23 – Section 153 (item 4 of the table)
131.	That ss 151(2) and (3) not be repealed or amended.	Accept	Status Quo	N/A

Rec No.	Recommendation	Response	Category	Status
132.	That s 167 be amended so that: <ul style="list-style-type: none"> <li>it applies (and applies only) to registrations against individuals (or to registrations against serial-numbered property that do not include the grantor's details because the grantor is an individual); and</li> <li>it only requires the secured party to remove a registration from the Register within 5 business days after it becomes aware, or should reasonably have become aware, that it no longer has any security interest over any collateral that is perfected because of the registration.</li> </ul>	Accept	Technical Amendment	Act – Schedule 5 Item 42 – Section 167 – Individual grantors – secured party required to end registration if security interest ends
133.	That s 178(1) be amended to allow an amendment demand to be made by a person who is identified as the grantor in the registration, or was otherwise the grantor of the security interest to which the registration related.	Accept	Technical Amendment	Act – Schedule 5 Item 43 – Part 5.6
134.	That s 178(1) be amended to accommodate the fact that a registration may perfect a security interest that does not secure an obligation because it is deemed to be a security interest by s 12(3).	Accept	Technical Amendment	Act – Schedule 5 Item 43 – Part 5.6
135.	That the functionality of the Register allow a registration to be amended by removing a collateral class (if Recommendation 92 is adopted to allow a registration to be made against more than one collateral class), or by replacing a collateral class with a narrower one.	Accept	No Legislative Amendment Required	N/A
136.	That s 179(3) be deleted.	Accept	Technical Amendment	Act – Schedule 5 Item 43 – Part 5.6
137.	That reg 5.9(g) of the Regulations be deleted, and that the balance of reg 5.9 be simplified.	Accept	Technical Amendment	Act – Schedule 5 Item 43 – Section 181
138.	That it be made clear that a proceeding “comes before a court” for the purposes of s 179 when a party first files an originating process with the court.	Accept	Technical Amendment	Act – Schedule 5 Item 43 – Part 5.6
139.	That the amendment demand process in Part 5.6 of the Act be recast along the lines of the approach taken in New Zealand, under s 165 of the NZ PPSA.	Reject but clarify	Significant Amendment	Act – Schedule 5 Item 43 – Part 5.6 – Amendment demands

Rec No.	Recommendation	Response	Category	Status
140.	That the Act not be amended to prohibit a secured party from obliging its grantor not to make amendment demands.	Accept	Technical Amendment	Act – Schedule 5 Item 43 – Part 5.6 – Subsection 178(4)
141.	That no additional mechanisms need to be included in the Act to facilitate the removal of registrations.	Accept	Status Quo	N/A
142.	That no steps need to be taken at this time to expand the ways in which users can access the Register.	Accept	Status Quo	N/A
143.	That the Act not be amended to require a secured party to file a copy of its security agreement as part of its registration.	Accept	Status Quo	N/A
144.	That the Act not be amended to provide that a registration be required to specify a maximum amount secured.	Accept	Status Quo	N/A
145.	That the Act and the Regulations not be amended to provide that a security interest will only be continuously perfected by a series of registrations if those registrations are linked using the “Earlier Registration Number” field on the Register.	Accept	Status Quo	N/A
146.	That the Register be amended to allow multiple registration numbers to be entered in the “Earlier Registration Number” field on the Register.	Accept	No Legislative Amendment Required	N/A
147.	That the current structure of the Register as principally a grantor-based registration system be retained, and that the Act not be amended to allow one registration to perfect all security interests over an asset, regardless of the identity of the grantor.	Accept	Status Quo	N/A
148.	That the Act not be amended to provide for separate registers for security interests that arise from different types of transactions.	Accept	Status Quo	N/A
149.	That Government separately consider whether it wishes to facilitate the establishment of a register of construction and heavy industry machines.	Accept to consider / consult	No Legislative Amendment Required	The department is seeking stakeholder input in relation to this recommendation. Please refer to part 4 of the discussion paper for further information.
150.	That AFSA be asked to incorporate suggestions in the submissions that go to the supporting functionalities of the Register into its current planning processes, and to discuss them with AFSA’s consultative forums, as appropriate.	Accept	No Legislative Amendment Required	N/A

Rec No.	Recommendation	Response	Category	Status
151.	That Government consider separately whether it wishes to facilitate data analytics being undertaken on data in the Register.	Accept	No Legislative Amendment Required	N/A
152.	That s 157(1) be amended to require a secured party to give a notice of a verification statement to the grantor, where the grantor's details are not included in the registration, on the following basis: 1. If the secured party has already entered into the security agreement, it should give the notice to the grantor under the security agreement. 2. If the secured party has not yet entered into the security agreement with the grantor, it should give the notice to the person who it anticipates will be the grantor, and then re-issue the notice when the security agreement has been entered into, if the actual grantor is not the same person.	Accept	Technical Amendment	Act – Schedule 5 Item 27 – Subsection 157(1) Item 28 – Subsection 157(3) Item 29 – Subsection 157(4)
153.	That the Act be amended to provide Government with the power to make regulations that excuse a secured party from the obligation to give a notice of verification statement to the grantor in relation to events of the type listed in those regulations.	Reject	No Legislative Amendment Required	The notification requirements are important to ensure the grantor is aware of amendments to a registration.
154.	That the Act not be amended to exempt a secured party from the obligation to give a notice of verification statement just because it is part of a bulk transfer.	Accept in part	Technical Amendment	Act – Schedule 5 Item 30 – At the end of subsection 158(1)
155.	That s 157 not be amended to provide that a secured party need only give a notice of verification statement to a grantor in relation to commercial property if it agrees with the grantor that it will do so.	Accept	Status Quo	N/A
156.	That the Act not be amended to provide that a person should not be taken to have knowledge of the contents of the Register where the general law would hold otherwise.	Accept	Status Quo	N/A

Rec No.	Recommendation	Response	Category	Status
157.	That: <ul style="list-style-type: none"> <li>• s 160 be amended to provide that a financing statement (rather than a description of collateral) starts to be registered when data in the financing statement becomes available for search in the register; and</li> <li>• corresponding simplifications be made where possible to other sections of the Act.</li> </ul>	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 5</b> Item 32 – Section 160 Item 12 – Paragraph 33(1)(a) Item 22 – Paragraph 151(3)(a) Item 31 – Section 159 Item 34 – Subsection 163(1)
158.	That the Act not be amended to give courts a power to rectify ineffective registrations.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
159.	That s 186 be amended to make it clear that it applies only to data that was removed from the Register by the Registrar.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 5</b> Item 31 – Section 159 Item 46 – Subsection 184(3) (note) Item 47 – Section 186 (heading) Item 48 – Subsection 186(1) Item 49 – Section 188 (heading)
160.	That residual issues with registrations that were migrated from the ASIC charges register be addressed, if technically feasible, by: <ul style="list-style-type: none"> <li>• matching organisation names for grantors on the Register to ACNs in ASIC’s register; and</li> <li>• then processing a bulk data change to amend the relevant “deregistered grantor” registrations by replacing the organisation name with the matched ACN.</li> </ul>	<b>Accept</b>	<b>No Legislative Amendment Required</b>	<b>Act – Schedule 5</b> Item 50 – Section 188A
161.	That AFSA investigate identified instances of incorrect migrations from State or Territory registers and then develop and implement solutions, where appropriate, in consultation with its relevant consultative forums.	<b>Accept</b>	<b>No Legislative Amendment Required</b>	<b>N/A</b>
162.	That the Act be amended to empower the Registrar to amend migrated data on the Register as the Registrar considers necessary to correct errors arising from the migration process.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 5</b> Item 55 – After paragraph 191(l)
163.	That ss 150(3)(c) and (d) be deleted.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 5</b> Item 18 – Paragraphs 150(3)(c) and (d)

Rec No.	Recommendation	Response	Category	Status
164.	That the Act be amended to provide that the Registrar does not need to exercise procedural fairness when giving effect to a court order, and that the Registrar instead be able to seek further directions from the court as to the way in which the Registrar should give effect to the order.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 5</b> Item 45 – paragraph 184(1)(da)
165.	That s 195A be amended to confirm that the Registrar’s power to conduct investigations extends to investigations that are conducted for purposes that may include pursuing the enforcement of civil penalties.	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 6</b> Item 6 – Subsection 195A(4) (note)
166.	That: <ul style="list-style-type: none"> <li>the definition of “business day” in s 10 not be amended; and</li> <li>the Registrar be asked to maintain a “business day calendar” on the Registrar’s website.</li> </ul>	<b>Accept</b>	<b>No Legislative Amendment Required</b>	<b>Act – Schedule 5</b>
167.	That: <ul style="list-style-type: none"> <li>the Registrar be empowered to issue a notice to a secured party by publication on the Registrar’s website, if the Registrar has no other valid notice details for a secured party; and</li> <li>any notice period required by the Act in relation to such a notice be extended by an appropriate additional period.</li> </ul>	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 5</b> Item 58 – Section 287 Item 59 – Section 287 Item 60 – Subsection 287(2)

## Chapter 7: Recommendations 168 to 273

Rec No.	Recommendation	Response	Category	Status
168.	That the Act be amended to ensure that it uses consistent terminology when it refers to dealings in collateral, and if different terms are used to describe particular types of dealings, that it be made clear what the differences in meaning are as between those different terms.	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 3</b> Item 5 – Section 10 – definition of <i>dealing</i>
169.	That Government consider further whether the Act should continue to provide that a transfer of collateral subject to a security interest will cause the transferee to become the grantor of that security interest, or whether the Act should be amended to reflect the alternative approach taken under the Canadian PPSAs and the NZ PPSA.	<b>Accept to consider / consult</b>	<b>No Legislative Amendment Required</b>	The department is seeking stakeholder input in relation to this recommendation. Please refer to part 4 of the discussion paper for further information.
170.	That Government expand the further consultation process described in Recommendation 51 to include consideration of the extent to which the competing models described in that Recommendation will affect the position of a lessor of collateral that is subsequently subleased by the lessee to a sublessee.	<b>Accept</b>	<b>No Legislative Amendment Required</b>	<b>N/A</b>
171.	That Government expand the further consultation process described in Recommendation 51 to include consideration of the extent to which the competing models described in that Recommendation will affect a security interest over collateral that is leased by the grantor to a lessee, where the lessee subsequently becomes insolvent in a way that causes the grantor's interest in the leased goods to vest in the lessee under s 267.	<b>Accept</b>	<b>No Legislative Amendment Required</b>	<b>N/A</b>
172.	That the Act not be amended to provide that a registration against one member of a corporate group is sufficient to perfect a security interest that is granted by another member of that group.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>



Rec No.	Recommendation	Response	Category	Status
173.	That s 31(3)(a)(i) be amended to make it clear that the grantor referred to in the section is the original grantor of the security interest, not a person who subsequently becomes the grantor as a result of the collateral being transferred to it.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 17 – Paragraph 31(3)(a) Item 18 – Subsection 31(3A)
174.	That the words “an interest” in s 31(3)(a)(i) be replaced with “rights”.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 17 – Paragraph 31(3)(a)
175.	That s 31(3)(a)(ii) be deleted.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 17 – Paragraph 31(3)(a)
176.	That s 32(1) be amended to read along these lines: “(1) Subject to this Act: (a) if collateral is dealt with, the security interest remains attached to the collateral, unless the secured party expressly or impliedly agreed that a party to the dealing could take the collateral free of the security interest; and (b) if collateral gives rise to proceeds (by being dealt with or otherwise), the security interest attaches to the proceeds unless the security agreement provides otherwise.”	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 19 – Subsection 32(1)
177.	That s 32(2) be retained, and that the start of s 32(2) be amended to read along these lines: “(2) If the secured party enforces a security interest against both collateral and proceeds that arise from a transfer of the collateral, the amount secured by the security interest in the collateral and proceeds is limited....”.	<b>Accept in part</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 20 – Subsection 32(2)
178.	That s 32(3) be deleted.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 21 – Subsection 32(3)
179.	That s 32(5) be amended to read along these lines: “(5) The time of registration in relation to original collateral, or the time of perfection of a security interest in original collateral, is also the time of registration or perfection in relation to the proceeds of the original collateral, if the security interest has been continuously perfected .”	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 22 – Item 32(5)

Rec No.	Recommendation	Response	Category	Status
180.	That the Act be amended to provide that a security interest over collateral that is perfected by registration is automatically perfected over any proceeds of that collateral.	<b>Reject</b>	<b>No Legislative Amendment Required</b>	It is important that secured parties continue to meaningfully engage with the PPS Register and ensure their registrations correctly align with the terms of any security agreement.
181.	If Recommendation 180 is not adopted, that s 33(1)(b) be amended to make it clear that the security interest is perfected over the proceeds if the proceeds are within the collateral description of any current financing statement made by the secured party against the grantor, not just the same financing statement.	<b>Reject</b>	<b>No Legislative Amendment Required</b>	Stakeholder consultation indicated insufficient support for this recommendation.
182.	If Recommendation 180 is not adopted, that s 33(1)(c) be retained.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
183.	That the Act not be amended to require an intending transferee of collateral to search the Register and advise any relevant secured party of the proposed transfer.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
184.	That “in the collateral” be inserted after “interest” in line 3 of s 34(1).	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 25 – Paragraph 34(1)(b)
185.	That the requirement for value in ss 43 to 52 and ss 69 to 72 be as follows: <ul style="list-style-type: none"> <li>ss 48, 49 and 69 – no value requirement; and</li> <li>the remaining sections – new value.</li> </ul>	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 31 – Subsection 43(1) Item 33 – Subsection 44(1) Item 36 – Subsection 45(1) Item 42 – Subsection 46(1) Item 47 – Section 48 Item 48 – Section 49 Item 49 – Section 50  Note sections 70 and 72 are intended to be repealed because they are replaced by new sections 48A and 48B.
186.	That the Act continue to allow “new value” to be a nominal amount.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
187.	That the Act be amended to provide that a person has knowledge of something for the purposes of the Act when information comes to their attention under circumstances in which a reasonable person would take cognisance of it.	<b>Accept in part</b>	<b>Significant Amendment</b>	<b>Act – Schedule 3</b> Item 5 – Section 10 – definition of <i>knowledge</i>

Rec No.	Recommendation	Response	Category	Status
188.	That the taking free rules in the sections identified in the recommendation be amended so that the “value” and “knowledge” qualifiers in those sections are as set out in the recommendation.  <i>Refer to recommendation 188 in the Whittaker Review for the table of sections and relevant “value” and “knowledge” qualifiers.</i>	Accept	Significant Amendment	<b>Act – Schedule 3</b> Item 31 – Subsection 43(1) Item 32 – Subsection 32(2) Item 33 – Subsection 44(1) Item 34 – Subsection 44(2) Item 36 – Subsection 45(1) Item 39 – Subsection 45(3) Item 42 – Subsection 46(1) Item 43 – Subsection 46(2) Item 44 – Subsection 47(1) Item 46 – Paragraph 47(2)(b) Item 47 – Section 48 Item 49 – Section 50 Item 51 – Subsection 52(2)
189.	That the Act not be amended to define the term “buyer”.	Accept	Status Quo	N/A
190.	That s 44(2)(a) be deleted.	Accept	Technical Amendment	<b>Act – Schedule 3</b> Item 34 – Subsection 44(2)
191.	That s 44 continue to apply to all types of property that may, or must, be described by serial number in a registration.	Accept	Status Quo	N/A
192.	That s 45(1) be retained, but that it only operate in favour of a buyer or lessee who is an individual.	Reject	No Legislative Amendment Required	This recommendation is not pursued as it was considered that all users of the PPS Register, not just individuals, would benefit from this provision.
193.	That s 45(2)(c) be deleted.	Accept	Technical Amendment	<b>Act – Schedule 3</b> Item 37 – paragraph 45(2)(c)
194.	That the content of ss 45(1)(c) and 45(2) be simplified.	Reject	No Legislative Amendment Required	The purpose and meaning of paragraph 45(1)(c) and subsection 45(2) operate as intended while maintaining industry practice.
195.	That s 45(4)(c) be deleted.	Accept	Technical Amendment	<b>Act – Schedule 3</b> Item 40 – paragraph 45(4)(c)
196.	That s 46(2)(a) be deleted.	Accept	Technical Amendment	<b>Act – Schedule 3</b> Item 43 – paragraph 46(2)
197.	That s 46(1) continue to apply only to security interests that are given by the seller or lessor, or that arise under s 32.	Accept	Status Quo	N/A
198.	That the Act not to be amended to limit s 46 to goods.	Accept	Status Quo	N/A
199.	That s 47(1) be amended so that the market value only needs to be determined when the agreement to buy or lease is entered into.	Accept	Technical Amendment	<b>Act – Schedule 3</b> Item 43 – Subsection 47(1)

Rec No.	Recommendation	Response	Category	Status
200.	That s 47(2)(c) be amended to provide that s 47(1) does not apply if, at the time the agreement for sale or lease is entered into, the buyer or lessee believes that the market value of the personal property is more than \$10,000 (or any greater amount prescribed by regulation).	<b>Accept in part</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 46 – Subsection 47(2)(c)
201.	That Government consider further, in consultation with industry, whether there are good policy reasons for retaining s 50 and, if there are not, that s 50 be deleted.	<b>Accept in part</b>	<b>Significant Amendment</b>	<b>Act – Schedule 3</b> Item 49 – Section 50
202.	That s 50 be amended, if it is retained, to clarify that it does not operate in favour of another secured party.	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 3</b> Item 49 – Section 50
203.	That Government consider further, in consultation with industry, whether there are good policy reasons for retaining s 51 and, if there are not, that s 51 be deleted.	<b>Accept in part</b>	<b>Significant Amendment</b>	<b>Act – Schedule 3</b> Item 49 – Sections 50 and 51  Section 51 is retained through the new section 50, which combines the sections 50 and 51 of the PPS Act.
204.	That s 51 be amended, if it is retained, to clarify that it does not operate in favour of another secured party, and to clarify the purpose and meaning of s 51(1)(b).	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 3</b> Item 49 – Sections 50 and 51  In line with recommendation 203, clarification is made to subsection 50(2).
205.	That s 52(1) be amended by replacing the references to proceeds, goods or negotiable documents of title with references to “personal property”.	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 3</b> Item 50 – Subsection 51(1)
206.	If Government decides (pursuant to Recommendation 169) to allow the Act to continue to provide that a transfer of collateral subject to a security interest makes the transferee the grantor of the security interest, that Government consider whether s 52 should be amended to provide that it does not apply to a security interest that is temporarily perfected under s 34.	<b>Accept to consider / consult</b>	<b>No Legislative Amendment Required</b>	The department is seeking stakeholder input in relation to this recommendation. Please refer to part 4 of the discussion paper for further information.
207.	That s 52(2) be amended so that any buyer or lessee can rely on s 52(1) unless they had the requisite knowledge at the time that they entered into the agreement to buy or lease the property.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 51 – Subsection 52(2)

Rec No.	Recommendation	Response	Category	Status
208.	That s 69 be reframed as a taking free rule, and moved to Part 2.5 of the Act.	Accept	Technical Amendment	<b>Act – Schedule 3</b> Item 71 – Division 5 of Part 2.6 Item 47 – Section 48A
209.	That the language of s 69 be tailored more closely to Australian market conditions, and that the rules in ss 48 and 69 be more closely aligned.	Accept	Technical Amendment	<b>Act – Schedule 3</b> Item 47 – Section 48A
210.	That the definition of “negotiable instrument” in s 10 be deleted, to allow the term to have the same meaning as at general law.	Accept	Significant Amendment	<b>Act – Schedule 3</b> Item 7 – Section 10 – definition of <i>negotiable instrument</i>  The new definition clarifies that the general law meaning applies, with specific exceptions.
211.	That s 70 be retained.	Accept	Status Quo	N/A
212.	That s 70 be reframed as a taking free rule, and moved to Part 2.5 of the Act.	Accept	Technical Amendment	<b>Act – Schedule 3</b> Item 71 – Division 5 of Part 2.6 Item 47 – Section 48B
213.	That s 72 be retained.	Accept	Status Quo	N/A
214.	That s 72 be reframed as a taking free rule, and moved to Part 2.5 of the Act.	Accept	Technical Amendment	<b>Act – Schedule 3</b> Item 71 – Division 5 of Part 2.6 Item 47 – Section 48C
215.	That s 53 be deleted.	Accept	Technical Amendment	<b>Act – Schedule 3</b> Item 52 – Section 53
216.	That s 37 be amended to make it clearer that it only applies if the effect of the buyer or lessee taking the goods free of a security interest was that the security interest ceased to be attached to the goods.	Accept	Technical Amendment	<b>Act – Schedule 3</b> Item 27 – Section 37
217.	That s 37 not be amended to make it clearer that it applies where a person has taken collateral free of a security interest because of the operation of s 32.	Accept	Status Quo	N/A
218.	That ss 37 and 38 be amended to ensure that they apply appropriately for all types of security interests.	Accept	Technical Amendment	<b>Act – Schedule 3</b> Item 27 – Section 37 and 38
219.	That Government consider, in consultation with the States and Territories, whether or not taking free rules may be contained in laws other than the Act, and that the Act be amended to set out the agreed position.	Accept to consider / consult	No Legislative Amendment Required	The department is seeking state and territory input in relation to this recommendation. Please refer to part 4 of the discussion paper for further information.
220.	That the Act be amended to confirm that the priority position as between competing security interests is determined at the time when they come into conflict.	Accept in part	Technical Amendment	<b>Act – Schedule 3</b> Item 58 – Section 55B

Rec No.	Recommendation	Response	Category	Status
221.	That the Act be amended to make it clear that priority as between two unperfected security interests that attach to collateral at the same time is to be determined by the order in which the security agreements were entered into.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 54 – Section 55(2)
222.	That the language of s 55(5) be simplified, potentially by amending it to read: “(5) For the purposes of subsection (4), the priority time for a security interest in collateral is, subject to subsection (6), the earlier of the following times to occur in relation to the security interest: (a) the registration time for the collateral; and (b) the time at which the security interest becomes perfected.”	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 56 – Subsection 55(5) Item 58 – Section 22 55A
223.	That Government consider, as part of the further consultations referred to in Recommendations 64 to 76, whether it is appropriate for a security interest that is perfected by control to be entitled to a super-priority, for each of the types of collateral listed in s 21(2)(c).	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 2</b> Item 15 – Paragraph 21(2)(c)
224.	That s 57(2) be amended to provide, if more than one security interest is perfected by control over an item of collateral at the same time, that priority is afforded to the security interest that is held by the secured party that took control first.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 59 – Subsection 57(2)
225.	That s 57(2A) be deleted.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 59 – Subsection 57(2A)
226.	That s 58 be amended to read along these lines: “A security interest has the same priority for all amounts and obligations secured by it, whether they are incurred or arise before or after the security interest arises.”	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 60 – Sections 58 and 59
227.	If Recommendations 56 and 226 are adopted, that the definition of “future advance” in s 10 be deleted.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 2</b> Item 4 – Section 10 – definition of <i>future advance</i>
228.	That s 59 be deleted.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 60 – Sections 58 and 59

Rec No.	Recommendation	Response	Category	Status
229.	That the language of s 61 and other relevant sections in the Act be amended to refer to “priority” rather than “subordination” agreements between secured parties.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 61 – Section 61 Item 65 – Subsection 64(3) Item 77 – Section 87 Item 85 – Sections 91 and 96
230.	That the Act be amended, if necessary, to make it clear that s 14(1) captures all leases or consignments that give rise to a security interest, whether or not they are a PPS lease or a commercial consignment.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 10 – Subsection 14(1)
231.	That the Act be amended to provide that a sale and lease-back can give rise to a PMSI if (and to the extent that) the PMSI secured party paid the purchase price for the collateral directly to the supplier.	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 3</b> Item 10 – Subsection 14(1A)
232.	That the Act not be amended to provide a security interest with PMSI status to the extent it secures funds provided by a secured party to a grantor or debtor to reimburse it for a deposit previously paid for the collateral.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
233.	That ss 14(2)(c) and (2A) be deleted.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 14 – Subsections 14(2) and 14(2A)
234.	That the Act be amended to enable PMSIs in inventory to be cross-collateralised, to the extent that the items of inventory are not separately identifiable.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 13 – Subsections 14(7) and 14(7A)
235.	That references in the Act to a PMSI not be amended to indicate whether they refer to a PMSI as defined in s 14 or to a PMSI that has priority under s 62 (on the basis that the references are simply to a PMSI as defined in s 14), and that clarifying language only be included where the intention is to refer only to a PMSI that has priority under s 62 (such as in s 103).	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 62 – Section 62  Section 62 has been repealed (and replaced).
236.	That s 14(5) be expanded to make it clear that a security interest that replaces a PMSI can also be a PMSI.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 11 – Subsection 14(5)
237.	That ss 62 and 63 continue to assess whether a registration is made in time to achieve PMSI super-priority by reference to the time when the grantor obtains possession, not when the secured party provides its funding.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>

Rec No.	Recommendation	Response	Category	Status
238.	That the Act be amended to clarify that references in ss 62 and 63, and elsewhere in the Act, to a grantor obtaining or having possession of personal property, are references to the grantor obtaining or having that possession in its capacity as grantor.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 62 – Sections 62 and 63 Item 9 – Section 10A
239.	That ss 62 and 63 be amended to provide a uniform timeframe of 15 business days for a registration that perfects a PMSI for all types of collateral, including collateral that is inventory.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 62 – Subsection 62(2)
240.	That s 62 not be amended to require a secured party that wants to claim PMSI priority to give notice of this to existing secured parties, or to provide other information in its registration.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
241.	That s 62(2)(c), and item 7 of the table in s 153(1), be deleted.	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 3</b> Item 62 – Section 62 <b>Act – Schedule 5</b> Item 23 – Section 153
242.	That s 64 be retained.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
243.	That the Act not be amended to provide that a retention of title supplier is not able to trace its security interest into receivables that are acquired by a receivables financier.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
244.	That s 64 be amended to provide that an accounts financier can use the section to take priority over both a PMSI held by an inventory financier in the proceeds of its inventory, and over a non-PMSI security interest held by the same inventory financier in those proceeds.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 64 – Subsection 64(1A)
245.	That s 64 continue to only apply to PMSIs that are granted by the same person as the person who granted the security interest in the account.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
246.	That s 64(1)(a)(i) be deleted.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 64 – Subsection 64(1)
247.	That s 64 be amended to require that the relevant registration be against the collateral class “accounts”.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 64 – Subsections 64(1A)-(2)



Rec No.	Recommendation	Response	Category	Status
248.	That s 64(1)(b)(ii) be amended to provide that a “priority interest” in an account will take priority in relation to the account if the priority interest first attaches to the account at least 15 business days after the secured party with the priority interest has given notice to the PMSI secured party in accordance with s 64(2).	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 64 – Subsections 64(1) and 64(2)
249.	That s 64(1)(b)(i) be amended to reflect the fact that the secured party will not hold the priority interest until it has attached.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 64 – Subsection 61(1)
250.	If s 62(2)(c) is retained, that s 64 not be amended to provide that an accounts financier only needs to send notices under the section to secured parties that have indicated in their registration that their security interest is a PMSI.	<b>Redundant</b>	<b>No Legislative Amendment Required</b>	This recommendation relates to recommendation 241, which recommends that paragraph 62(2)(c) be deleted. That recommendation has been accepted.
251.	That s 64(2)(b) be amended to provide that a s 64 notice need only state that: <ul style="list-style-type: none"> <li>• the accounts financier may be acquiring an interest in accounts that are proceeds of inventory in which the PMSI holder may also have a security interest; and</li> <li>• the effect of s 64 is that the accounts financier will have priority over the PMSI in relation to accounts to which its security interest attaches after 15 business days from the day the notice is given.</li> </ul>	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 64 – Paragraph 61(2)(b)
252.	That s 76(3)(a) be amended by replacing “while the goods are in the possession of the person” with “before the repossession time (referred to in paragraph 37(1) or 38(1))”.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 74 – Paragraph 76(3)(a)
253.	That s 76(3)(b) be amended by replacing “paragraph 37(1)(d) and 38(1)(d)” with “subsection 37(1) or 38(1)”.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 74 – Paragraph 76(3)(b)
254.	That Government afford agribusiness financiers and farming organisations a further opportunity to comment on whether ss 85 and 86 should be retained or deleted.	<b>Accept to consider / consult</b>	<b>No Legislative Amendment Required</b>	The department is seeking stakeholder input in relation to this recommendation. Please refer to part 4 of the discussion paper for further information.
255.	If s 85 is retained, that it be amended by inserting “(other than a purchase money security interest)” after “other security interest” in line 3.	<b>Reject</b>	<b>No Legislative Amendment Required</b>	Engagement with industry sectors indicated that the current provision supports further funding options.

Rec No.	Recommendation	Response	Category	Status
256.	That the Act not be amended to address whether a trustee's lien ranks ahead of or behind a security interest over the assets of the trust.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
257.	That s 74(4)(a) be amended to read: "(a) if the collateral is seized as part of the execution process – the time of seizure;"	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 73 – Paragraph 74(4)(a)
258.	That s 74(1) be amended to provide that an execution creditor only has priority over a security interest if the "priority time" for the security interest is after the date specified in the section.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 72 – Subsection 74(1)
259.	That s 8(2) and reg 1.4(5)(b) be amended to make it clear that s 74 can only afford an execution creditor priority over another interest if that other interest is a security interest that is subject to the Act.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 72 – Subsection 74(1)  <i>The amended subsection 74(1) clarifies when an execution creditor has priority in accordance with the act</i>
260.	That the definition of "accession" in s 10 be amended to clarify that goods will not be an accession to other goods if their identity has been lost in the other goods in a way that engages the application of Part 3.4 of the Act.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 1 – Section 10 – definition of <i>accession</i>
261.	That references in Part 3.3 of the Act to a security interest "continuing in" an accession be amended to refer to the security interest "remaining attached to" the accession.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 76 – Section 87 Item 79 – Section 88
262.	That s 90(b) be deleted.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 82 – Paragraph 90(b)

Rec No.	Recommendation	Response	Category	Status
263.	<p>That Part 3.4 of the Act be split into two, and that commingled goods be dealt with separately, in accordance with these principles:</p> <ol style="list-style-type: none"> <li>1. A party with an interest in goods that are commingled into a larger bulk shares in that larger bulk in the proportion that its goods represent of all contributions to the bulk.</li> <li>2. To the extent that more than one party had an interest in goods that become part of a larger bulk, their rights as against each other continue to be resolved as if the goods were still separate, but on the basis that the aggregate of their claims may not exceed the relevant proportion of the bulk, as described in the previous paragraph.</li> <li>3. If a secured party wants to enforce its security interest in a share of the bulk, it must separate the relevant share from the bulk, and then enforce against that separate share.</li> </ol>	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 86 – Part 3.4
264.	That Government consider further, in consultation with industry and through consideration of the position in Canada and under Article 9, whether the commingling rules should be extended to commingled intangibles.	<b>Accept to consider / consult</b>	<b>No Legislative Amendment Required</b>	The department is seeking stakeholder input in relation to this recommendation. Please refer to part 4 of the discussion paper for further information.
265.	That s 100 be amended by replacing “section 55 (default priority rules)” with “this Act (other than Part 2.5)”.	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 3</b> Item 86 – Section 101
266.	That s 101 be amended so that it limits the amount recoverable under a security interest, not just its priority.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 86 – Subsections 102(2) and 103(2)
267.	That s 101 not be amended to change the point in time at which the value of the input is assessed.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>

Rec No.	Recommendation	Response	Category	Status
268.	That ss 102 and 103 be amended to reflect the following principles: 1. The aggregate amount recoverable under a security interest (or multiple security interests) over an input that becomes part of a product or mass is capped at the value of the input when it became part of the product or mass. 2. If there was more than one security interest over the input, they rank inter se in the order that would have applied if the input was still separate. 3. If the amount recovered on enforcement is not enough to pay out all secured parties (taking into account any cap under the previous two items on the amount they can recover), the priority between them is established using the other priority rules.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 86 – Sections 102 and 103
269.	That s 79 be retained, and that it amended so that it applies to the grant of a security interest over collateral, as well as a transfer.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 75 – Part 2.7, section 79
270.	That s 80(3) be retained.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
271.	That s 81 be retained.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
272.	That s 81(1) be amended: • so that it applies to the grant of a security interest over an account, not just a transfer; • by deleting “for currency due or to become due” from line 2 of s 81(1) (b); and • to make it clear that it only invalidates the restriction to the extent that it applies to an account.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 75 – Part 2.7, section 81
273.	That Government consider further whether: • the exclusion from s 81 of construction contracts and financial services contracts is appropriate; and • s 81 should be amended to make it clear that the transfer may not adversely affect the obligor on the account.	<b>Accept in part</b>	<b>Significant Amendment</b>	<b>Act – Schedule 3</b> Item 75 – Part 2.7, section 81

## Chapter 8: Recommendations 274 to 335

Rec No.	Recommendation	Response	Category	Status
274.	<p>That Chapter 4 be amended to make it clear that the following principles apply:</p> <ol style="list-style-type: none"> <li>1. A secured party may use enforcement remedies in its security agreement or under laws outside the Act (even if they parallel remedies contained in Chapter 4) without needing to comply with any corresponding notice or other requirements in Chapter 4, except to the extent that a provision in Chapter 4 expressly states that it applies to the exercise of remedies outside the Chapter.</li> <li>2. If a secured party elects to rely on a remedy provided by Chapter 4, it must comply with the associated notice or other requirements in the Chapter, except to the extent that the secured party and the grantor agree otherwise in accordance with s 115.</li> </ol>	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 4</b> Item 1 – Chapter 4
275.	That the Act be amended by replacing references to “default by the debtor” (or similar) with “default” or “default under the security agreement”, and that the term “default” be defined in s 10 along the lines of the corresponding definition in the NZ PPSA.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 4</b> Item 1 – Chapter 4
276.	That s 109(1)(b) be deleted.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 4</b> Item 1 – Chapter 4, subsection 109(1)
277.	That s 109(2) be deleted.	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 4</b> Item 1 – Chapter 4, section 109
278.	That Government consider, in further consultation with industry, whether s 109(3) should be amended to provide that Chapter 4 (other than ss 110,111, 113 and 140) does not apply to an intermediated security or an investment instrument that is held on a prescribed financial market within the meaning given to that term by the Corporations Act.	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 4</b> Item 1 – Chapter 4, subsection 143

Rec No.	Recommendation	Response	Category	Status
279.	That s 109(5) be deleted.	Accept	Technical Amendment	Act – Schedule 4 Item 1 – Chapter 4
280.	That s 111 not be amended.	Accept	Status Quo	Act – Schedule 4 Item 1 – Chapter 4, section 113
281.	That s 112(3) be deleted.	Accept	Technical Amendment	Act – Schedule 4 Item 1 – Chapter 4, section 115
282.	That the words “is not used” in line 2 of s 115(1) be replaced with “the grantor does not intend, at the time it enters into the security agreement, to use”.	Accept	Technical Amendment	Act – Schedule 4 Item 1 – Chapter 4, subsection 114(4)
283.	That s 115(1) be amended by replacing “may contract out of” in s 115(1) with “may agree that a party need not comply with”, and that a corresponding amendment also be made to s 115(7).	Reject but clarify	Technical Amendment	Act – Schedule 4 Item 1 – Chapter 4, subsection 114(1)
284.	That s 115(1)(q) continue to allow parties to contract out of the grantor’s right to redeem collateral under s 142.	Accept	Status Quo	Act – Schedule 4 Item 1 – Chapter 4, subsection 114(1)  Please note the broad provision of subsection 114(1).
285.	That s 115(2) not be amended.	Accept	Status Quo	Act – Schedule 4 Item 1 – Chapter 4, section 115(5)
286.	If s 116 is retained, that it be amended to reflect these principles more clearly: <ul style="list-style-type: none"> <li>• Chapter 4 does not apply to property if the property is in the hands of a receiver, or a receiver and manager, unless the grantor of the security interest is an individual.</li> <li>• Section 131 does not apply in relation to property while a person is a controller of the property, unless the grantor of the security interest is an individual.</li> <li>• The parties to a security agreement can also agree that any other provision of Part 4.3 will not apply to property that is in the hands of a controller other than a receiver or receiver and manager, unless the grantor of the security interest is an individual.</li> </ul>	Accept	Technical Amendment	Act – Schedule 4 Item 1 – Chapter 4, subsection 109(3) and subsection 131(2)

Rec No.	Recommendation	Response	Category	Status
287.	That Government consider further whether the nature of company receiverships is such that they need to remain outside Chapter 4, taking into account Government's deliberations on the extent to which provisions in Chapter 4 should be mandatory to all enforcement processes, and that s 116 be retained or deleted in accordance with Government's conclusion.	<b>Accept to consider / consult</b>	<b>No Legislative Amendment Required</b>	The department is seeking stakeholder input in relation to this recommendation. Please refer to part 4 of the discussion paper for further information.
288.	That Government consider whether s 119 could be amended to simply say that Chapter 4 does not apply to an enforcement process that is regulated by the National Credit Code.	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 4</b> Item 1 – Chapter 4, subsection 109(2)
289.	That the headings to ss 120 and 121 be amended to refer to security interests in “certain payment obligations” (or a similar expression), rather than to security interests in “liquid assets”.	<b>Reject but clarify</b>	<b>Technical Amendment</b>	<b>Act – Schedule 4</b> Item 1 – Chapter 4, sections 144, 144A and 114B
290.	That the Act be amended so that the garnishee mechanism in ss 120 and 121 can apply to any payment obligation.	<b>Reject</b>	<b>No Legislative Amendment Required</b>	Sections 120 and 121 are considered to be sufficiently powerful provisions as they enable a secured party to collect money owed to the grantor by a third party directly from the third party. Therefore, there is insufficient justification to expand this provision to other payment obligations.
291.	That s 80(7) be expanded: <ul style="list-style-type: none"> <li>• to apply to a grant of any security interest over an account, not just a transfer;</li> <li>• to give the obligor a further 5 business days after receipt of the notice within which it must make the payment; and</li> <li>• to apply to payment obligations generally, if Recommendation 290 is adopted.</li> </ul>	<b>Accept in part</b>	<b>Technical Amendment</b>	<b>Act – Schedule 3</b> Item 75 – Section 81B
292.	That s 120(3) be deleted, if s 80(7) is amended in accordance with Recommendation 291.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 4</b> Item 1 – Chapter 4, section 144

Rec No.	Recommendation	Response	Category	Status
293.	That s 120(3) be amended, if s 80(7) is not amended in accordance with Recommendation 291, to read: “(3) A person who receives a notice under paragraph (2)(a) must pay, to the secured party, any amount that the person owes to the grantor on the collateral before the later of: (a) the end of 5 business days after the day the notice is received; or (b) the day the amount becomes due and payable.”	<b>Redundant</b>	<b>No Legislative Amendment Required</b>	Recommendation 292 has been accepted and subsection 120(3) deleted.
294.	That s 120(4) be deleted, and that s 120(5) be amended to require that all amounts recovered under s 120 be applied in accordance with s 140.	<b>Accept in part</b>	<b>Technical Amendment</b>	<b>Act – Schedule 4</b> Item 1 – Chapter 4, section 120
295.	That the Act be amended so that ss 123(2) and (3) apply to all personal property that is not in tangible form.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 4</b> Item 1 – Chapter 4, section 122
296.	That ss 123(2)(b) and 123(3)(b) be retained.	<b>Accept</b>	<b>Status Quo</b>	<b>Act – Schedule 4</b> Item 1 – Chapter 4, section 122
297.	That s 124(2)(b) be deleted.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 4</b> Item 1 – Chapter 4, section 123
298.	That the Act be amended to provide that a secured party with a security interest in an accession can remove that accession when enforcing its security interest.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 4</b> Item 1 – Chapter 4, section 144F
299.	That s 126(2) continue to provide that a secured party that disposes of collateral on the grantor’s premises must not cause the grantor any greater cost or inconvenience than is “necessarily incidental to the disposal”.	<b>Accept</b>	<b>Status Quo</b>	<b>Act – Schedule 4</b> Item 1 – Chapter 4, subsection 125(2)
300.	That the Act be amended to make it clear that s 127 cannot override an agreement to a different effect as between secured parties.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 4</b> Item 1 – Chapter 4, subsection 118(12)
301.	That the Act not be amended to include rules that determine, as between a security interest and a non-security interest in relation to the same collateral, which has the superior right to conduct enforcement proceedings.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
302.	That s 17(4) not be amended.	<b>Accept</b>	<b>Status Quo</b>	<b>Act – Schedule 4</b> Item 1 – Chapter 4, subsection 118(4)  The department understands that subsection 17(4) is supposed to refer to subsection 127(4).



Rec No.	Recommendation	Response	Category	Status
303.	That ss 127(6) to (11) be retained.	Accept	Status Quo	<b>Act – Schedule 4</b> Item 1 – Chapter 4, subsections 118(6)-(11)
304.	That the reference in s 127(9) to “20 business days” not be changed.	Accept	Status Quo	<b>Act – Schedule 4</b> Item 1 – Chapter 4, subsection 118(9)
305.	That the Act be amended to make it clear that a secured party is able to enforce its security interest against collateral without first having to seize the collateral.	Reject	No Legislative Amendment Required	While there are some circumstances where a secured party may not want to seize the collateral before commencing enforcement proceedings, transparency for purchasers and others comes in part from the requirement that the secured party must first take the property to enforce its security interest.
306.	That the description in ss 128(2), (3) and (4) of a lease or licence as a “disposal” be considered in the context of Recommendation 168, to ensure that the language of the sections does not inadvertently expand the meaning of the term “dispose” as used elsewhere in the Act.	Accept	Technical Amendment	<b>Act – Schedule 4</b> Item 1 - Chapter 4, subsections 130(1), (2) and (3)  <i>The department did not consider that there was a need to amend the wording in subsections 128 (2), (3) and (4). Clarifications were made in reference to recommendation 168</i>
307.	That s 128(3) be retained.	Accept	Status Quo	<b>Act – Schedule 4</b> Item 1 – Chapter 4, subsection 130(2)
308.	That s 129(3)(b) be retained.	Accept	Status Quo	<b>Act – Schedule 4</b> Item 1 – Chapter 4, subsection 131(1)
309.	That s 129(2)(b) be deleted.	Accept	Technical Amendment	<b>Act – Schedule 4</b> Item 1 – Chapter 4, section 130
310.	That s 130(1) not be amended to require that the secured party also provide the notice contemplated by that section to the debtor.	Accept	Status Quo	<b>Act – Schedule 4</b> Item 1 – Chapter 4, section 129(1)
311.	That s 144 be expanded to provide that a secured party is only required to give a notice to another secured party if the other secured party is perfected by registration or possession.	Accept	Technical Amendment	<b>Act – Schedule 4</b> Item 1 – Chapter 4, section 138
312.	That s 130(2) be amended to say that the notice must set out either the amount to be paid on or before the day specified in s 130(3), or the manner in which the amount is to be calculated.	Accept	Technical Amendment	<b>Act – Schedule 4</b> Item 1 – Chapter 4, paragraph 129(2)(d)

Rec No.	Recommendation	Response	Category	Status
313.	That s 130(5)(b) be deleted.	Accept	Technical Amendment	Act – Schedule 4 Item 1 – Chapter 4, subsection 130(5)
314.	That s 130(5)(c) be amended to provide that it applies if the secured party believes on reasonable grounds that there will be a material decline in the value of the collateral if it is not disposed of before the end of the period that would have applied under s 130(3) if the notice had been given (rather than “immediately”).	Accept	Technical Amendment	Act – Schedule 4 Item 1 – Chapter 4, paragraph 130(5)(b)
315.	That s 132(1) be amended to clarify that it only applies when the secured party has disposed of all the collateral it is enforcing against.	Accept	Technical Amendment	Act – Schedule 4 Item 1 – Chapter 4, subsection 139(1)
316.	That s 132(3)(a) be amended by deleting “, and expected to be received,”.	Accept in part	Technical Amendment	Act – Schedule 4 Item 1 – Chapter 4, paragraph 139(3)(a)
317.	That s 133 not be amended.	Accept	Status Quo	Act – Schedule 4 Item 1 – Chapter 4, section 119
318.	That s 135(1) be amended so that it requires the retaining secured party to give the notice to: <ul style="list-style-type: none"> <li>• the grantor; and</li> <li>• any other secured party that is perfected by registration or possession.</li> </ul>	Accept	Technical Amendment	Act – Schedule 4 Item 1 – Chapter 4, section 132
319.	That s 136 be amended to confirm that it only allows the secured party to retain the grantor’s interest in the collateral, free of the interest of the grantor and the security interests listed in s 136(2), and not free of the interests of other third parties.	Reject	No Legislative Amendment Required	To avoid further confusion under the provision, it is not necessary for section 136 to stipulate the effect of retention of collateral on non-security interests of third parties as these are not relevant to enforcement of a security interest by retention of collateral under Chapter 4.
320.	That s 135(3)(d) be amended to say that the notice must set out either the amount to be paid, or the manner in which the amount is to be calculated.	Accept	Technical Amendment	Act – Schedule 4 Item 1 –Chapter 4, paragraph 132(3)(d)
321.	That ss 136 and 141 be amended to accommodate the fact that title to the collateral may already be with the secured party, rather than the grantor.	Accept in part	Technical Amendment	Act – Schedule 4 Item 1 – Chapter 4, section 136 and subsection 130(6)
322.	That ss 137 and 138 be amended to incorporate provisions that are reflective of ss 61(2) and (6) of the Saskatchewan PPSA.	Accept	Technical Amendment	Act – Schedule 4 Item 1 – Chapter 4, sections 133 and 134

Rec No.	Recommendation	Response	Category	Status
323.	That: <ul style="list-style-type: none"> <li>• s 140(1) be amended to read: “This section applies if any personal property (a recovery) is received by or on behalf of a secured party as a result of enforcing a security interest in collateral (whether or not under section 120 or 128).”; and</li> <li>• each subsequent reference in s 140 to an “amount, personal property or proceeds” (or similar) be replaced with “recoveries”.</li> </ul>	<b>Reject but clarify</b>	<b>No Legislative Amendment Required</b>	Use of a collective term may create further confusion as to the terminology used in the PPS Act. This is because the provision will still require use of the singular terms at, for example, sections 140(6) and (7).
324.	That s 142 be amended so that it only permits the grantor or another secured party to redeem collateral if: <ul style="list-style-type: none"> <li>• the secured party is enforcing its security interest; and</li> <li>• the secured party has not yet disposed or committed to dispose of the collateral (whether under s 128 or otherwise), or retained that collateral under s 134.</li> </ul>	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 4</b> Item 1 – Chapter 4, section 126
325.	That s 143 be retained.	<b>Accept</b>	<b>Status Quo</b>	<b>Act – Schedule 4</b> Item 1 – Chapter 4, section 127
326.	That s 143 be amended: <ul style="list-style-type: none"> <li>• so that the reinstatement right may only be exercised by the grantor, not by any “person”; and</li> <li>• by replacing “disposes” in line 1 of s 143(1) with “commits to dispose”.</li> </ul>	<b>Accept in part</b>	<b>Technical Amendment</b>	<b>Act – Schedule 4</b> Item 1 – Chapter 4, section 127
327.	That the Act be amended to make it clear that a secured party is entitled to pursue its debtor for any shortfall between what it is owed, and what it recovers by enforcing against the collateral, unless the secured party has agreed otherwise.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 4</b> Item 1 – Chapter 4, section 107 – <i>Guide to this chapter</i>
328.	That ss 267 and 267A be retained.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
329.	That ss 267 to 269 continue to use the expression “vests in the grantor”.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
330.	That s 268(1)(a)(ii) be amended to read: “(ii) a PPS lease;”.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 4</b> Item 29 – Subparagraph 268(1)(a)(i)
331.	That s 267 not be amended to provide that a security interest over collateral does not vest in the grantor under the section if there is any registration on the register that describes that particular collateral.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
332.	That subparagraphs (ii) and (iv) be deleted from s 268(2)(c).	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 4</b> Item 32 – Paragraph 268(2)(c)

Rec No.	Recommendation	Response	Category	Status
333.	That s 267(1)(a)(iii) be deleted.	Accept	Technical Amendment	Act – Schedule 4 Item 26 – Paragraph 267(1)(a)
334.	That ss 267(3)(b) and 267A(2)(b) be expanded to include the bankruptcy-related events referred to in ss 267(1)(a)(iv) and (v).	Accept	Technical Amendment	Act – Schedule 4 Item 27 – Subparagraphs 267(3)(b)(iv) and 267(3)(b)(iva)
335.	That s 268(1)(aa) be deleted.	Accept	Technical Amendment	Act – Schedule 4 Item 30 – Subsection 268(1)

## Chapter 9: Recommendations 336 to 385

Rec No.	Recommendation	Response	Category	Status
336.	That Government consider further whether s 6 is needed, and that it be either deleted, or simplified so that it facilitates the application of the Act, rather than have the potential to impede it.	Accept	Technical Amendment	Act – Schedule 7 Item 2 – Section 6
337.	That the Act make it clear that a reference in Part 7.2 to “attachment” or “perfection” under laws of another jurisdiction is a reference to the functional equivalent of those concepts under those other laws.	Accept	Technical Amendment	Act – Schedule 7 Item 9 – Sections 234A and 234B
338.	That the terminology used in Part 7.2, and in ss 39 and 40, be aligned with the terminology used elsewhere in the Act.	Accept	Technical Amendment	Act – Schedule 7 Item 9 – Sections 234A and 234B
339.	That Part 7.2 be amended to clarify that references to “the effect of perfection or non-perfection” of a security interest include the effect of all the priority and taking free rules in the Act, including rules that do not turn on whether a security interest is perfected.	Accept	Technical Amendment	Act – Schedule 7 Item 9 – Sections 234A and 234B
340.	That the Act adopt a choice of law rule for the enforcement of security interests that reflects Recommendation 218 of the UNCITRAL Legislative Guide on Secured Transactions.	Accept	Technical Amendment	Act – Schedule 7 Item 22 –Section 241A
341.	That Part 7.2 be amended to provide that questions relating to the validity, perfection and effect of perfection or non-perfection of a security interest over an intermediated security be determined by the law (other than the law relating to conflict of laws) of the jurisdiction in which the intermediary maintains the securities account.	Accept	Technical Amendment	Act – Schedule 7 Item 20 – Section 240
342.	That s 235(5) not be amended.	Accept	Status Quo	N/A
343.	That s 235(2) be deleted.	Accept	Technical Amendment	Act – Schedule 7 Item 10 – Subsections 235(1) and (2)

Rec No.	Recommendation	Response	Category	Status
344.	That s 237 be deleted.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 7</b> Item 3 – Section 10 – definition of <i>Australian entity</i> Item 11 – Section 237 Item 12 – Subsection 238(1) (note 1) Item 13 – Subsection 238(1) (note 2)
345.	If s 237 is retained, that s 237(2) be amended so that s 237(1) only applies to tangible personal property.	<b>Redundant</b>	<b>No Legislative Amendment Required</b>	Recommendation 344 has been accepted and section 237 deleted.
346.	That s 238(2) not be amended.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
347.	That s 238(2A) be deleted.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 7</b> Item 14 – Paragraph 238(2)(a) Item 15 – Subsection 238(2A) Item 16 – Subsection 238(3)
348.	That the words “(including the law relating to conflict of laws)” in s 238(3) be replaced with “(other than the law relating to conflict of laws)”.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 7</b> Item 9 – Sections 234A and 234B Item 17 – Subsection 238(3)
349.	That s 238(3)(c) be retained	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
350.	That s 239(5) be deleted.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 7</b> Item 18 – Section 239
351.	That ss 239(6) and 240(2) be deleted.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 7</b> Item 18 – Section 239 Item 20 – Section 240
352.	That ss 240(3) and (5) be amended to provide that the choice of law rules for a security interest in a negotiable instrument, or any other tangible instrument that is regarded by the law as embodying the payment obligation that it represents, should be governed by the law of the place where the instrument is located, consistent with the primary governing law rules for goods.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 7</b> Item 20 – Section 240
353.	If Government decides pursuant to Recommendation 75 to delete ss 21(2) (c)(iv) and 29, that s 240(7) be deleted as well.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 7</b> Item 20 – Section 240
354.	That s 241 be amended to reflect Recommendation 215 of the UNCITRAL Legislative Guide on Secured Transactions.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 7</b> Item 21 – Subsection 241(2)

Rec No.	Recommendation	Response	Category	Status
355.	That s 40(5) be deleted.	<b>Reject</b>	<b>No Legislative Amendment Required</b>	Deletion of this provision would further complicate the PPS Act. Security interests in intellectual property, intellectual property licences, ADI accounts and negotiable instruments, excluded from the application of section 40(5), do not need to be temporarily perfected.
356.	That ss 340 to 341A be amended so that collateral is only a “circulating asset” of a grantor if it is inventory (in the ordinary meaning) of the grantor (other than inventory that is subject to a PMSI), or its proceeds.	<b>Reject but clarify</b>	<b>Significant Amendment</b>	<b>Act – Schedule 7</b> Item 33 – Sections 339-341A Item 28 – Corporations Act 2001 – Sections 51CA and 51CB
357.	That ss 340 to 341A, in whatever form they may ultimately take, be removed from the Act and relocated to the Corporations Act.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 7</b> Item 33 – Sections 339-341A Item 28 – Corporations Act 2001 – Sections 51CA and 51CB
358.	If ss 340 to 341A are not amended in accordance with Recommendation 356, and the Register continues (despite Recommendation 89) to allow a person registering a financing statement to indicate whether or not the secured party may have control, that s 340(2) be amended to make it clear that an ADI that is perfected by control over an ADI account does not need to register a financing statement and indicate that it has control, in order to cause that ADI account not to be a circulating asset for the purposes of s 340.	<b>Reject but clarify</b>	<b>Technical Amendment</b>	<b>Act – Schedule 7</b> Item 28 – Corporations Act 2001 – Sections 51CA and 51CB
359.	If ss 340 to 341A are not amended in accordance with Recommendation 356, that s 341(3)(b) be amended so that a secured party will have control of an account if it satisfies the other requirements of the section, unless it is shown that the grantor’s usual practice is not to deposit the proceeds into the ADI account and that it has the express or implied consent of the secured party to not do so.	<b>Reject</b>	<b>No Legislative Amendment Required</b>	Consultation with insolvency practitioners found this recommendation would unduly shift the burden of proof to the grantor or any party seeking to challenge the presence of such usual practice regarding an ADI account. The secured party is better placed to demonstrate usual practice.
360.	That ss 341(3)(d) and 341A(1)(b) be deleted.	<b>Reject but clarify</b>	<b>Significant Amendment</b>	<b>Act – Schedule 7</b> Item 28 – Corporations Act 2001 – Section 51CB
361.	That s 341(1)(a)(i), and the corresponding reference in s 341(1)(a)(ii) to “specifically appropriated” inventory, be deleted.	<b>Reject but clarify</b>	<b>Significant Amendment</b>	<b>Act – Schedule 7</b> Item 28 – Corporations Act 2001 – Section 51CB

Rec No.	Recommendation	Response	Category	Status
362.	That s 588FL of the Corporations Act be repealed.	<b>Reject</b>	<b>No Legislative Amendment Required</b>	Section 588FL is intended to discourage and protect against fraudulent claims prior to a company's insolvency.
363.	If s 588FL of the Corporations Act is retained despite Recommendation 362, that it be amended: <ul style="list-style-type: none"> <li>to remove references to "deeds of company arrangement";</li> <li>to allow for the possibility that a security interest can be perfected by means other than registration; and</li> <li>so that it does not apply to deemed security interests, consistent with s 267.</li> </ul>	<b>Accept to consider / consult</b>	<b>No Legislative Amendment Required</b>	Further consideration will be required on this recommendation given the proposed response to recommendation 362.
364.	That: <ul style="list-style-type: none"> <li>the Act be amended, if necessary, to enable Government to provide for additional taking free rules in the Regulations; and</li> <li>regulation 7.1 be amended to operate as a taking free rule.</li> </ul>	<b>Accept in part</b>	<b>Significant Amendment</b>	<b>Act – Schedule 3</b> Item 49 – Section 50
365.	That the arm of Government responsible for insolvency law reform be asked to consider whether the law should be amended to allow an insolvency practitioner to give notice to claimants on the Register to verify their claims within a set period (such as 21 days), on the basis that unverified claims could then be treated as unsecured.	<b>Reject</b>	<b>No Legislative Amendment Required</b>	Requiring additional verification undermines the policy goal of the PPS framework, which is that registration provides perfection. Invalidating registrations in this way would disproportionately impact secured parties when additional improvements can be made to the PPS Register to enhance the registration process and assist liquidators.
366.	That the arm of Government responsible for insolvency law reform be asked to consider whether the law should be amended to clarify the extent to which an administrator's equitable lien should rank ahead of security interests.	<b>Accept to consider / consult</b>	<b>No Legislative Amendment Required</b>	The department is seeking stakeholder input in relation to this recommendation. Please refer to part 4 of the discussion paper for further information.
367.	That the Shipping Registration Act 1981 be amended to allow a secured party to lodge a caveat on the Shipping Register.	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 7</b> Item 36 – Shipping Registration Act 1981 – Subsection 47A(1A)
368.	That the list of "interested persons" in s 275(9) be expanded to include a judgment creditor of a grantor that is considering whether to enforce its judgment by seeking execution against property that is described in the secured party's registration.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 7</b> Item 49 – Paragraph 275(9)(da)



Rec No.	Recommendation	Response	Category	Status
369.	That Government investigate further whether it is sufficiently clear that company receivers, and insolvency officials such as administrators or liquidators, that have been appointed to a grantor are able to make use of the information-gathering powers in s 275, and that the section be amended, if necessary, to ensure that this is the case.	Accept	Technical Amendment	Act – Schedule 7 Item 49 – Paragraph 275(9)(d)
370.	That the period within which a secured party must respond to a request for information under s 275, as set out in s 277, remain 10 business days.	Accept	Status Quo	N/A
371.	That s 275 be amended to provide that a secured party is only required to provide those parts of a security agreement that are relevant to ascertaining the identity of the grantor and the secured party, the identity of the collateral, and the amount or obligation that is secured.	Reject	No Legislative Amendment Required	Stakeholder consultation indicated insufficient support for this recommendation. Secured parties concerned about the commercial sensitivity of information can contain this information in another document not part of the security agreement.
372.	That s 275(6)(a) be amended to read along these lines: “subject to subsection (7), the secured party has agreed with the debtor or the grantor (a confidentiality agreement) that the secured party is not obliged to respond to such a request”.	Accept	Technical Amendment	Act – Schedule 7 Item 46 – Paragraph 275(6)(a)
373.	That s 275(7) be deleted.	Accept	Technical Amendment	Act – Schedule 7 Item 48 – Section 275
374.	That it be made clear that the banker’s duty of confidence cannot be relied on to block a disclosure that would otherwise be required by s 275(1).	Accept	Technical Amendment	Act – Schedule 7 Item 47 – Paragraph 275(6)(c)
375.	That s 339 be deleted.	Reject	No Legislative Amendment Required	It was considered there may be unintended consequences if this section is deleted.
376.	That the Act not incorporate any specific provisions for letters of credit, other than any provisions that might remain as a result of Government’s decisions in relation to other Recommendations in this report.	Accept	Status Quo	N/A
377.	That the definition of “intellectual property” in s 10 be deleted.	Accept	Technical Amendment	Act – Schedule 7 Item 40 – Section 10 – definition of <i>intellectual property</i>

Rec No.	Recommendation	Response	Category	Status
378.	That careful consideration be given to the manner in which the term “intellectual property” is used in the Act, and if there are provisions in which the breadth of the term should be limited to registered intellectual property, that those provisions be amended accordingly.	<b>Accept to consider / consult</b>	<b>No Legislative Amendment Required</b>	This has been considered and no further action on this specific recommendation is required as it is considered that it has been addressed through other recommendations relating to IP.
379.	That the definition of “intellectual property” in s 10 be amended, if it is retained, by deleting the text “(including the right to be a party to proceedings in relation to such a right)”, unless a good reason can be identified for retaining it.	<b>Redundant</b>	<b>No Legislative Amendment Required</b>	This recommendation is redundant as the definition of <i>intellectual property</i> in section 10 has been deleted, see recommendation 377.
380.	That s 105 be deleted.	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 7</b> Item 45 – Part 3.5
381.	That Government ask stakeholders whether s 106 should be retained and, if no good reasons are put forward for retaining s 106, that it be deleted.	<b>Accept</b>	<b>Significant Amendment</b>	<b>Act – Schedule 7</b> Item 45 – Part 3.5
382.	That the constitutional, judicial and other supporting provisions in the Act be relocated into a separate piece of supporting legislation.	<b>Reject</b>	<b>No Legislative Amendment Required</b>	This recommendation may have implications for the structure of state laws referring powers to the Commonwealth that allow the functioning of the PPS Act.
383.	That Government consider, as part of redrafting the Act, whether other changes can be made to the location of the Act’s provisions that would make the Act easier to work with.	<b>Accept</b>	<b>No Legislative Amendment Required</b>	<b>N/A</b>
384.	That the Act continue to use the term “grantor” rather than “debtor” to refer to the person who grants a security interest.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>
385.	That the name of the Act not be changed.	<b>Accept</b>	<b>Status Quo</b>	<b>N/A</b>

## Chapter 10: Recommendations 386 to 394

Rec No.	Recommendation	Response	Category	Status
386.	That Government engage private-sector input in the drafting of the Bill for the amending legislation, in addition to then releasing the draft Bill for public consultation.	Accept in part	No Legislative Amendment Required	N/A
387.	That Government proceed if necessary with amendments to the Act in two stages, by deferring any amendments on matters relating to statutory licences, water rights and fixtures, if necessary, for enactment at a later date.	Reject	No Legislative Amendment Required	This recommendation may have implications for the structure of state laws referring powers to the Commonwealth that allow the functioning of the PPS Act.
388.	That Government obtain appropriate private-sector input into the crafting of the transitional provisions.	Accept in part	No Legislative Amendment Required	N/A
389.	That Government develop and publish a detailed implementation plan for the period leading up to commencement of the amending legislation, in collaboration with the business community (such as through AFSA's consultative forums).	Accept	No Legislative Amendment Required	N/A
390.	That Government develop a targeted yet multi-faceted campaign, in the lead-up to the amendments to the Act coming into operation, to increase levels of awareness among small businesses of the Act and its implications.	Accept	No Legislative Amendment Required	N/A
391.	That Government develop and implement steps to raise awareness among consumers of the importance of searching the Register before purchasing a motor vehicle or boat, particularly in a private transaction.	Accept	No Legislative Amendment Required	N/A
392.	That Government develop and implement a campaign to increase understanding among businesses and their advisers of the detailed effect of the Act, and take other steps that could assist businesses on an ongoing basis to understand how the Act affects them and how best to take advantage of it.	Accept	No Legislative Amendment Required	N/A

Rec No.	Recommendation	Response	Category	Status
393.	That Government consult with business and other stakeholders in 5 years' time, to determine whether there is a need for further reform of the Act.	<b>Reject</b>	<b>No Legislative Amendment Required</b>	There is a need to further consider and test the possibilities for future review mechanisms through stakeholder feedback.
394.	That s 343 be repealed.	<b>Accept</b>	<b>Technical Amendment</b>	<b>Act – Schedule 7</b> Item 55 – Part 9.6