Personal Property Securities Act 2009

No. 130, 2009 as amended

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About this compilation

This compilation

This is a compilation of the *Personal Property Securities Act 2009* as in force on 24 June 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 24 June 2014.

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of each amended provision.

Uncommenced amendments

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

Provisions ceasing to have effect

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to personal property securities, and for related purposes

Chapter 1—Introduction

Part 1.1—Preliminary

1 Short title

This Act may be cited as the *Personal Property Securities Act 2009*.

2 Commencement

This Act commences on the day after it receives the Royal Assent.

3 Guide to this Act

Overview

This Act is a law about security interests in personal property.

A security interest is an interest in personal property provided for by a transaction that secures payment or the performance of an obligation. The form of the transaction and the identity of the person who has title to the property do not affect whether an interest is a security interest.

Personal property includes many different kinds of tangible and intangible property, other than real property. Examples include motor vehicles, household goods, business inventory, intellectual property and company shares. Personal property is known as collateral if it is (or is anticipated to be) the subject of a security interest.

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Section 3

A security interest is enforceable against a grantor when it attaches to collateral. A security interest attaches to collateral when a person gives value for acquiring the security interest (or does something else to acquire it), and in return, the person gains rights in the collateral.

A security interest is enforceable against third parties when it has attached to the collateral and either the secured party has possession or control of the collateral, or a security agreement covers the collateral.

If a security interest in collateral is perfected, it takes priority over another security interest that is unperfected when the security interest comes to be enforced. A security interest is perfected if:

(a) it has attached to collateral; and

(b) it is enforceable against third parties; and

(c) certain extra steps (possession or control of the collateral, or registration on the Register of Personal Property Securities) have been taken to protect the interest.

Certain security interests are also declared to be temporarily perfected, or perfected, under this Act.

The secured party whose security interest has the highest priority is entitled to enforce that interest ahead of secured parties with security interests that have a lower priority.

Between perfected security interests, perfection by control has a higher priority than other forms of perfection. The next level of priority is given (subject to certain rules) to perfected purchase money security interests. If no other way of working out priority between perfected interests is provided, the highest priority is given to the security interest that has been continuously perfected for the longest period.

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Section 3

The Register of Personal Property Securities enables secured parties to give notice of actual or prospective security interests. Notice is given by the recording of data about secured parties, grantors and collateral. The register may be kept electronically, for example in a form that is interactive and accessible over the internet.

Summary

Chapter 1 deals with some preliminary matters, including the general application of the Act (Part 1.2) and its interpretation (Part 1.3).

Chapter 2 sets out general rules relating to security interests. These include the following:

(a) general principles relating to security agreements, security interests, attachment and perfection (Part 2.2);

(b) interpretation provisions about possession and control (Part 2.3);

(c) rules about when attachment and perfection of security interests occurs in particular situations (Part 2.4);

(d) the circumstances in which personal property is taken free of a security interest in the property (Part 2.5);

(e) how to work out the priority between competing security interests (and in some cases, other sorts of interests) in personal property (Part 2.6);

(f) rules about the transfer of interests in collateral (Part 2.7).

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Section 3

Chapter 3 contains specific rules about the following:

(a) agricultural interests (Part 3.2);

(b) security interests in accessions to personal property and their priority (Part 3.3);

(c) security interests in personal property that is processed or commingled and their priority (Part 3.4);

(d) intellectual property and intellectual property licences (Part 3.5).

Chapter 4 deals with how to enforce a security interest in personal property. Parties can contract out of some of the provisions of Chapter 4.

Chapter 5 provides for the establishment and maintenance of a register with respect to personal property securities and certain prescribed personal property (the Register of Personal Property Securities).

The Registrar of Personal Property Securities is responsible for maintaining the register. Chapter 5 also deals with how the register can be searched, and how certain non-registered data can be provided through the register (as a portal).

A search by reference to the details of an individual grantor must be made for an authorised purpose set out in the Act. A person who carries out an unauthorised search, or uses data from an unauthorised search, may be liable to pay compensation or a civil penalty (or both).

Chapter 6 deals with the role of the courts in proceedings that relate to security interests in personal property. It confers jurisdiction on courts and provides rules for the transfer of proceedings between courts. It also describes the Registrar's role in judicial proceedings and contains provisions about proceedings for contravention of a civil penalty provision.

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Chapter 7 deals with how this Act interacts with foreign laws, the constitutional operation of this Act and the relationship between this Act and other Australian laws.

Chapter 8 deals with the following:

(a) rules about the vesting of certain unperfected interests (Part 8.2);

(b) rights to damages and compensation in relation to contraventions of this Act (Part 8.3);

(c) requests to secured parties for information, how notices may be given and certain other procedural and administrative matters (Parts 8.4 to 8.7).

Chapter 9 deals with the initial application of this Act.

The Act starts to apply under Part 9.3 at the registration commencement time, which is 1 February 2012 (the first day of the month that is 26 months after this Act was given the Royal Assent), or another time determined by the Minister.

Chapter 9 also deals with references to charges and fixed and floating charges in this Act and in security agreements, and provides for the review of the operation of the Act within 3 years after it starts to apply.

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Part 1.2—General application of this Act

4 Guide to this Part

This Part contains general rules about the application of this Act. These deal with the following matters:

(a) binding the Crown;

(b) geographical rules;

(c) particular interests to which this Act does not apply.

5 Crown to be bound

This Act binds the Crown in each of its capacities.

6 Connection with Australia

(1) This Act applies to a security interest in goods or financial property if:

(a) the location of the goods or property is in Australia; or

(b) the grantor is an Australian entity.

Note: For when personal property is located in a jurisdiction, see section 235.

(1A) This Act applies to a security interest in an intermediated security if:

(a) the intermediary in relation to the intermediated security is located in Australia; or

(b) the grantor is an Australian entity.

Note: For when a person is located in a jurisdiction, see section 235.

(2) This Act applies to a security interest in intangible property if:

(a) the grantor is an Australian entity; or

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(b) the intangible property is an account that is payable in Australia; or

(c) the security interest is an interest of a transferor under a transfer of intangible property that consists of an account or chattel paper, and:

(i) the transferor is an Australian entity; or

(ii) the account or chattel paper is payable in Australia; or

(d) the intangible property is an ADI account; or

(e) the intangible property is created, arises or is provided for by either or both of the following:

(i) a law of the Commonwealth, a State or a Territory;

(ii) the general law (to the extent to which it applies in Australia, a State or a Territory).

Note: For the application of Australian and foreign law in relation to a security interest, see Part 7.2.

7 Application in the external Territories

Extension to Norfolk Island

(1) This Act extends to Norfolk Island.

(2) A reference in this Act to "Australia" includes a reference to Norfolk Island.

Extension to other external Territories

(3) This Act extends to such other external Territories (if any) as are prescribed by the regulations for the purposes of this section.

(4) Without limiting subsection (3), if an external Territory is prescribed for the purposes of this section, regulations prescribing the external Territory may provide that:

(a) only some of the provisions of this Act apply in the external Territory; and

(b) provisions that apply in the external Territory only apply in specified circumstances.

(5) If:

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(a) an external Territory is prescribed by the regulations for the purposes of this section; and

(b) in a provision of this Act that applies (either generally or in particular circumstances) in the external Territory there is a reference to "Australia" or a reference to a term the definition of which includes a reference to "Australia";

then, unless the contrary intention appears, the reference to "Australia" in that provision as so applying, or in that definition as applying for the purposes of that provision as so applying, includes a reference to that external Territory.

Acts Interpretation Act 1901 definition of ***Australia***

(6) To avoid doubt, this section applies despite paragraph 17(a) of the *Acts Interpretation Act 1901* (definition of ***Australia***).

8 Interests to which this Act does not apply

(1) This Act does not apply to any of the following interests (except as provided by subsection (2) or (3)):

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

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

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

(d) any right of set-off or right of combination of accounts (within the ordinary meaning of the term "accounts");

(e) any right or interest held by a person, or any interest provided for by any transaction, under any of the following (as defined in section 5 of the *Payment Systems and Netting Act 1998*):

(i) an approved netting arrangement;

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(ii) a close-out netting contract;

(iii) a market netting contract;

(f) an interest provided for by any of the following transactions:

(i) the creation or transfer of an interest in land;

(ii) the creation of an interest in a right to payment, or the creation or transfer (including a successive transfer) of a right to payment, in connection with an interest in land, if the writing evidencing the creation or transfer specifically identifies that land;

(iii) a transfer (including a successive transfer) of an unearned right to payment under a contract to a person who is to perform the transferor's obligations under the contract;

(iv) a transfer of present or future remuneration (including wages, salary, commission, allowances or bonuses) payable to an individual as an employee or a contractor;

(v) a transfer of an interest or claim in, or under, a contract of annuity or policy of insurance, except a transfer of a right to an insurance payment or other payment as indemnity or compensation for loss of, or damage to, collateral (or proceeds of collateral);

(vi) a transfer of an account made solely to facilitate the collection of the account on behalf of the person making the transfer;

(vii) without limiting subparagraph (vi), a transfer of an account, if the transferee's sole purpose in acquiring the account is to collect it;

(viii) a transfer of an account or negotiable instrument to satisfy (either wholly or partly) a pre-existing indebtedness;

(ix) a sale of an account or chattel paper as part of a sale of business, unless the seller remains in apparent control (within the ordinary meaning of that term) of the business after the sale;

(x) a transfer of the beneficial interest in a monetary obligation where, after the transfer, the transferee holds the monetary obligation on trust for the transferor;

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(g) the following interests in property created under the *Bankruptcy Act 1966*:

(i) the interest of the Official Trustee or a registered trustee who has taken control (within the meaning of section 50 of that Act) of a debtor's or grantor's property under that section;

(ii) the interest of the Official Trustee or a registered trustee in property of a debtor or grantor that has vested in the Official Trustee or the registered trustee under section 58 of that Act;

(iii) a charge created under section 139ZN of that Act;

(iv) a charge created under section 139ZR of that Act;

(v) an interest created under a personal insolvency agreement under Part X of that Act;

(h) a trust over some or all of an amount provided by way of financial accommodation, if the person to whom the financial accommodation is provided is required to use the amount in accordance with a condition under which the financial accommodation is provided;

(i) a right entitlement or authority, whether or not exclusive, that is granted by or under the general law or a law of the Commonwealth, a State or a Territory in relation to the control, use or flow of water;

Note: See also subsection (5).

(j) an interest in a fixture;

(ja) a security interest in personal property taken by a pawnbroker, if subsection (6) applies to the security interest;

(jb) an interest that a person has:

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

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

(iii) as a holder of a retirement savings account (within the meaning of the *Retirement Savings Accounts Act 1997*); or

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(iv) in an account kept under the *Small Superannuation Accounts Act 1995* in the name of the person; or

(v) as a holder of a superannuation annuity (within the meaning of the *Income Tax Assessment Act 1997*);

(jc) a charge created by section 5 of the *Loans Redemption and Conversion Act 1921*;

(k) a particular right, licence or authority (the ***statutory right***) granted by or under a law of the Commonwealth, a State or a Territory, if, at the time when the statutory right is granted, or at any time afterwards, a provision of that law declares that kind of statutory right not to be personal property for the purposes of this Act (no matter whether the provision remains in force);

Note: ***Personal property*** does not include such a statutory right if it has been declared by such a law not to be personal property for the purposes of this Act (see section 10).

(l) an interest of a kind prescribed by the regulations for the purposes of this section.

Exceptions to subsection (1)

(2) The following table has effect:

Provisions of this Act that apply to interests mentioned in subsection (1)

Item	Despite subsection (1), the following provision:	applies in relation to the following interest mentioned in subsection (1):
1	section 73	(a) a lien, charge or other interest in personal property of a kind described in paragraph (1)(b) or (c); and (b) an interest provided for by a transaction described in subparagraph (1)(f)(ii).
2	section 80	a right of set-off (see paragraph (1)(d)).
3	sections 117 and 118	an interest provided for by the creation or transfer of an interest in land (see subparagraph (1)(f)(i)).

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Section 8

Provisions of this Act that apply to interests mentioned in subsection (1)		
Item	**Despite subsection (1), the following provision:**	**applies in relation to the following interest mentioned in subsection (1):**
4	paragraph 140(2)(a)	a lien, charge or other interest in personal property of a kind described in paragraph (1)(b) or (c).
5	paragraph 148(c) and regulations made for the purposes of that paragraph	a lien, charge or other interest in personal property of a kind described in paragraph (1)(b) or (c).
6	a provision prescribed by regulations made for the purposes of this item	an interest mentioned in subsection (1) (including an interest prescribed by regulations made for the purposes of paragraph (1)(l)) that is prescribed by regulations made for the purposes of this item.

(3) The regulations may provide that, despite subsection (1), this Act applies in relation to a kind of interest prescribed by the regulations for the purposes of this subsection.

Transfer of interests and rights

(4) To avoid doubt, the interest provided for by a transfer of an interest or right (see paragraph (1)(f)) is the interest that the transferee has to claim against the transferor.

Water rights

(5) In paragraph (1)(i), the reference to a right in relation to the control, use or flow of water includes, but is not limited to, a reference to a right that a person has against another person to receive (or otherwise gain access to) water.

Pawnbroker security interests

(6) For the purposes of paragraph (1)(ja), this subsection applies to a security interest taken by a pawnbroker if:

(a) the pawnbroker holds a licence or is otherwise expressly authorised (for example, by registration) by a law of a State

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or Territory to carry on a pawnbroking business (however described in that law); and

(b) the taking of the security interest is authorised by that licence or authorisation, and is not in contravention of that law of the State or Territory; and

(c) the security interest is taken in the ordinary course of the pawnbroker's business as a pawnbroker; and

(d) at the time the security interest is taken, the market value of the payment or obligation secured by the security interest is less than or equal to:

(i) $5,000; or

(ii) if a greater amount has been prescribed by regulations made for the purposes of subsection 47(1)—that amount; and

(e) at the time the security interest is taken, the pawnbroker believes, and it is actually the case, that the market value of the personal property is less than or equal to:

(i) $5,000; or

(ii) if a greater amount has been prescribed by regulations made for the purposes of paragraph 47(2)(c)—that amount; and

(f) the personal property is not of a kind that the regulations provide may, or must, be described by serial number in a registration.

Note: Section 47 deals with taking personal, domestic or household property free of a security interest.

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Part 1.3—Definitions

Division 1—Introduction

9 Guide to this Part

This Part is about the terms that are defined in this Act.

Division 2 contains the Dictionary. The Dictionary is a list of every term defined in this Act. A term will either be defined in the Dictionary itself, or in another provision of this Act. If another provision defines the term, the Dictionary will have a signpost to that definition.

Division 3 contains some longer definitions. These include the definition of ***security interest*** (in section 12).

A security interest is an interest in personal property provided for by a transaction that secures payment or the performance of an obligation. The form of the transaction and the identity of the person who has title to the property do not affect whether an interest is a security interest. Certain transactions that do not secure payment or the performance of an obligation may also give rise to a security interest: transfers of accounts, consignments and certain long-term leases and bailments (called PPS leases).

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Division 2—The Dictionary

10 The Dictionary

In this Act:

ABN (short for Australian Business Number) has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

accession to other goods means goods that are installed in, or affixed to, the other goods, unless both the accession and the other goods are required or permitted by the regulations to be described by serial number.

account means a monetary obligation (whether or not earned by performance, and, if payable in Australia, whether or not the person who owes the money is located in Australia) that arises from:

(a) disposing of property (whether by sale, transfer, assignment, lease, licence or in any other way); or

(b) granting a right, or providing services, in the ordinary course of a business of granting rights or providing services of that kind (whether or not the account debtor is the person to whom the right is granted or the services are provided);

but does not include any of the following:

(c) an ADI account;

(d) chattel paper;

(e) an intermediated security;

(f) an investment instrument;

(g) a negotiable instrument.

Example: An account that is a credit card receivable is covered by paragraph (b).

account debtor means a person who is obligated under an account or chattel paper.

ADI (short for authorised deposit-taking institution) has the same meaning as in the *Banking Act 1959*.

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ADI account means an account, within the ordinary meaning of that term, kept by a person (whether alone or jointly with one or more other persons) with an ADI that is payable on demand or at some time in the future (as agreed between the ADI and the person or persons).

Example: A savings account, or a term deposit, kept with an ADI.

advance:

(a) means the payment of currency, the provision of credit or the giving of value; and

(b) includes any liability of a debtor to pay interest, credit costs and other charges or costs payable by the debtor in connection with the advance or the enforcement of a security interest securing the advance.

after-acquired property means personal property acquired by the grantor after a security agreement is made.

agency includes an authority or instrumentality.

amendment demand has the meaning given by section 178.

amendment notice has the meaning given by section 180.

amendment time, of a registration, has the meaning given by section 160.

approved form has the meaning given by section 302.

attaches has the meaning given by section 19.

Australia has a meaning affected by section 7.

Australian entity means any of the following entities:

(a) an individual who is located in Australia;

Note: For the location of individuals, see section 235.

(b) a company or registrable Australian body (within the meaning of the *Corporations Act 2001*);

(c) a corporation sole established under a law of the Commonwealth, a State or a Territory;

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(d) a public authority or an agency or instrumentality of the Crown in right of the Commonwealth, a State or a Territory.

bankruptcy has the same meaning as in paragraph 51(xvii) of the Constitution.

Note: Other parts of speech and grammatical forms of "bankruptcy" (for example, "bankrupt") have a corresponding meaning (see section 18A of the *Acts Interpretation Act 1901*).

business day means a day other than:

(a) a Saturday or a Sunday; or

(b) a day which is a public holiday for the whole of:

(i) any State; or

(ii) the Australian Capital Territory; or

(iii) the Northern Territory; or

(c) a day that falls between Christmas Day and New Year's Day; or

(d) a day on which the Registrar has refused access to the register, or otherwise suspended the operation of the register, in whole or in part (see subsection 147(5)); or

(e) a day that is prescribed by the regulations for the purposes of this definition.

carrying on an enterprise has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

chattel paper means one or more writings that evidence a monetary obligation and either or both of the following:

(a) a security interest in, or lease of, specific goods, or specific goods and accessions to the specific goods (even if the description of the goods (and accessions) is taken to include a description of intellectual property, or an intellectual property licence, under section 105);

(b) a security interest in specific intellectual property or a specific intellectual property licence;

but does not include any of the following:

(c) a document of title;

(d) an intermediated security;

(e) an investment instrument;

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(f) a negotiable instrument.

circulating asset has the meaning given by section 340.

civil penalty provision has the meaning given by section 221.

clearing and settlement facility has the meaning given by Chapter 7 of the *Corporations Act 2001*.

collateral:

(a) means personal property to which a security interest is attached; and

(b) in relation to a registration with respect to a security interest—includes personal property described by the registration (whether or not a security interest is attached to the property).

Note: Section 161 authorises the registration of a financing statement that describes personal property before or after a security agreement is made covering the property, or a security interest has attached to the property.

commercial consignment means a consignment if:

(a) the consignor retains an interest in goods that the consignor delivers to the consignee; and

(b) the consignor delivers the goods to the consignee for the purpose of sale, lease or other disposal; and

(c) the consignor and the consignee both deal in goods of that kind in the ordinary course of business;

but does not include an agreement under which goods are delivered to:

(d) an auctioneer for the purpose of sale; or

(e) a consignee for sale, lease or other disposal if the consignee is generally known to the creditors of the consignee to be selling or leasing goods of others.

commercial property means personal property other than consumer property.

commingled: goods that are ***commingled*** include goods that are mixed with goods of the same kind.

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company means:

(a) a company registered under Part 2A.2 or Part 5B.1 of the *Corporations Act 2001*; or

(b) a registrable body (within the meaning of that Act) that is registered under Division 1 or 2 of Part 5B.2 of that Act.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

constructive knowledge has the meaning given by section 297.

Note: Section 298 deals with knowledge in relation to bodies corporate and other entities.

consumer property means personal property held by an individual, other than personal property held in the course or furtherance, to any degree, of carrying on an enterprise to which an ABN has been allocated.

continuously perfected has the meaning given by section 56.

control has the meaning given by Part 2.3.

Note: ***Control*** has an extended meaning in section 341 (control of inventory and accounts in relation to fixed and floating charges).

crops means crops (whether matured or not and whether naturally grown or planted) that have not been harvested, including:

(a) the products of agriculture or aquaculture, if the products have not been harvested; and

(b) trees (but only if they are personal property), if the trees have not been harvested.

currency means currency authorised as a medium of exchange by the law of Australia or of any other country.

debtor means:

(a) a person who owes payment or performance of an obligation that is secured by a security interest in personal property (whether or not the person is also the grantor of the security interest); or

(b) a transferee of, or successor to, an obligation mentioned in paragraph (a).

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defect, in relation to a registration, includes an irregularity, omission or error in the registration.

Deputy Registrar means a Deputy Registrar of Personal Property Securities.

Note: See Part 5.9 for the office of Deputy Registrar.

description of personal property (including collateral and proceeds) means:

(a) in the case of a particular item of personal property—a description that identifies the item, or that identifies a class to which the item belongs; or

(b) in the case of a class of personal property—a description that identifies the class, including a description that identifies the class by identifying a larger class of personal property that wholly includes the class.

Example 1: A description that identifies collateral as "sheep" (a type of livestock) is sufficient to identify collateral that is sheep wool (a product of livestock, which is a class of collateral wholly included in the larger class of "sheep").

Example 2: A description that identifies collateral as "fruit" is sufficient to identify collateral that is apples.

document of title means a writing issued by or addressed to a bailee:

(a) that covers goods in the bailee's possession that are identified or are fungible portions of an identified mass; and

(b) in which it is stated that the goods identified in it will be delivered:

(i) to a named person, or to the transferee of that person; or

(ii) to the bearer; or

(iii) to the order of a named person.

effective: a registration is ***effective*** with respect to particular collateral if it is effective with respect to that collateral under Part 5.4.

enterprise has the meaning given by section 9-20 of the *A New Tax System (Goods and Services Tax) Act 1999*.

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evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

execution creditor means a creditor who has recovered judgment and issued execution against a grantor.

expenses, in relation to the enforcement of a security interest in collateral, includes advances, costs and taxes for obtaining possession of, protecting (including insuring), maintaining, preserving or repairing the collateral.

Example: For collateral that is intellectual property, ***expenses*** include the costs of legal proceedings against infringers of the intellectual property.

Note: Reasonable expenses in relation to the enforcement of a security interest are taken to be secured by a security interest unless the parties agree otherwise (see subsection 18(5)).

express amendment, of this Act, has the meaning given by section 244.

Family Court means the Family Court of Australia.

Federal Circuit Court means the Federal Circuit Court of Australia.

Federal Court means the Federal Court of Australia.

financial product:

(a) for the purposes of the definition of ***investment instrument*** in this section—has the meaning given by the *Corporations Act 2001*; and

(b) for any other purposes—means any of the following, or an interest in any of the following, other than cash:

(i) shares;

(ii) bonds;

(iii) any other financial instrument;

(iv) any other financial asset.

financial property means any of the following personal property:

(a) chattel paper;

(b) currency;

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(c) a document of title;
(d) an investment instrument;
(e) a negotiable instrument.

financing change statement means data amending a registered financing statement.

financing statement means data registered (or that is to be registered) pursuant to an application for registration under subsection 150(1).

Note: For requirements relating to financing statements, see Part 5.3 (Registration).

fish means any of the following, while alive:
(a) marine, estuarine or freshwater fish, or other aquatic animal life, at any stage of their life history;
(b) oysters and other aquatic molluscs, crustaceans, echinoderms, beachworms and other aquatic polychaetes;

but does not include any fish prescribed by the regulations for the purposes of this definition.

fixtures means goods, other than crops, that are affixed to land.

foreign jurisdiction has the meaning given by section 39.

future advance means:
(a) an advance secured by a security interest (whether or not made pursuant to an obligation), if the advance is made after the security agreement was made; or
(b) expenses in relation to the enforcement of a security interest that are secured by the security interest.

Note: For the meaning of ***expenses***, see the definition elsewhere in this section. Reasonable expenses in relation to the enforcement of a security interest are taken to be secured by the security interest unless the parties agree otherwise (see subsection 18(5)).

general law means the principles and rules of the common law and equity.

goods means personal property that is tangible property, including the following:

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(a) crops;
(b) livestock;
(c) wool;
(d) minerals that have been extracted (including hydrocarbons) in any form, whether solid, liquid or gaseous and whether organic or inorganic;
(e) satellites and other space objects;

but does not include financial property or an intermediated security.

grantor means:

(a) a person who has the interest in the personal property to which a security interest is attached (whether or not the person owes payment or performance of an obligation secured by the security interest); or
(b) a person who receives goods under a commercial consignment; or
(c) a lessee under a PPS lease; or
(d) a transferor of an account or chattel paper; or
(e) a transferee of, or successor to, the interest of a person mentioned in paragraphs (a) to (d); or
(f) in relation to a registration with respect to a security interest:
  (i) a person registered in the registration as a grantor; or
  (ii) a person mentioned in paragraphs (a) to (e).

insolvency has the same meaning as in paragraph 51(xvii) of the Constitution.

Note: Other parts of speech and grammatical forms of "insolvency" (for example, "insolvent") have a corresponding meaning (see section 18A of the *Acts Interpretation Act 1901*).

intangible property means personal property (including a licence) that is not any of the following:

(a) financial property;
(b) goods;
(c) an intermediated security.

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intellectual property means any of the following rights (including the right to be a party to proceedings in relation to such a right):

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

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

(c) the rights held by a person who is the registered owner of a trade mark that is registered under the *Trade Marks Act 1995*;

(d) the right to do, or to license another person to do, an act referred to in section 11 of the *Plant Breeder's Rights Act 1994* in relation to propagating material of a plant variety;

(e) the right to do an act referred to in section 17 of the *Circuit Layouts Act 1989* in relation to an eligible layout during the protection period of the layout;

(f) the right under the *Copyright Act 1968* to do an act comprised in the copyright in a literary, dramatic, musical or artistic work or a published edition of such a work, or in a sound recording, cinematograph film, television broadcast or sound broadcast;

(g) a right under or for the purposes of a law of a foreign country that corresponds to a right mentioned in any of paragraphs (a) to (f).

intellectual property licence means an authority or licence (within the ordinary meaning of that term) to exercise rights comprising intellectual property.

interest, in personal property, includes a right in the personal property.

intermediary has the meaning given by section 15.

intermediated security has the meaning given by section 15.

inventory means personal property (whether goods or intangible property) that, in the course or furtherance, to any degree, of an enterprise to which an ABN has been allocated:

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(a) is held by the person for sale or lease, or has been leased by the person as lessor; or

(b) is held by the person to be provided under a contract for services, or has been so provided; or

(c) is held by the person as raw materials or as work in progress; or

(d) is held, used or consumed by the person, as materials.

investment instrument means any of the following financial products:

(a) a share in a body, or a debenture of a body;

(b) a debenture, stock or bond issued or proposed to be issued by a government;

(c) a derivative;

(d) a foreign exchange contract that is not a derivative;

(e) an assignable option to have an allotment of an investment instrument (apart from this paragraph) made to the holder of the option;

(f) an interest in, or a unit in an interest in, a managed investment scheme;

(g) a unit in a share in a body;

(h) a financial product that is traded on a financial market that is:

(i) operated in accordance with an Australian market licence; or

(ii) exempt from the operation of Part 7.2 of the *Corporations Act 2001*;

(i) any other financial product that is prescribed by the regulations;

(j) any financial product that consists of a combination of any 2 or more of the financial products mentioned in paragraphs (a) to (i);

but does not include any of the following:

(k) the creation or transfer (including a successive transfer) of a right to payment in connection with interests in land, if the writing evidencing the creation or transfer does not specifically identify that land;

(l) a document of title;

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(m) an intermediated security;
(n) a negotiable instrument.

A word or expression used in this definition has the same meaning as in the *Corporations Act 2001*, subject to this Part.

jurisdiction, in which personal property, or an individual, is located, has a meaning affected by subsections 235(6) and (7).

land includes all estates and interests in land, whether freehold, leasehold or chattel, but does not include fixtures.

land law has the meaning given by section 117.

law of the Commonwealth, a State or a Territory means:
(a) an Act of the Commonwealth, the State or the Territory; or
(b) an instrument made under such an Act.

licence means either of the following, if it is transferable by the licensee (whether or not the right, entitlement, authority or licence is exclusive, and whether or not a transfer is restricted or requires consent):
(a) a right, entitlement or authority to do one or more of the following:
(i) to manufacture, produce, sell, transport or otherwise deal with personal property;
(ii) to provide services;
(iii) to explore for, exploit or use a resource;
(b) an intellectual property licence;

but does not include a right, entitlement or authority that is:
(c) granted by or under a law of the Commonwealth, a State or a Territory; and
(d) declared by that law not to be personal property for the purposes of this Act.

Note: A right, entitlement or authority to which paragraph (c) or (d) applies is not personal property for the purposes of this Act (for the meaning of ***personal property***, see elsewhere in this section).

livestock includes:

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(a) while they are alive—alpacas, cattle, fish, goats, horses, llamas, ostriches, poultry, sheep, swine and other animals; and
(b) the unborn young of animals mentioned in paragraph (a); and
(c) the products of livestock before they become proceeds (for example, the wool on a sheep's back before the sheep is shorn).

located, in relation to personal property, or a person, has the meaning given by section 235.

lower court has the meaning given by section 211.

matter includes act, omission, body, person and thing.

migrated security interest has the meaning given by section 332.

modification includes addition, omission and substitution.

motor vehicle has the meaning given by the regulations.

National Credit Code means Schedule 1 to the *National Consumer Credit Protection Act 2009*, and includes regulations made under section 329 of that Act for the purposes of that Schedule.

negotiable instrument means:
(a) a bill of exchange (within the meaning of the *Bills of Exchange Act 1909*); or
(b) a cheque (within the meaning of the *Cheques Act 1986*); or
(c) a promissory note (within the meaning of section 89 of the *Bills of Exchange Act 1909*); or
(d) any other writing that evidences a right to payment of currency, if:
  (i) the writing is of a kind that, in the ordinary course of business, is transferred by delivery with any necessary endorsement or assignment; or
  (ii) the writing satisfies the requirements for negotiability under the law governing negotiable instruments (including, but not limited to, instruments that are negotiable instruments within the meaning of this definition); or

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(e) a letter of credit that states that it must be presented on claiming payment;

but does not include any of the following:

(f) the creation or transfer (including a successive transfer) of a right to payment in connection with interests in land, if the writing evidencing the creation or transfer does not specifically identify that land;

(g) a document of title;

(h) an intermediated security.

new value means value other than value provided to reduce or discharge an earlier debt or liability owed to the person providing the value.

non-referring State means a State that is not a referring State.

Note: For the meaning of ***referring State***, see section 244.

notice of objection has the meaning given by section 137.

penalty unit has the meaning given by section 4AA of the *Crimes Act 1914*.

perfected has the meaning given by section 21.

personal property means property (including a licence) other than:

(a) land; or

(b) a right, entitlement or authority that is:

(i) granted by or under a law of the Commonwealth, a State or a Territory; and

(ii) declared by that law not to be personal property for the purposes of this Act.

Note: This Act does not apply to certain interests even if they are interests in personal property (see section 8).

possession has a meaning affected by section 24.

PPS lease (short for Personal Property Securities lease) has the meaning given by section 13.

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PPS matter (short for Personal Property Securities matter) has the meaning given by section 206.

predominantly: personal property is intended to be used ***predominantly*** for personal, domestic or household purposes if:

(a) the personal property:
  (i) is intended to be used only for those purposes; or
  (ii) is intended to be used for other purposes as well, but is intended to be mostly used for personal, domestic or household purposes; and
(b) the personal property is not acquired as an investment.

present liability means a liability:

(a) that has arisen; and
(b) whose extent or amount is fixed or capable of being ascertained;

whether or not the liability is immediately due to be met.

proceeds has the meaning given by section 31.

provides: a security agreement ***provides*** for a security interest if the interest arises under the agreement.

purchase money security interest has the meaning given by section 14.

receiving court has the meaning given by section 210.

referred PPS matters (short for referred Personal Property Securities matters) has the meaning given by section 245.

referring State has the meaning given by section 244.

register means the Personal Property Securities Register established under section 147.

registered data conditions has the meaning given by section 176B (access to registered data).

Registrar means the Registrar of Personal Property Securities.

Note: See Part 5.9 for the office of Registrar.

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registration means a registered financing statement (as amended by any registered financing change statement) with respect to:

(a) a security interest; or

(b) personal property prescribed by regulations made for the purposes of paragraph 148(c).

registration commencement time has the meaning given by section 306.

registration event has the meaning given by section 155.

registration time, with respect to collateral described in a registration, has the meaning given by:

(a) section 160; or

(aa) section 333 (registration with respect to migrated data); or

(b) section 336 (preparatory registration with respect to transitional security interests).

relevant superior court has the meaning given by section 211.

secured party:

(a) means a person who holds a security interest for the person's own benefit or for the benefit of another person (or both); and

(b) if the holders of the obligations issued, guaranteed or provided for under a security agreement are represented by a trustee as the holder of the security interest—includes the trustee; and

(c) in relation to a registration with respect to a security interest—includes a person registered as a secured party in the registration.

securities account has the meaning given by section 15.

security agreement means:

(a) an agreement or act by which a security interest is created, arises or is provided for; or

(b) writing evidencing such an agreement or act.

security interest has the meaning given by section 12.

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serial number, in relation to collateral, means a serial number by which the regulations require, or permit, the collateral to be described in a registration.

State Family Court, in relation to a State, means a court of that State to which section 41 of the *Family Law Act 1975* applies because of a Proclamation made under subsection 41(2) of that Act.

superior court has the meaning given by section 211.

take has the meaning given by section 138A.

term deposit means a deposit made with an ADI that matures on a particular date (whether or not the ADI can be required to repay the deposit before that date).

third party data has the meaning given by section 176C (access to third party data).

third party data conditions has the meaning given by section 176C (access to third party data).

this Act includes the regulations.

time of execution has the meaning given by section 74.

transfer matter has the meaning given by section 210.

transferring court has the meaning given by section 210.

transitional register has the meaning given by section 330.

transitional security agreement has the meaning given by section 307.

transitional security interest has the meaning given by section 308.

value:

(a) means consideration that is sufficient to support a contract; and

(b) includes an antecedent debt or liability; and

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(c) in relation to the definition of ***purchase money security interest***—has a meaning affected by section 14.

verification statement has the meaning given by section 155.

water source has the meaning given by section 138A.

wool means the natural fibre from any livestock that produce fleece that can be shorn (such as sheep, goats, alpacas and llamas).

writing includes:

(a) the recording of words or data in any way (including electronically), if, at the time the recording was made, it was reasonable to expect that the words or data would be readily accessible so as to be useable for subsequent reference; and

(b) the display, or other representation, of words or data by any form of communication (including electronic), if:

(i) the display or representation is recorded in any way (including electronically); and

(ii) at the time the recording was made, it was reasonable to expect that the words or data would be readily accessible so as to be useable for subsequent reference.

11 Application of the *Acts Interpretation Act 1901*

(1) The *Acts Interpretation Act 1901*, as in force at the start of the day on which this Act receives the Royal Assent, applies to this Act.

(2) Amendments of the *Acts Interpretation Act 1901* made after that time do not apply to this Act.

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Division 3—Concepts relating to security interests and personal property

12 Meaning of *security interest*

(1) A ***security interest*** means an interest in personal property provided for by a transaction that, in substance, secures payment or performance of an obligation (without regard to the form of the transaction or the identity of the person who has title to the property).

Note: For the application of this Act to interests, see section 8.

(2) For example, a ***security interest*** includes an interest in personal property provided by any of the following transactions, if the transaction, in substance, secures payment or performance of an obligation:

(a) a fixed charge;
(b) a floating charge;
(c) a chattel mortgage;
(d) a conditional sale agreement (including an agreement to sell subject to retention of title);
(e) a hire purchase agreement;
(f) a pledge;
(g) a trust receipt;
(h) a consignment (whether or not a commercial consignment);
(i) a lease of goods (whether or not a PPS lease);
(j) an assignment;
(k) a transfer of title;
(l) a flawed asset arrangement.

(3) A ***security interest*** also includes the following interests, whether or not the transaction concerned, in substance, secures payment or performance of an obligation:

(a) the interest of a transferee under a transfer of an account or chattel paper;

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(b) the interest of a consignor who delivers goods to a consignee under a commercial consignment;
(c) the interest of a lessor or bailor of goods under a PPS lease.

(3A) A person who owes payment or performance of an obligation to another person may take a security interest in the other person's right to require the payment or the performance of the obligation.

(4) Without limiting subsection (3A):
(a) an account debtor, in relation to an account or chattel paper, may take a security interest in the account or chattel paper; and
(b) an ADI may take a security interest in an ADI account that is kept with the ADI.

(5) A ***security interest*** does not include:
(a) a licence; or
(b) an interest of a kind prescribed by the regulations for the purposes of this section.

(6) A security interest is not created only by an agreement or undertaking to do either of the following:
(a) to postpone or subordinate a person's right to payment or performance of all or any part of a debtor's obligation to another person's right to payment or performance of all or any part of another of the debtor's obligations;
(b) to postpone or subordinate all or any part of a secured party's rights under a security agreement to all or any part of another secured party's rights under another security agreement with the same grantor.

13 Meaning of *PPS lease*

(1) A ***PPS lease*** means a lease or bailment of goods:
(a) for a term of more than one year; or
(b) for an indefinite term (even if the lease or bailment is determinable by any party within a year of entering into the lease or bailment); or

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(c) for a term of up to one year that is automatically renewable, or that is renewable at the option of one of the parties, for one or more terms if the total of all the terms might exceed one year; or

(d) for a term of up to one year, in a case in which the lessee or bailee, with the consent of the lessor or bailor, retains uninterrupted (or substantially uninterrupted) possession of the leased or bailed property for a period of more than one year after the day the lessee or bailee first acquired possession of the property (but not until the lessee's or bailee's possession extends for more than one year); or

(e) for goods that may or must be described by serial number in accordance with the regulations, if the lease or bailment is:

(i) for a term of 90 days or more; or

(ii) for a term of less than 90 days, but is automatically renewable, or is renewable at the option of one of the parties, for one or more terms if the total of all the terms might be 90 days or more; or

(iii) for a term of less than 90 days, in a case in which the lessee or bailee, with the consent of the lessor or bailor, retains uninterrupted (or substantially uninterrupted) possession of the leased or bailed property for a period of 90 days or more after the day the lessee or bailee first acquired possession of the property, (but not until the lessee's or bailee's possession extends for 90 days or more).

(2) However, a ***PPS lease*** does not include:

(a) a lease by a lessor who is not regularly engaged in the business of leasing goods; or

(b) a bailment by a bailor who is not regularly engaged in the business of bailing goods; or

(c) a lease of consumer property as part of a lease of land where the use of the property is incidental to the use and enjoyment of the land; or

(d) a lease or bailment of personal property prescribed by the regulations for the purposes of this definition, regardless of the length of the term of the lease or bailment.

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Bailments for value only

(3) This section only applies to a bailment for which the bailee provides value.

14 Meaning of *purchase money security interest*

General definition

(1) A ***purchase money security interest*** means any of the following:

(a) a security interest taken in collateral, to the extent that it secures all or part of its purchase price;

(b) a security interest taken in collateral by a person who gives value for the purpose of enabling the grantor to acquire rights in the collateral, to the extent that the value is applied to acquire those rights;

(c) the interest of a lessor or bailor of goods under a PPS lease;

(d) the interest of a consignor who delivers goods to a consignee under a commercial consignment.

Exceptions

(2) However, a ***purchase money security interest*** does not include:

(a) an interest acquired under a transaction of sale and lease back to the seller; or

(b) an interest in collateral (as original collateral) that is chattel paper, an investment instrument, an intermediated security, a monetary obligation or a negotiable instrument; or

(c) a security interest in collateral that (at the time the interest attaches to the collateral) the grantor intends to use predominantly for personal, domestic or household purposes.

(2A) Despite paragraph (2)(c), a ***purchase money security interest*** includes an interest if:

(a) the interest is covered by subsection (1); and

(b) the interest is in collateral that (at the time the interest attaches to the collateral) the grantor intends to use predominantly for personal, domestic or household purposes; and

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(c) the collateral is of a kind that is required or permitted by the regulations to be described by serial number.

Mixed securities

(3) If a security interest in collateral secures obligations covered by subsection (7) (***purchase money obligations***) and other obligations, the security interest is a purchase money security interest only to the extent that it secures the purchase money obligations.

(4) If a security interest is granted in personal property (***purchase money collateral***) that secures a purchase money obligation, together with other collateral, the security interest is a purchase money security interest only to the extent that it is granted in the purchase money collateral.

Renewal etc.

(5) A purchase money security interest does not lose its status as such only because the purchase money obligation is renewed, refinanced, consolidated or restructured (whether or not by the same secured party).

Application of payments to obligations

(6) In any transaction, if the extent to which a security interest is a purchase money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(a) in accordance with any method of application to which the parties agree; or

(b) if the parties do not agree on a method—in accordance with any intention of the debtor manifested at or before the time of the payment; or

(c) if neither paragraph (a) nor (b) applies—in the following order:

(i) to obligations that are not secured, in the order in which those obligations were incurred;

(ii) to obligations that are secured, but not by purchase money security interests, in the order in which those obligations were incurred;

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(iii) to obligations that are secured by purchase money security interests, in the order in which those obligations were incurred.

Purchase money obligations

(7) This subsection covers an obligation of a debtor incurred:
(a) as all or part of the purchase price of the collateral; or
(b) for value given to enable the grantor to acquire or use the collateral (provided the collateral is so acquired or used).

References to purchase price and value

(8) In this section, a reference to a purchase price, or value, includes a reference to credit charges and interest payable for the purchase or loan credit.

15 Meaning of *intermediated security* and related terms

*Meaning of **intermediated security***

(1) An ***intermediated security*** is the rights of a person in whose name an intermediary maintains a securities account.

*Meaning of **intermediary***

(2) An ***intermediary*** is:
(a) a person (including a central securities depository) who holds an Australian financial services licence (within the meaning of the *Corporations Act 2001*) permitting the person, in the course of business or other regular activity, to maintain securities accounts:
(i) on behalf of others; or
(ii) on behalf of others as well as on the person's own behalf; or
(b) a person who operates a clearing and settlement facility under an Australian CS facility licence (within the meaning of the *Corporations Act 2001*), other than such a person prescribed by regulations made for the purposes of this paragraph; or

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(c) a person (including a central securities depository) who holds a licence issued under the law of a foreign jurisdiction permitting the person, in the course of business or other regular activity, to maintain securities accounts:

(i) on behalf of others; or

(ii) on behalf of others as well as on the person's own behalf.

(3) An ***intermediary*** does not include a central bank.

(4) An intermediary (including a central securities depository) is an ***intermediary*** only while acting in the capacity of an intermediary.

(5) A person is not an ***intermediary*** for the purposes of paragraph (2)(a) or (c) merely because the person maintains a securities account on behalf of the issuer of the financial products to which the account relates.

(6) Without limiting subsection (5), a person is not an ***intermediary*** for the purposes of paragraph (2)(a) or (c) merely because the person:

(a) acts as a central securities depository, registrar or transfer agent for an issuer of a financial product; or

(b) records details of interests in financial products in the person's own books, being interests credited to securities accounts in the names of other persons for whom the person acts as manager or agent or otherwise in a purely administrative capacity.

Meaning of ***securities account***

(7) In this Act:

securities account means:

(a) an account to which interests in financial products may be credited or debited; or

(b) in the case of an intermediary mentioned in paragraph 15(2)(b)—a record of holdings and transfers of interests in financial products.

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Section 16

Chapter 2—General rules relating to security interests

Part 2.1—Guide to this Chapter

16 Guide to this Chapter

This Chapter sets out general rules relating to security interests in personal property.

Part 2.2 contains some general principles relating to these security interests, the agreements that govern them and their enforceability. The Part describes how a security interest is attached to personal property and perfected.

Part 2.3 deals with the concepts of possession and control of personal property.

Part 2.4 contains some rules about attachment and perfection of security interests in particular situations.

Part 2.5 sets out circumstances in which a person takes an interest in personal property free of a security interest in the property.

Part 2.6 sets out how to work out the priority between competing security interests (and in some cases, other sorts of interests) in personal property. If a specific rule does not deal with the priority between security interests, then the priority is determined in accordance with the default rules in section 55.

Part 2.7 contains some rules about transferring and assigning interests in collateral.

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Part 2.2—Security interests: general principles

17 Guide to this Part

This Part sets out some general principles about security interests.

These principles relate to the enforceability of security agreements against grantors of security interests and third parties.

A security interest is only effective if it has ***attached*** to collateral. A security interest attaches to collateral when the grantor has rights in the collateral, or can transfer it to the secured party, and value is given, or the security interest otherwise arises.

A security interest is only enforceable against a third party if it has attached to collateral and the secured party possesses the collateral, has perfected the security interest by controlling the collateral or has entered into a written security agreement that describes the collateral.

This Part also contains rules about how a security interest is perfected and how it is continuously perfected. A perfected security interest has priority over an unperfected security interest, and the security interest that has been continuously perfected for the longest time generally has the highest priority (see Part 2.6 for priority rules).

Perfection occurs when a security interest has attached to collateral and any further steps needed to make the security interest effective against third parties have been taken.

These steps involve registration on the Personal Property Securities Register or possession or control of the collateral. In certain situations this Act provides for perfection, or temporary perfection, by the operation of the Act itself.

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18 General rules about security agreements and security interests

(1) A security agreement is effective according to its terms.

(2) A security agreement may provide for security interests in after-acquired property.

(3) A security interest in after-acquired property attaches without specific appropriation by the grantor.

(4) A security agreement may provide for future advances.

(5) A security interest is taken to secure reasonable expenses in relation to the enforcement of the security interest, unless the parties agree otherwise.

19 Enforceability of security interests against grantors—attachment

Attachment required for enforceability

(1) A security interest is enforceable against a grantor in respect of particular collateral only if the security interest has attached to the collateral.

Attachment rule

(2) A security interest ***attaches*** to collateral when:
  (a) the grantor has rights in the collateral, or the power to transfer rights in the collateral to the secured party; and
  (b) either:
    (i) value is given for the security interest; or
    (ii) the grantor does an act by which the security interest arises.

Time of attachment

(3) Subsection (2) does not apply if the parties to a security agreement have agreed that a security interest attaches at a later time, in which case the security interest ***attaches*** at the time specified in the agreement.

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(4) To avoid doubt, a reference in a security agreement to a floating charge is not a reference to an agreement that the security interest created by the floating charge attaches at a time later than provided under subsection (2).

Goods leased, bailed, consigned or sold under a conditional sale agreement.

(5) For the purposes of paragraph (2)(a), a grantor has rights in goods that are leased or bailed to the grantor under a PPS lease, consigned to the grantor, or sold to the grantor under a conditional sale agreement (including an agreement to sell subject to retention of title) when the grantor obtains possession of the goods.

(6) Subsection (5) does not limit any other rights the grantor may have in the goods.

Note: A security interest may attach to crops while they are growing, and to the products of livestock, before they become proceeds of the crops or livestock (for example, wool before it is shorn). See subsections 31(4) and (5) (meaning of ***proceeds***) and section 84A (security interests in crops and livestock).

20 Enforceability of security interests against third parties

General rule

(1) A security interest is enforceable against a third party in respect of particular collateral only if:

(a) the security interest is attached to the collateral; and

(b) one of the following applies:

(i) the secured party possesses the collateral;

(ii) the secured party has perfected the security interest by control;

(iii) a security agreement that provides for the security interest covers the collateral in accordance with subsection (2).

Note: For possession and control of collateral, see Part 2.3.

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Written security agreements

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

(a) the security agreement is 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; and

(b) the writing evidencing the agreement contains:

(i) a description of the particular collateral, subject to subsections (4) and (5); or

(ii) a statement that a security interest is taken in all of the grantor's present and after-acquired property; or

(iii) a statement that a security interest is taken in all of the grantor's present and after-acquired property except specified items or classes of personal property.

Methods of signing writing

(3) Without limiting subparagraph (2)(a)(i), for the purposes of that subparagraph a grantor is taken to sign writing if, with the intention of identifying the grantor and adopting, or accepting, the writing, the person applies:

(a) writing (including a symbol) executed or otherwise adopted by the person; or

(b) writing wholly or partly encrypted, or otherwise processed, by the person.

Note: For the meaning of ***writing***, see section 10.

Personal property descriptions—consumer property, equipment and inventory

(4) If particular personal property is described using the term "consumer property" or "commercial property" in the writing evidencing a security agreement, subparagraph (2)(b)(i) is satisfied only if the personal property is more particularly described, in addition, by reference to item or class.

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(5) If particular personal property is described using the term "inventory" in the writing evidencing a security agreement, subparagraph (2)(b)(i) is satisfied only while the personal property is held or leased by the grantor as inventory.

Proceeds

(6) A security interest in proceeds is enforceable against a third party whether or not the security agreement providing for the security interest contains a description of the proceeds.

Note: Section 32 deals with whether a security interest in collateral attaches to proceeds of the collateral.

21 Perfection—main rule

(1) A security interest in particular collateral is ***perfected*** if:
- (a) the security interest is temporarily perfected, or otherwise perfected, by force of this Act; or
- (b) all of the following apply:
  - (i) the security interest is attached to the collateral;
  - (ii) the security interest is enforceable against a third party;
  - (iii) subsection (2) applies.

(2) This subsection applies if:
- (a) for any collateral, a registration is effective with respect to the collateral; or
- (b) for any collateral, the secured party has possession of the collateral (other than possession as a result of seizure or repossession); or
- (c) for the following kinds of collateral, the secured party has control of the collateral:
  - (i) an ADI account;
  - (ii) an intermediated security;
  - (iii) an investment instrument;
  - (iv) a negotiable instrument that is not evidenced by a certificate;

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(v) a right evidenced by a letter of credit that states that the letter of credit must be presented on claiming payment or requiring the performance of an obligation;

(vi) satellites and other space objects.

Note: For what constitutes possession and control of collateral, see Part 2.3.

(3) A security interest may be perfected regardless of the order in which attachment and any step mentioned in subsection (2) occur.

(4) A single registration may perfect one or more security interests.

22 Perfection—goods possessed by a bailee

Perfection of security interest

(1) A security interest that has attached to goods in the possession of a bailee (other than the grantor or the debtor) is perfected if any of the following applies, regardless of when the security interest attached to the goods:

(a) the security interest is perfected by registration, as provided by section 21;

(b) the security interest is perfected by possession, as provided by section 21, because the bailee possesses the property on behalf of the secured party;

(c) the bailee issues a document of title to the goods in the name of the secured party;

(d) the bailee issues a negotiable document of title to the goods, and the secured party has a perfected security interest in the document.

Temporary perfection while negotiable document of title in transit

(2) A security interest in goods in the possession of a bailee (other than the grantor or the debtor) is temporarily perfected for the period:

(a) starting at the time the bailee issues a negotiable document of title to the goods; and

(b) ending at the end of the day the secured party takes possession of the document.

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(3) The security interest in the goods becomes unperfected at the end of the period mentioned in subsection (2), unless the security interest is perfected otherwise than under subsection (2) before the end of the period.

(4) However, subsection (2) does not apply, and is taken never to have applied, unless, before the end of the period of 5 business days after the day of issue of the negotiable document of title:

(a) the secured party takes possession of the document; or

(b) the security interest is perfected otherwise than under that subsection.

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Part 2.3—Possession and control of personal property

23 Guide to this Part

This Part deals with the concepts of possession and control of personal property.

A grantor and secured party cannot both have possession of collateral. There are special rules about possession of the following:

(a) goods transported by a common carrier;

(b) negotiable instruments not evidenced electronically;

(c) chattel paper evidenced electronically;

(d) investment instruments evidenced by a certificate.

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

(a) ADI accounts;

(b) intermediated securities;

(c) investment instruments;

(d) letters of credit;

(e) negotiable instruments not evidenced by a certificate.

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24 Possession

Possession by one party exclusive of possession by others

(1) A secured party cannot have ***possession*** of personal property if the property is in the actual or apparent possession of the grantor or debtor, or another person on behalf of the grantor or debtor.

(2) A grantor or debtor cannot have ***possession*** of personal property if the property is in the actual or apparent possession of the secured party, or another person on behalf of the secured party.

Timing rule for possession of goods transported by common carrier

(3) A grantor or debtor to whom goods are transported by a common carrier acquires possession of the goods only when the earlier of the following occurs:

(a) the grantor or debtor, or another person at the request of the grantor or debtor, actually acquires possession of the goods;

(b) the grantor or debtor, or another person at the request of the grantor or debtor, acquires possession of a document of title to the goods.

Possession of certain negotiable instruments

(4) A person (the ***first person***) has ***possession*** of a negotiable instrument that is not evidenced by an electronic record if, and only if, the first person, or another person on behalf of the first person, takes physical possession of the instrument.

Note: For possession of investment instruments, see subsection 24(6).

Possession of chattel paper that is evidenced electronically

(5) A secured party has ***possession*** of chattel paper that is evidenced by an electronic record if, and only if:

(a) a single authoritative copy of the record exists which is unique, identifiable and unalterable (except as set out below); and

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(b) the authoritative copy identifies the secured party as the transferee of the record; and

(c) the authoritative copy is communicated to, and maintained by, the secured party or the secured party's agent; and

(d) copies or revisions of the record that change the transferee of the authoritative copy can be made only with the participation of the secured party; and

(e) each copy of the authoritative copy (or any copy of such a copy) is readily identifiable as a copy that is not the authoritative copy; and

(f) any revision of the authoritative copy is readily identifiable as an authorised or unauthorised copy.

Possession of investment instruments

(6) Despite subsections (1) and (2), a person (the ***possessor***) has ***possession*** of an investment instrument that is evidenced by a certificate if, and only if:

(a) the certificate specifies the person who is entitled to the investment instrument; and

(b) a transfer of the investment instrument may be registered on books maintained for that purpose by or on behalf of the issuer (or the certificate states that a transfer of the instrument may be so registered); and

(c) any of the following applies:

(i) the possessor has possession of the certificate;

(ii) another person (other than the grantor or the debtor) has possession of the certificate on behalf of the possessor;

(iii) the registered owner (who is not the grantor or debtor) of the investment instrument acknowledges in writing that he, she or it has possession of the investment instrument on behalf of the possessor.

25 Control of an ADI account

A secured party has ***control*** of an ADI account for the purposes of section 21 (perfection—main rule) if, and only if, the secured party is the ADI.

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Note: ***Control*** has an extended meaning in relation to ADIs in sections 341 and 341A (control in relation to fixed and floating charges).

26 Control of intermediated securities

Main rule

(1) A person has ***control*** of an intermediated security that is credited to or recorded in a securities account if, and only if, this section so provides.

Control by agreement

(2) A secured party has ***control*** of an intermediated security if:
  (a) one of the following conditions is satisfied:
    (i) there is an agreement in force between the grantor, the secured party and the intermediary who maintains the securities account;
    (ii) there is an agreement in force between the grantor and the intermediary;
    (iii) there is an agreement in force between the grantor and the secured party, and notice of the agreement is given to the intermediary; and
  (b) the agreement has the effect that:
    (i) the intermediary must not comply with instructions given by the grantor in relation to the intermediated security without seeking the consent of the secured party (or a person who has agreed to act on the instructions of the secured party); or
    (ii) the intermediary must comply, or must comply in one or more specified circumstances, with instructions (including instructions to debit the account) given by the secured party in relation to the intermediated security without seeking the consent of the grantor (or any person who has agreed to act on the instructions of the grantor).

(3) If the intermediary who maintains the securities account is an intermediary because of paragraph 15(2)(b), a reference to the intermediary in subparagraphs (2)(a)(i) to (iii) of this section

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includes a reference to a person prescribed by regulations made for the purposes of this subsection.

Note 1: Under paragraph 15(2)(b), a person is an ***intermediary*** if the person operates a clearing and settlement facility under an Australian CS facilities licence (within the meaning of the *Corporations Act 2001*), other than such a person prescribed by regulations made for the purposes of that paragraph.

Note 2: The regulations may prescribe a person by reference to a class or classes of persons (see subsection 33(3A) of the *Acts Interpretation Act 1901*).

(3A) A secured party has ***control*** of an intermediated security if there is an agreement in force under which the secured party (or a person who has agreed to act on the instructions of the secured party) is able to initiate or control the sending of some or all electronic messages or other electronic communications by which the intermediated security could be transferred or otherwise dealt with.

Control by secured party in whose name securities account is maintained

(4) A secured party has ***control*** of an intermediated security if:
(a) the securities account is maintained in the secured party's name; or
(b) the securities account is maintained in the name of another person (who is not the grantor or debtor), and that person acknowledges in writing that he, she or it holds the intermediated security on behalf of the secured party.

27 Control of investment instruments

Main rule

(1) A person has ***control*** of an investment instrument if, and only if, this section so provides.

Control of any investment instrument

(2) A person, other than the debtor or grantor, has ***control*** of an investment instrument (whether or not the instrument is evidenced

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by a certificate) if the issuer of the instrument registers the person as the registered owner of the instrument.

Control of investment instruments evidenced by certificates

(3) A person (the ***controller***) has ***control*** of an investment instrument that is evidenced by a certificate if:
  (a) the controller has possession of the instrument; and
  (b) the controller (or a person who has agreed to act on the instructions of the controller) is able to:
    (i) transfer the instrument to the controller, or to another person; or
    (ii) otherwise deal with the instrument.

Control of investment instruments not evidenced by certificates

(4) A person has ***control*** of an investment instrument that is not evidenced by a certificate if:
  (a) there is an agreement in force between the person and the grantor; and
  (b) the agreement has the effect that the person (or a person who has agreed to act on the instructions of the first person) is able to initiate or control sending instructions by which the investment instrument could be transferred or otherwise dealt with.

(5) A person (the ***controller***) has ***control*** of an investment instrument that is not evidenced by a certificate if:
  (a) either:
    (i) the issuer of the instrument registers another person (who is not the grantor or debtor) as the registered owner of the investment instrument on behalf of the controller; or
    (ii) the registered owner (who is not the grantor or debtor) of the investment instrument acknowledges in writing that he, she or it holds the investment instrument on behalf of the controller; and
  (b) there is an agreement in force under which the controller (or a person who has agreed to act on the instructions of the

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controller) is able to initiate or control the sending of some or all electronic messages or other electronic communications by which the investment instrument could be transferred or otherwise dealt with.

(6) For the purposes of this section, a person has ***control*** of an investment instrument even if the registered owner of the investment instrument (who might be the grantor) retains the right:

(a) to make substitutions for the instrument; or

(b) to originate instructions to the issuer; or

(c) to otherwise deal with the instrument.

28 Control of a letter of credit

A secured party does not have ***control*** of a right evidenced by a letter of credit, to the extent of any right to payment or performance of an obligation by the issuer or a nominated person, unless the issuer or nominated person has consented to assigning the proceeds of the letter of credit to the secured party.

29 Control of negotiable instruments that are not evidenced by a certificate

(1) A secured party has ***control*** of a negotiable instrument that is not evidenced by a certificate if, and only if:

(a) the instrument is able to be transferred in accordance with the operating rules of a clearing and settlement facility; and

(b) there is an agreement in force under which the secured party (or a person who has agreed to act on the instructions of the secured party) controls the sending of some or all electronic messages or other electronic communications by which the instrument could be transferred.

(2) For the purposes of subsection (1), a secured party has ***control*** of a negotiable instrument even if the registered owner (who might be the grantor) retains the right:

(a) to make substitutions for the instrument; or

(b) to originate instructions to the issuer; or

(c) to otherwise deal with the instrument.

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Part 2.4—Attachment and perfection: specific rules

Division 1—Introduction

30 Guide to this Part

This Part contains rules about when attachment and perfection (including, in some circumstances, temporary perfection) of security interests occurs in particular situations.

Division 2 deals with security interests in the proceeds of collateral, and in collateral after it is transferred.

Proceeds of collateral are identifiable or traceable personal property that is derived from dealings with the collateral. Proceeds also includes certain insurance or indemnity rights, payments in redemption of certain intangible collateral, certain rights of licensors of intellectual property, and certain rights relating to investment instruments and intermediated securities.

A security interest in collateral continues in the proceeds (except in certain cases). Division 2 also includes some other rules about the perfection of such interests and their enforcement. Special provisions are made for the perfection and temporary perfection of security interests in proceeds, and for the temporary perfection of security interests in collateral after it is transferred.

Division 3 deals with the perfection (and temporary perfection) of security interests in goods that are returned to the grantor or the debtor. After goods are returned for certain dealings (for example, sale or exchange), a security interest in the goods that had previously been perfected otherwise than by registration may be temporarily perfected for 5 business days. The same period of temporary perfection is provided in similar circumstances if possession or control of a negotiable instrument or investment instrument is returned to the grantor or debtor.

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Section 30

If goods are taken free of a security interest, but are repossessed by the grantor or debtor, the security interest reattaches to the goods, and (if the security interest had been perfected by registration) the perfection status of the security interest is unaffected.

Division 3 also provides special rules for the attachment and perfection of a security interest in goods if a sale or lease of the goods creates an account or chattel paper that is transferred to another person.

Division 4 deals with situations where collateral or a grantor of a security interest is relocated from a foreign jurisdiction to Australia. The security interest in the collateral is temporarily perfected if certain conditions are met.

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Division 2—Proceeds and transfer

31 Meaning of *proceeds*

(1) In this Act:

proceeds of collateral to which a security interest is (or is to be) attached means identifiable or traceable personal property of the following types, subject to subsections (2) and (3):

(a) personal property that is derived directly or indirectly from a dealing with the collateral (or proceeds of the collateral);

(b) a right to an insurance payment or other payment as indemnity or compensation for loss of, or damage to, the collateral (or proceeds of the collateral);

(c) a payment made in total or partial discharge or redemption of the collateral (or proceeds of the collateral), if the collateral (or proceeds) consists of any of the following:

(i) chattel paper;

(ii) intangible property;

(iii) an investment instrument;

(iv) an intermediated security;

(v) a negotiable instrument;

(d) if the collateral is intellectual property (or an intellectual property licence)—in addition to any other proceeds, the right of a licensor of the property (whether or not the property is itself a licence) to receive payments under any licence agreement in relation to the collateral;

(e) if the collateral is an investment instrument or intermediated security—any of the following:

(i) rights arising out of the collateral;

(ii) property collected on the collateral;

(iii) property distributed on account of the collateral.

Note: In section 140 (distribution of proceeds received by secured party) proceeds has its ordinary meaning, so this definition does not apply.

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Whether proceeds are traceable

(2) Proceeds are traceable whether or not there is a fiduciary relationship between the person who has a security interest in the proceeds, as provided in section 32, and the person who has rights in or has dealt with the proceeds.

Restriction to proceeds in which grantor has a transferable interest

(3) However, personal property is ***proceeds*** only if:
  (a) either:
    (i) the grantor has an interest in the proceeds; or
    (ii) the grantor has the power to transfer rights in the proceeds to the secured party (or to a person nominated by the secured party); and
  (b) the interest in the proceeds does not arise because of the operation of paragraph 140(2)(f).

  Note: Paragraph 140(2)(f) provides for the distribution of an amount or proceeds to the grantor upon the enforcement of a security interest.

Crops and livestock

(4) The ***proceeds*** of collateral that is crops include the harvested produce of the crops, if the produce is identifiable or traceable.

(5) The ***proceeds*** of collateral that is livestock include products of the livestock (for example, meat or wool), if the products are identifiable or traceable.

(6) However, livestock are not the ***proceeds*** of collateral merely because they are the unborn young, or the offspring, of livestock that are collateral.

32 Proceeds—attachment

Continuation of security interest in collateral, and attachment to proceeds

(1) Subject to this Act, if collateral gives rise to proceeds (by being dealt with or otherwise), the security interest:

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(a) continues in the collateral, unless:

(i) the secured party expressly or impliedly authorised a disposal giving rise to the proceeds; or

(ii) the secured party expressly or impliedly agreed that a dealing giving rise to the proceeds would extinguish the security interest; and

(b) attaches to the proceeds, unless the security agreement provides otherwise.

Note 1: The effect of paragraph (a) is to extinguish the security interest in the collateral if the secured party expressly or impliedly authorised the dealing mentioned.

Note 2: A transferee can also take the collateral free of the security interest because of the operation of another provision of this Act (for example, under Part 2.5).

Enforcement of security interest against collateral and proceeds

(2) If the secured party enforces a security interest against both collateral (other than an investment instrument or an intermediated security) and proceeds, the amount secured by the security interest in the collateral and proceeds is limited to the market value of the collateral immediately before the collateral gave rise to the proceeds.

Note: For the enforceability of a security interest against a third party in relation to proceeds, see also subsection 20(6).

(3) However, subsection (2) does not apply if, at the time of the transfer of the collateral, the transferee has actual or constructive knowledge that the transfer was in breach of a security agreement that provides for the security interest in the collateral.

(4) To avoid doubt, subsection (2) does not affect any right the secured party may have to recover the amount secured without enforcing the security interest.

Priority of proceeds

(5) For the purposes of section 55 (default priority rules), the time of registration or possession in relation to original collateral, or the time of perfection of a security interest in original collateral, is also

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the time of registration, possession or perfection in relation to the proceeds of the original collateral.

Note: The effect of subsection (5) is that the security interest in the proceeds has the same default priority as the security interest in the original collateral.

33 Proceeds—perfection and temporary perfection

Perfection by reference to perfection of security interest in original collateral

(1) A security interest in proceeds is perfected if the security interest in the original collateral is perfected by a registration that:

(a) describes the proceeds, if the description complies with any regulations made for the purposes of paragraph (d) of item 4 of the table in section 153 (financing statements with respect to security interests); or

(b) covers the original collateral, if the proceeds are of a kind that are within the description of the original collateral; or

(c) covers the original collateral, if the proceeds consist of currency, cheques or an ADI account, or a right to an insurance payment or any other payment as indemnity or compensation for loss or damage to the collateral or proceeds.

Temporary perfection in other situations

(2) If a security interest in original collateral is perfected, but a security interest in the proceeds is not perfected under subsection (1), the security interest in the proceeds is temporarily perfected for the period starting at the time the security interest in the original collateral attaches to the proceeds and ending at the end of 5 business days afterwards.

(3) However, the security interest in the proceeds under subsection (2) becomes unperfected at the end of the period mentioned in that subsection, unless the security interest in the proceeds is perfected otherwise than under the subsection before the end of the period.

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34 Transferred collateral—temporary perfection after transfer

Security interest is temporarily perfected

(1) If collateral is transferred, and at the time of the transfer a secured party held a perfected security interest in the collateral, the security interest is temporarily perfected for the period starting at the time of the transfer and ending at the earliest of the following times:

(a) the end of the month that is 24 months after the time of the transfer;

(b) if the security interest was perfected by registration at the time of the transfer—the end time for the registration (as registered at the time of the transfer);

(c) if another security interest attaches to the collateral at or after the time of the transfer, and the other security interest is perfected:

(i) in a case in which the original secured party consented to the transfer—the end of 5 business days after the day of the transfer; or

(ii) in a case in which the original secured party otherwise acquires the actual or constructive knowledge required to perfect the original secured party's interest by registration (or to re-perfect the interest by an amendment of a registration)—the end of 5 business days after the day the original secured party acquires the knowledge.

Note: The knowledge required is the knowledge of the transferee's (the new grantor's) details. Unless these are registered, the original secured party's registration may be ineffective under section 165.

Security interest becomes unperfected

(2) However, the security interest becomes unperfected immediately after the earliest time mentioned in subsection (1), unless, at or before that time, the security interest is perfected otherwise than under subsection (1).

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Transfer free of security interest

(3) This section does not apply in relation to a transfer of collateral if the transferee takes the collateral free of the security interest.

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Division 3—Collateral returned to grantor or debtor

35 Returned collateral—from bailee

Security interest is temporarily perfected

(1) A security interest in goods that is perfected by possession of the goods or a negotiable document of title to the goods under subsection 22(1) is temporarily perfected for the period covered by subsection (2) of this section if possession of the goods or document is given to the grantor or the debtor at a particular time (the ***action time***) for the purpose of any of the following actions in relation to the goods:

(a) sale;

(b) exchange;

(c) any other action in preparation for sale or exchange, including (but not limited to) the following:

(i) loading;

(ii) unloading;

(iii) storing;

(iv) shipping;

(v) manufacturing;

(vi) processing;

(vii) packaging.

Note: Subsection 22(1) provides for the perfection of a security interest in goods possessed by a bailee.

(2) This subsection covers the period starting at the action time and ending at the end of 5 business days after the day the action time occurs.

Security interest becomes unperfected after 5 business days

(3) However, the security interest in the goods or document becomes unperfected at the end of the period covered by subsection (2), unless the security interest is perfected otherwise than under subsection (1) before the end of the period.

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36 Returned collateral—negotiable instruments and investment instruments

Security interest is temporarily perfected

(1) A security interest in a negotiable instrument or an investment instrument that is perfected by possession or control is temporarily perfected for the period covered by subsection (2) if possession or control of the instrument is given to the grantor or the debtor at a particular time (the ***action time***) for the purpose of any of the following actions in relation to the instrument:

(a) sale;
(b) exchange;
(c) presentation;
(d) collection;
(e) renewal;
(f) registration (other than under this Act) for the purposes of a transfer.

(2) This subsection covers the period starting at the action time and ending at the end of 5 business days after the day the action time occurs.

Security interest becomes unperfected after 5 business days

(3) However, the security interest in the instrument becomes unperfected at the end of the period covered by subsection (2), unless the security interest in the instrument is perfected otherwise than under subsection (1) before the end of the period.

37 Returned collateral—following sale or lease

Reattachment of security interest

(1) If a grantor or debtor sells or leases goods that are subject to a security interest, and the buyer or lessee takes the goods free of the security interest because of the operation of this Act, the security interest reattaches to the goods at a particular time (the ***repossession time***) if, at that time, the goods come into the possession of the grantor or debtor, or of a transferee of chattel

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paper created by the sale or lease, in any of the following circumstances:

(a) in the case of a sale—the contract of sale is rescinded;

(b) in the case of a lease—the lease expires or is rescinded;

(c) the transferee seizes the goods in the exercise of a right in enforcing a security agreement;

(d) the grantor or debtor repossesses the goods in the exercise of a right in enforcing the contract of sale or the lease;

(e) any other circumstances prescribed by the regulations.

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

Perfection of security interest

(2) The perfection of the security interest, and the time of registration or perfection of the security interest, are to be determined as if the goods had not been sold or leased, if:

(a) the security interest reattaches to the goods under subsection (1); and

(b) the security interest was perfected by registration immediately before the time of the acquisition; and

(c) the registration is effective at the repossession time.

38 Returned collateral—accounts and chattel paper

Deemed goods security interest

(1) If a sale or lease of goods creates an account or chattel paper, and the account or chattel paper is transferred to another person, the transferee is taken to have a security interest (the ***deemed goods security interest***) in the goods if, at a particular time (the ***repossession time***) the goods come into the possession of the transferor, or of the transferee, in any of the following circumstances:

(a) in the case of a sale—the contract of sale is rescinded;

(b) in the case of a lease—the lease expires or is rescinded;

(c) the transferee seizes the goods in the exercise of a right in enforcing a security agreement;

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(d) the transferor repossesses the goods in the exercise of a right in enforcing the contract of sale or the lease;

(e) any other circumstances prescribed by the regulations.

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

(2) The deemed goods security interest attaches to the goods at the repossession time.

Deemed goods security interest temporarily perfected for 5 business days

(3) If the transferee has a security interest in the account or chattel paper that is perfected by possession or registration at the repossession time, the deemed goods security interest is temporarily perfected for the period starting at the possession time and ending at the end of 5 business days after the day the repossession time occurs.

Deemed goods security interest becomes unperfected after 5 business days

(4) However, the deemed goods security interest becomes unperfected at the end of the period mentioned in subsection (3), unless the deemed goods security interest is perfected otherwise than under subsection (3) before the end of the period.

Note: Section 76 deals with the priority of a deemed goods security interest.

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Division 4—Relocation of collateral or grantor to Australia etc.

39 Relocation—main rule

Continuous perfection prior to move to Australia

(1) A security interest in collateral that has been located in a jurisdiction (the ***foreign jurisdiction***) outside Australia, and is relocated to Australia, is taken to have been continuously perfected for the period covered by subsection (2) if, immediately before the collateral became located in Australia, and at the time it became so located:

(a) the security interest was effective; and

(b) the security agreement providing for the security interest was enforceable against third parties.

Note: For when personal property is located in a jurisdiction, see section 235.

(2) This subsection covers the period:

(a) starting at whichever of the following times is applicable:

(i) if the law of the foreign jurisdiction provides for the perfection (and the effect of perfection or non-perfection) of the security interest—when the security interest last became perfected under that law;

(ii) if subparagraph (i) does not apply to the law of the foreign jurisdiction, but that law provides for the public registration or recording of the security interest, or of a notice relating to the security interest—when the security interest, or such a notice, was so registered or recorded (or was last so registered or recorded);

(iii) if neither subparagraph (i) nor (ii) applies to the law of the foreign jurisdiction—when the security interest last became enforceable against third parties under that law; and

(b) ending when the property becomes located in Australia.

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(2A) However, a security interest in collateral is not taken to have been continuously perfected under subsection (1) if, immediately before the collateral became located in Australia:

(a) in a case in which the law of the foreign jurisdiction provides for the perfection (and effect of perfection or non-perfection) of the security interest—the security interest was not perfected under that law; or

(b) in a case in which paragraph (a) does not apply to the law of the foreign jurisdiction, but that law provides for the public registration or recording of the security interest, or of a notice relating to the security interest—the security interest, or such a notice, was not so registered or recorded.

Temporary perfection after move to Australia

(3) If a security interest in collateral is continuously perfected under subsection (1), the security interest in the collateral is temporarily perfected for the period:

(a) starting at the time the property becomes located in Australia; and

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

(i) the end of 56 days after the day the collateral becomes located in Australia;

(ii) the end of 5 business days after the day the secured party has actual knowledge that the collateral has become located in Australia.

(4) However, the security interest in the collateral becomes unperfected at the end of the period mentioned in subsection (3), and is taken never to have been temporarily perfected, unless the security interest is perfected otherwise than under subsection (3) before the end of the period.

40 Relocation—intangible property and financial property

Continuous perfection prior to relocation event

(1) If the law of a foreign jurisdiction has governed a security interest in intangible property, or financial property, the security interest is

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taken to have been continuously perfected for the period covered by subsection (2) if:

(a) either of the following events (the ***relocation event***) occurs:

(i) the grantor becomes located in Australia;

(ii) the grantor transfers the collateral to a person who is located in Australia; and

(b) immediately before the relocation event, and at the time of that event:

(i) the security interest was effective; and

(ii) the security agreement providing for the security interest was enforceable against third parties; and

(c) as a result of the occurrence of the relocation event, the perfection (and the effect of perfection or non-perfection) of the security interest becomes governed by the law of Australia.

Note 1: For when bodies corporate, bodies politic or individuals are located in a jurisdiction, see section 235.

Note 2: For when laws of other jurisdictions govern a security interest, see Part 7.2.

(2) This subsection covers the period:

(a) starting at whichever of the following times is applicable:

(i) if the law of the foreign jurisdiction provides for the perfection (and the effect of perfection or non-perfection) of the security interest—when the security interest last became perfected under that law;

(ii) if subparagraph (i) does not apply to the law of the foreign jurisdiction, but that law provides for the public registration or recording of the security interest, or of a notice relating to the security interest—when the security interest, or such a notice, was so registered or recorded (or was last so registered or recorded);

(iii) if neither subparagraph (i) nor (ii) applies to the law of the foreign jurisdiction—when the security interest last became enforceable against third parties under that law; and

(b) ending when the relocation event occurs.

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(2A) However, a security interest is not taken to have been continuously perfected under subsection (1) if, immediately before the relocation event:

(a) in a case in which the law of the foreign jurisdiction provides for the perfection (and effect of perfection or non-perfection) of the security interest—the security interest was not perfected under that law; or

(b) in a case in which paragraph (a) does not apply to the law of the foreign jurisdiction, but that law provides for the public registration or recording of the security interest, or of a notice relating to the security interest—the security interest, or such a notice, was not so registered or recorded.

Temporary perfection after relocation event

(3) If a security interest in collateral is continuously perfected under subsection (1), the security interest in the collateral is temporarily perfected for the period:

(a) starting at the time of the relocation event; and

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

(i) the end of 56 days after the day of the relocation event;

(ii) the end of 5 business days after the day the secured party has actual knowledge of the relocation event.

(4) However, the security interest in the collateral becomes unperfected at the end of the period mentioned in subsection (3), and is taken never to have been temporarily perfected, unless the security interest is perfected otherwise than under subsection (3) before the end of the period.

Exceptions

(5) This section does not apply to:

(a) intellectual property, an intellectual property licence or an ADI account; or

(b) a negotiable instrument.

Note: The property mentioned in paragraph (5)(a) is ***intangible property***; negotiable instruments are ***financial property*** (see section 10).

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Part 2.5—Taking personal property free of security interests

41 Guide to this Part

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

Rules are set out for when personal property may be bought or leased free of a security interest in relation to the following:

(a) unperfected security interests;

(b) serial number defects;

(c) motor vehicles;

(d) taking in the ordinary course of business;

(e) personal, domestic or household property;

(f) currency;

(g) taking investment instruments or intermediated securities in the ordinary course of trading;

(h) investment instruments;

(i) intermediated securities;

(j) temporarily perfected security interests.

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If a transferee takes personal property (or an accession) free of a security interest by the operation of this Part, the secured party's rights are subrogated to the rights of the transferor. Payment of the purchase price before the transferee receives notice of subrogation discharges the transferee's obligation (to the extent of the payment).

42 Application of this Part

This Part:

(a) applies to a security interest:

(i) whether or not the security interest is perfected (except in sections 43 (unperfected interests) and 52 (temporarily perfected interests)); and

(ii) whether the security interest attaches to personal property as original collateral or as proceeds; and

(b) does not apply to the acquisition of an interest in personal property free of a security interest if the interest that is taken is itself a security interest (except in sections 50 (investment instruments) and 51 (intermediated securities)).

Note: Some acquisitions to which section 50 applies, and all acquisitions to which section 51 applies, consist of the taking of security interests (see subsections 50(3) and 51(1)).

43 Taking personal property free of unperfected security interest

Main rule

(1) A buyer or lessee of personal property, for value, takes the personal property free of an unperfected security interest in the property.

Exception

(2) Subsection (1) does not apply if the unperfected security interest was created or provided for by a transaction to which the buyer or lessee is a party, unless the personal property concerned is of a kind prescribed by the regulations for the purposes of this subsection.

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44 Taking personal property free of security interest if serial number incorrect or missing

Main rule

(1) A buyer or lessee of personal property takes the personal property free of a security interest in the property if:

(a) the regulations provide that personal property of that kind may, or must, be described by serial number in a registration; and

(b) searching the register, immediately before the time of the sale or lease, by reference only to the serial number of the property, would not disclose a registration that perfected the security interest.

Exceptions

(2) Subsection (1) does not apply if:

(a) the buyer or lessee holds the personal property:

(i) as inventory; or

(ii) on behalf of a person who would hold the collateral as inventory; or

(b) the security interest was created or provided for by a transaction to which the buyer or lessee is a party, unless the personal property concerned is of a kind prescribed by regulations for the purposes of this paragraph.

(3) Within the period of 24 months after the registration commencement time, subsection (1) does not apply if the security interest is a transitional security interest, other than:

(a) a migrated security interest in a motor vehicle; or

(b) a migrated security interest in a watercraft within the meaning of the regulations.

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45 Taking motor vehicles free of security interest

Incorrect or missing serial number

(1) A buyer or lessee, for new value, of a motor vehicle of a kind prescribed by the regulations for the purpose of this section, takes the motor vehicle free of a security interest in the motor vehicle if:

(a) the regulations provide that motor vehicles of that kind may, or must, be described by serial number; and

(b) there is a time during the period between the start of the previous day and the time of the sale or lease by reference to which a search of the register (by reference otherwise only to the serial number of the motor vehicle) would not disclose a registration that perfected the security interest; and

(c) the seller or lessor is:

(i) the person who granted the security interest; or

(ii) if the person who granted the security interest has lost the right to possess the motor vehicle, or is estopped from asserting an interest in the motor vehicle—another person who is in possession of the motor vehicle.

(2) Subsection (1) does not apply if:

(a) the secured party is in possession of the motor vehicle immediately before the time of the sale or lease; or

(b) the motor vehicle is bought at a sale held by or on behalf of an execution creditor; or

(c) the buyer or lessee holds the motor vehicle:

(i) as inventory; or

(ii) on behalf of a person who would hold the motor vehicle as inventory; or

(d) the buyer or lessee buys or leases the motor vehicle with actual or constructive knowledge of the security interest.

Taking from prescribed persons

(3) A buyer or lessee, for new value, of a motor vehicle of a kind prescribed by the regulations for the purpose of this section takes the motor vehicle free of a security interest in the motor vehicle if:

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(a) the regulations provide that motor vehicles of that kind may, or must, be described by serial number; and

(b) the seller or lessor is in a class of persons prescribed by the regulations for the purposes of this subsection.

(4) Subsection (3) does not apply if:

(a) the secured party is in possession of the motor vehicle immediately before the time of the sale or lease; or

(b) the motor vehicle is bought at a sale held by or on behalf of an execution creditor; or

(c) the buyer or lessee holds the motor vehicle:

(i) as inventory; or

(ii) on behalf of a person who would hold the motor vehicle as inventory; or

(d) the buyer or lessee buys or leases the motor vehicle with actual or constructive knowledge that the sale or lease constitutes a breach of the security agreement that provides for the security interest.

46 Taking personal property free of security interest in ordinary course of business

Main rule

(1) A buyer or lessee of personal property takes the personal property free of a security interest given by the seller or lessor, or that arises under section 32 (proceeds—attachment), if the personal property was sold or leased in the ordinary course of the seller's or lessor's business of selling or leasing personal property of that kind.

Exceptions

(2) Subsection (1) does not apply if:

(a) in a case in which personal property of that kind may, or must, be described by serial number—the buyer or lessee holds the personal property:

(i) as inventory; or

(ii) on behalf of a person who would hold the collateral as inventory; or

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(b) in any case—the buyer or lessee buys or leases the personal property with actual knowledge that the sale or lease constitutes a breach of the security agreement that provides for the security interest.

47 Taking personal, domestic or household property free of security interest

Main rule

(1) A buyer or lessee of personal property, for new value, that the buyer or lessee intends (at the time of purchase or lease) to use predominantly for personal, domestic or household purposes takes the personal property free of a security interest in the property if the market value (worked out at the time each part of the total new value is given) of the total new value given for the personal property is not more than:

(a) $5,000; or

(b) if a greater amount has been prescribed by regulations for the purposes of this subsection—that amount.

Exceptions

(2) Subsection (1) does not apply if:

(a) the personal property is of a kind that the regulations provide may, or must, be described by serial number in a registration; or

(b) the buyer or lessee buys or leases the personal property with actual or constructive knowledge that the sale or lease constitutes a breach of the security agreement that provides for the security interest; or

(c) at the time the contract or agreement providing for the sale or lease is entered into, the buyer or lessee believes, and it is actually the case, that the market value of the personal property is more than:

(i) $5,000; or

(ii) if a greater amount has been prescribed by regulations for the purposes of this paragraph—that amount.

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48 Taking currency free of security interest

A holder of currency takes the currency free of a security interest in the currency if the holder acquires the currency with no actual or constructive knowledge of the security interest.

49 Taking investment instrument or intermediated security free of security interest in the ordinary course of trading

A person who buys an investment instrument or an intermediated security in the ordinary course of trading on a prescribed financial market (within the meaning of the *Corporations Act 2001*) takes the instrument or intermediated security free of a security interest in the instrument or intermediated security.

50 Taking investment instrument free of security interest

Main rule

(1) A purchaser (see subsection (3)) of an investment instrument, other than a secured party, takes the instrument free of a security interest in the instrument if:

(a) the purchaser gives value for the instrument; and

(b) the purchaser takes possession or control of the instrument.

Exception

(2) Subsection (1) does not apply if the purchaser takes the instrument with actual or constructive knowledge that the taking constitutes a breach of the security agreement that provides for the security interest.

(3) In this section:

purchaser, in relation to an investment instrument, means a person who takes the instrument by sale, lease, discount, assignment, negotiation, mortgage, pledge, lien, issue, reissue or any other consensual transaction that creates an interest in personal property.

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51 Taking intermediated security free of security interest

Main rule

(1) A person (the ***transferee***) who takes an interest in an intermediated security takes the interest free of a security interest in the intermediated security if:

(a) the transferee gives value for the interest (unless the interest acquired is itself a security interest); and

(b) the credit of the interest in the financial product in relation to which the intermediated security arises is made in accordance with a consensual transaction.

Exception

(2) Subsection (1) does not apply if, at the time the interest is taken, the transferee has actual or constructive knowledge that crediting the interest in the financial product constitutes a breach of a security agreement that provides for a security interest in any intermediated security or financial product.

52 Taking personal property free of temporarily perfected security interest

Main rule

(1) A buyer or lessee, for new value, of the proceeds of personal property, or of goods or a negotiable document of title, takes the proceeds, goods or document free of a security interest that is temporarily perfected by force of this Act (other than a transitional security interest perfected by force of section 322) immediately before the time of the sale or lease, if the security interest is not otherwise perfected at that time.

Note: Section 322 provides for the perfection of transitional security interests.

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Exception

(2) Subsection (1) does not apply if the buyer or lessee has actual knowledge that the sale or lease constitutes a breach of the security agreement that provides for the security interest at:

(a) the time new value is first given for the sale or lease, if the personal property is bought or leased with the intention of using it predominantly for personal, domestic or household purposes; or

(b) in any other case—the time of sale or of entry into agreement for the lease.

53 Rights of secured party and transferee on taking personal property free of security interest

Scope

(1) This section applies if:

(a) a person (the ***transferee***) acquires personal property from another person (the ***transferor***); and

(b) as a result, the transferee takes the personal property, or an accession to the property, free of a secured party's security interest because of the operation of this Part.

Rights of secured party

(2) The rights of the secured party are subrogated, in relation to the property, to the rights (if any) of the transferor and any predecessor of the transferor (including the right to receive any part of the purchase price for the property which has not been paid).

Rights of transferee

(3) If a person who is liable to pay the purchase price of personal property makes a payment before receiving notice of a secured party's right under subsection (2), the payment discharges the obligation of the person to the extent of the payment.

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Part 2.6—Priority between security interests

Division 1—Introduction

54 Guide to this Part

This Part deals with how to work out the priority between competing security interests in collateral (and in some cases, other kinds of interests).

Priority rules are relevant when the same personal property is subject to 2 or more security interests. If the debtor defaults, the rules determine the order of priority in which the various secured parties can enforce their security interests under Chapter 4.

Division 2 sets out the default rules that apply if this Act provides no other way of determining that priority.

Unless otherwise provided:

(a) perfected interests have priority over unperfected interests; and

(b) priority between perfected interests amongst themselves, and unperfected interests amongst themselves, is determined on a first-in-time basis.

The Division contains other rules of general application (such as the priority that applies to the proceeds of collateral). Security interests perfected by control have the highest priority.

For example, a security interest held by an ADI in an ADI account with the ADI has priority over any other security interest in the ADI account. An ADI has control over an ADI account held with the ADI (see section 25). Only the ADI with which an ADI account is held may perfect a security interest in the ADI account by control (see section 21). A security interest perfected by control

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has priority over any other security interest in the same collateral (see section 57).

Division 3 deals with the priority rules that apply when one of the security interests is a perfected purchase money security interest. These interests are exceptions to the first-in-time rule (except for certain security interests in an account dealt with in section 64). A perfected purchase money security interest that is granted to a seller, lessor or consignor takes priority over a perfected purchase money security interest that is granted to others.

Division 4 deals with priority of security interests in transferred collateral where a transferor and a transferee have both granted security interests in the transferred collateral. Provided the transferor-granted security interest has remained perfected, that security interest will take priority.

Division 5 deals with the priority of certain creditors who have their debts repaid. The priority of those who purchase negotiable instruments, chattel paper and negotiable documents of title is also dealt with. Generally, the purchaser's interest will take priority over a security interest in the negotiable instrument, chattel paper or negotiable document of title.

Division 6 deals with priorities in relation to the following:

(a) interests that arise under law;

(b) interests of execution creditors;

(c) security interests in returned goods;

(d) security interests in accounts, financial property or intermediated securities if a foreign law governs their perfection but does not provide for public registration.

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Division 2—Priority of security interests generally

55 Default priority rules

(1) This section sets out the priority between security interests in the same collateral if this Act provides no other way of determining that priority.

Note: For other rules about priorities, see the following:
(a) the remaining provisions of this Part;
(b) Chapter 3 (agricultural interests, accessions and commingling);
(c) Part 9.4 (transitional application of this Act).

Priority between unperfected security interests

(2) Priority between unperfected security interests in the same collateral is to be determined by the order of attachment of the security interests.

Perfected security interest has priority over unperfected security interest

(3) A perfected security interest in collateral has priority over an unperfected security interest in the same collateral.

Priority for perfection in other ways

(4) Priority between 2 or more security interests in collateral that are currently perfected is to be determined by the order in which the priority time (see subsection (5)) for each security interest occurs.

(5) For the purposes of subsection (4), the ***priority time*** for a security interest in collateral is, subject to subsection (6), the earliest of the following times to occur in relation to the security interest:
(a) the registration time for the collateral;
(b) the time the secured party, or another person on behalf of the secured party, first perfects the security interest by taking possession or control of the collateral;
(c) the time the security interest is temporarily perfected, or otherwise perfected, by force of this Act.

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(6) A time is a ***priority time*** for a security interest only if, once the security interest is perfected at or after that time, the security interest remains continuously perfected.

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

56 How a security interest is continuously perfected

(1) For the purposes of this Act, a security interest is ***continuously perfected*** after a particular time if the security interest is, after that time, perfected under this Act at all times.

(2) A security interest may be continuously perfected after a particular time even if, after that time, it is perfected in 2 or more different ways:

(a) at any particular time; or

(b) at different times.

Examples: A security interest could be perfected in 2 or more different ways as follows:

(a) by possession and by a registration;

(b) by 2 different registrations.

57 Priority of security interests perfected by control

Priority interests

(1) A security interest in collateral that is currently perfected by control has priority over a security interest in the same collateral that is currently perfected by another means.

Note: Only security interests in certain kinds of property can be perfected by control (see paragraph 21(2)(c) and Part 2.3).

(2) Priority between 2 or more security interests in collateral that are currently perfected by control is to be determined by the order in which the interests were perfected by control (where the perfection by control has been continuous).

(2A) A perfected security interest (the ***priority interest***) in the proceeds of original collateral has priority over any other security interest in

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the proceeds, except a security interest in the proceeds as original collateral that is perfected by control, if:

(a) the security interest in the first-mentioned original collateral was perfected by control when the collateral gave rise to proceeds; and

(b) the priority interest is not perfected by control.

Control priority takes precedence over any other priority rule

(3) This section applies despite the application of any other provision of this Part.

58 Priority of advances

A security interest provided for by a security agreement has the same priority in respect of all advances (including future advances), and the performance of all obligations, secured by the agreement.

Note: This section is subject to section 68 (transfer of collateral that is not registered with a serial number).

59 Priority rules and intervening security interests

A security interest (the ***first security interest***) has priority over another security interest (the ***last security interest***) if, by the operation of this Act (including this section):

(a) the first security interest has priority over security interests of a particular kind (the ***intermediate security interests***); and

(b) the intermediate security interests have priority over the last security interest.

60 Transfer of security interests does not affect priority

If a security interest in collateral is transferred, the transferred interest has the same priority immediately after the transfer as it had immediately before the transfer.

Note: Division 4 deals with transfer of collateral.

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61 Voluntary subordination of security interests

(1) A secured party may (in a security agreement or otherwise) subordinate the secured party's security interest in collateral to any other interest in the collateral.

(2) The subordination:

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

(b) may be enforced by a third party if the third party is the person, or one of a class of persons, for whose benefit the subordination is intended.

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Division 3—Priority of purchase money security interests

62 When purchase money security interests take priority over other security interests

Scope

(1) This section sets out when a perfected purchase money security interest that is granted by a grantor in collateral or its proceeds has priority over a perfected security interest that is granted by the same grantor in the same collateral, but that is not a purchase money security interest.

Note: This section is subject to section 57 (perfection by control).

Inventory

(2) The purchase money security interest has priority if:

(a) the purchase money security interest is in inventory or its proceeds; and

(b) the purchase money security interest is perfected by registration at the time:

(i) for inventory that is goods—the grantor, or another person at the request of the grantor, obtains possession of the inventory; or

(ii) for any other kind of inventory—the purchase money security interest attaches to the inventory; and

(c) the registration that perfects the purchase money security interest states, in accordance with item 7 of the table in section 153, that the interest is a purchase money security interest.

Note: This subsection is subject to sections 64 (non-purchase money security interest in accounts) and 71 (chattel paper).

Personal property other than inventory

(3) The purchase money security interest has priority if:

(a) the interest is in personal property, or its proceeds, other than inventory; and

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(b) the purchase money security interest is perfected by registration before the end of 15 business days after whichever of the following days applies:

(i) for goods—the day the grantor, or another person at the request of the grantor, obtains possession of the property;

(ii) for any other property—the day the interest attaches to the property; and

(c) the registration that perfects the purchase money security interest states, in accordance with item 7 of the table in section 153, that the interest is a purchase money security interest.

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

63 Priority between competing purchase money security interests in collateral

A perfected purchase money security interest (the ***priority interest***) that is granted by a grantor in collateral or its proceeds to a seller, lessor or consignor of the collateral has priority over any other perfected purchase money security interest that is granted by the same grantor in the same collateral if the priority interest is perfected:

(a) if the collateral is inventory that is goods—at the time the grantor, or another person at the request of the grantor, obtains possession of the collateral; or

(b) if the collateral is inventory and is not goods—at the time the priority interest attaches to the collateral; or

(c) if the collateral is not inventory, and is goods—before the end of 15 business days after the day the grantor, or another person at the request of the grantor, obtains possession of the collateral; or

(d) if the collateral is not inventory, and is not goods—before the end of 15 business days after the day the priority interest attaches to the collateral.

Note 1: This section is subject to section 57 (perfection by control).

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Note 2: The periods mentioned in paragraphs (c) and (d) may be extended by a court under section 293.

64 Non-purchase money security interests in accounts

Non-purchase money security interest in account as original collateral has priority over purchase money security interest in account as proceeds of inventory

(1) Despite subsection 62(2), a non-purchase money security interest (the ***priority interest***) granted for new value in an account as original collateral and perfected by registration has priority over a perfected purchase money security interest that is granted by the same grantor in the account as proceeds of inventory, if:

(a) the registration time in respect of the priority interest occurs before the earlier of the following times:

(i) the time at which the purchase money security interest is perfected;

(ii) the registration time in respect of the purchase money security interest; or

(b) both of the following conditions are met:

(i) the secured party holding the priority interest gives a notice in accordance with subsection (2) to the secured party holding the purchase money security interest;

(ii) the notice is given at least 15 business days before the earlier of the day on which the registration time for the account occurs and the day the priority interest attaches to the account.

Note 1: This section is subject to sections 57 (perfection by control) and 71 (chattel paper).

Note 2: The period mentioned in paragraph (b) may be extended by a court under section 293.

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

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

(b) the notice:

(i) contains a description of the inventory to which the notice relates; and

(ii) sets out the effect of subsection (1).

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Perfected purchase money security interest in both proceeds and new value

(3) If a person has a purchase money security interest in an account as proceeds of inventory that is subordinate to a non-purchase money security interest under subsection (1):

(a) the person is taken to have a purchase money security interest in both the proceeds of the inventory and in the new value mentioned in subsection (1); and

(b) the purchase money security interest in the new value is taken to be perfected by the registration that perfected the purchase money security interest in the proceeds; and

(c) the new value is taken to be an account for the purposes of this Act (except for the purposes of this section or paragraph 12(3)(a) (account transferee's interest taken to be security interest)).

(4) However, if the new value mentioned in paragraph (3)(c) would be an account for the purposes of this Act in the absence of that paragraph, the paragraph does not prevent the new value from being an account for the purposes of this section or paragraph 12(3)(a).

65 Possession of goods shipped by a common carrier

For the purposes of this Division, if goods are shipped by common carrier to a grantor, or to a person designated by the grantor, the grantor does not obtain possession of the goods until the grantor, or a third party at the request of the grantor, obtains actual possession of the goods or a document of title to the goods, whichever is earlier.

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Division 4—Priority of security interests in transferred collateral

66 Application of this Division

(1) This Division sets out the priority between 2 security interests (a transferor-granted interest and a transferee-granted interest) if:

(a) a grantor transfers collateral (the ***transferred collateral***) to a transferee; and

(b) immediately before the transfer, a security interest (the ***transferor-granted interest***) is attached to the collateral; and

(c) the transferee grants (whether before or after the transfer) a security interest (the ***transferee-granted interest***) in the transferred collateral; and

(d) neither the transferor-granted interest nor the transferee-granted interest is currently perfected by control.

Note 1: If either or both of the interests are currently perfected by control under paragraph 21(2)(c), section 57 applies.

Note 2: If the priority between a transferor-granted interest and a transferee-granted interest is not covered by this section, then section 55 applies.

Note 3: For attachment and perfection in relation to transferred collateral, see section 34.

Note 4: For a grantor's rights in relation to transferring collateral, see section 79.

(2) This Division does not prevent a secured party from perfecting a security interest in any way in order to have priority over another security interest.

67 Priority when transferor-granted interest has been continuously perfected

The transferor-granted interest has priority if:

(a) it was perfected immediately before the transfer; and

(b) it has been continuously perfected since the transfer.

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68 Priority when there is a break in the perfection of the transferor-granted interest

(1) The transferor-granted interest in the transferred collateral has priority (except as mentioned in subsection (2)) if:

(a) the transferred collateral is not registered with a serial number (see subsection (4)); and

(b) the interest was perfected by registration immediately before the transfer; and

(c) the interest becomes unperfected; and

Note: See subsection 34(3) for one situation in which a security interest may become unperfected following a transfer of collateral.

(d) the interest is later re-perfected; and

(e) a notice is given (whether before or after the interest is re-perfected as mentioned in paragraph (d)) to all other secured parties who have a registration that describes the transferred collateral; and

(f) the notice is given in accordance with subsection (5); and

(g) the interest has been continuously perfected since it was re-perfected as mentioned in paragraph (d).

(2) However, the transferee-granted interest has priority if:

(a) subsection (1) applies in relation to the transferor-granted interest; and

(b) the transferee-granted interest is perfected immediately before the transferor-granted security is re-perfected as mentioned in paragraph (1)(d); and

(c) the transferee acquires the collateral without actual or constructive knowledge that the acquisition constitutes a breach of the security agreement that provides for the transferor-granted interest; and

(d) the transferee-granted interest secures performance of an advance made, or an obligation incurred, by the transferee's secured party before:

(i) the transferor-granted interest is re-perfected as mentioned in paragraph (1)(d); and

(ii) the notice is given under paragraph (1)(e);

but only to the extent of the advance or obligation.

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(3) Subsection (2) applies despite section 58 (priority of advances).

(4) For the purposes of this section, the transferred collateral is registered with a serial number at a particular time only if a search of the register by reference to that time and by reference only to the serial number of the collateral is capable of disclosing the registration.

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

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

(b) the notice:

(i) states that the secured party expects to perfect a security interest in the transferred collateral; and

(ii) contains a description of the transferred collateral; and

(iii) sets out the effect of subsections (1) and (2).

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Division 5—Priority of creditors, and purchasers of negotiable instruments, chattel paper and negotiable documents of title

69 Priority of creditor who receives payment of debt

(1) The interest of a creditor who receives payment of a debt owing by a debtor through a payment covered by subsection (3) has priority over a security interest (whether perfected or unperfected) in:

(a) the funds paid; and

(b) the intangible that was the source of the payment; and

(c) a negotiable instrument used to effect the payment.

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

(2) Subsection (1) does not apply if, at the time of the payment, the creditor had actual knowledge that the payment was made in breach of the security agreement that provides for the security interest.

(3) Payments made by a debtor are covered by this subsection if they are made through the use of:

(a) an electronic funds transfer; or

(b) a debit, transfer order, authorisation, or similar written payment mechanism executed by the debtor when the payment was made; or

(c) a negotiable instrument.

70 Priority of person who acquires a negotiable instrument or an interest in a negotiable instrument

(1) This section applies if, by a consensual transaction, a person acquires an interest consisting of:

(a) a negotiable instrument; or

(b) an interest in a negotiable instrument.

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(2) The interest of the person in the negotiable instrument has priority over a perfected security interest in the negotiable instrument if:
  (a) the person gave value for the interest; and
  (b) the person:
    (i) in the case of a person who acquired the interest in the ordinary course of the person's business of acquiring interests of that kind—acquired the interest without actual or constructive knowledge that the acquisition constitutes a breach of the security agreement that provides for the security interest; or
    (ii) otherwise—acquired the interest without actual or constructive knowledge of the security interest; and
  (c) the person took possession or control of the negotiable instrument.

71 Priority of person who acquires chattel paper or an interest in chattel paper

(1) This section applies if:
  (a) a person acquires an interest consisting of:
    (i) chattel paper; or
    (ii) an interest in chattel paper; and
  (b) the interest is acquired:
    (i) by a consensual transaction; and
    (ii) in the ordinary course of the person's business of acquiring interests of that kind; and
    (iii) for new value.

Note: For rights relating to the transfer of chattel paper, see section 80.

(2) The interest of the person in the chattel paper has priority over the following security interests in the chattel paper:
  (a) if the person took possession of the chattel paper without actual or constructive knowledge of a perfected security interest in the chattel paper—the perfected security interest;
  (b) in any case—a security interest that has attached to proceeds of inventory as original collateral.

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(3) This section applies despite sections 62 and 64.

72 Priority of holder of negotiable document of title

The interest of a holder of a negotiable document of title has priority over a perfected security interest in the document of title if:

(a) the holder gave value for the document of title; and

(b) the holder:

(i) in the case of a holder who acquired the document of title in the ordinary course of the holder's business of acquiring documents of title of that kind—acquired the interest without actual or constructive knowledge that the acquisition constitutes a breach of the security agreement that provides for the security interest; or

(ii) otherwise—acquired the document of title without actual or constructive knowledge of the security interest.

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Division 6—Priority of other interests

73 Priority between security interests and declared statutory interests

Interests arising under a law etc. in the ordinary course of business

(1) An interest (the ***priority interest***) in collateral has priority over a security interest in the collateral if:

(a) the priority interest arises (by being created, arising or being provided for):

(i) under a law of the Commonwealth, a State or a Territory, unless the person who owns the collateral in which the priority interest is granted agrees to the interest; or

(ii) by operation of the general law; and

(b) the priority interest arises in relation to providing goods or services in the ordinary course of business; and

(c) the person who holds the priority interest provided those goods or services; and

(d) no law of the Commonwealth, a State or a Territory provides for the priority between the priority interest and the security interest; and

Example: A law of the Commonwealth, a State or a Territory to which subsection (2) applies is a law that provides for the priority between the priority interest and the security interest.

(e) the person who holds the priority interest acquired the interest without actual knowledge that the acquisition constitutes a breach of the security agreement that provides for the security interest.

Note: The priority interest might be an interest to which this Act would otherwise not apply (see subsection 8(2)).

Statutory interests declared by law

(2) The priority between an interest in collateral (the ***statutory interest***) that arises, by being created, arising or being provided for, under a law of the Commonwealth, a State or a Territory (the

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relevant jurisdiction) and a security interest in the same collateral is to be determined in accordance with that law if, and only if:

(a) that law declares that this subsection applies to statutory interests of that kind; and

(b) the statutory interest arises after the declaration comes into effect.

Note: The statutory interest might be an interest to which this Act would otherwise not apply (see subsection 8(2)).

(3) However, for the purposes of subsection (2), as it applies to a law of the Commonwealth:

(a) the Minister may, by an instrument made under subsection (4), make the declaration required by paragraph (2)(a); and

(b) the priority mentioned in subsection (2) may be determined in accordance with that instrument.

(4) The Minister may make a legislative instrument containing a declaration, or determining priority, or both, for the purposes of subsection (3).

(5) Subsection (2) is subject to subsection (1).

Rights to payment in connection with specifically identified land

(6) An interest (the ***priority interest***) in collateral has priority over a security interest in the collateral if the priority interest is an interest of a kind mentioned in subparagraph 8(1)(f)(ii) (certain rights to payment in respect of land).

Interests arising under the general law

(7) The priority between an interest in collateral (the ***general law interest***) that arises by operation of the general law and a security interest in the same collateral is to be determined in accordance with an instrument made under subsection (8) if, and only if:

(a) no law of the Commonwealth (other than this Act and that instrument) provides for the priority between the general law interest and the security interest; and

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(b) the instrument provides that this subsection applies to general law interests of that kind; and

(c) the general law interest arises after the instrument comes into effect.

(8) The Minister may make a legislative instrument for the purposes of subsection (7).

(9) Subsection (7) is subject to subsection (1).

Note: This section does not apply to priorities in relation to interests that arise before the registration commencement time (within the meaning of section 306). Priorities in relation to such interests are unaffected by this Act (see section 312).

74 Execution creditor has priority over unperfected security interest

(1) The interest of an execution creditor in collateral has priority over any security interest in the same collateral that is not perfected at the time covered by subsection (4) (even if such a security interest is later perfected).

(2) To avoid doubt, an execution creditor does not include a landlord who exercises a right of distress.

(3) This section applies despite any other section in this Part.

Time of seizure or execution

(4) This subsection covers the following times:

(a) if the collateral is seized by the execution creditor or by another person on behalf of the execution creditor—the time of seizure;

(b) in any other case—the time when:

(i) an order is made by a court in respect of a judgment in relation to the execution creditor; or

(ii) a garnishee order is made in relation to the execution creditor.

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75 Priority of security interests held by ADIs

To avoid doubt, a perfected security interest, held by an ADI, in an ADI account with the ADI has priority over any other perfected security interest in the ADI account.

Note 1: A security interest that is held by an ADI in an ADI account is perfected by control (see paragraph 21(2)(c) and section 25).

Note 2: This provision does not affect any right of set-off the grantor might have in relation to the account (see paragraph 8(1)(d)).

76 Priority of security interests in returned goods

Security interest held by account transferee

(1) A perfected security interest in goods that has reattached to the property under subsection 37(1) has priority over a security interest in the goods that is granted by the operation of subsection 38(1) to a transferee of an account.

Note: Section 37 deals with security interests that reattach when goods are returned. Section 38 provides for a security interest in an account or chattel paper to arise automatically when goods are returned.

(2) A security interest in goods that is granted by the operation of subsection 38(2) to a transferee of chattel paper has priority over the following perfected security interests:

(a) a perfected security interest in the goods that is granted by the operation of subsection 38(2) to a transferee of an account;

(b) if the transferee takes possession of the chattel paper in the ordinary course of business of acquiring chattel paper of that kind and for new value:

(i) a perfected security interest in the goods that has reattached under subsection 37(1); or

(ii) a perfected security interest in the goods as after-acquired property that attaches when the goods come into the possession of the grantor or transferee in the circumstances mentioned in paragraph 37(1)(d).

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Security interest granted by buyer or lessee

(3) A security interest (the ***priority interest***) in goods that is granted by a person who acquires an interest in the property has priority over a security interest in the goods that reattaches under section 37, or is granted by the operation of section 38, if:

(a) the priority interest attaches while the goods are in the possession of the person; and

(b) immediately before the repossession time (referred to in paragraph 37(1)(d) or 38(1)(d)), the priority interest is perfected.

77 Priority of certain security interests if there is no foreign register

Scope

(1) This section applies to a security interest (the ***priority interest***) in an account, financial property or an intermediated security if the law of the jurisdiction that governs the perfection, and the effect of perfection or non-perfection, of the priority interest does not provide for the public registration or recording of the priority interest, or a notice relating to the priority interest.

Note: For when laws of other jurisdictions govern a security interest, see Part 7.2.

Security interests in accounts

(2) A priority interest in an account has priority, in proceedings in an Australian court, over another interest in the account (whether or not the other interest is a security interest) if the priority interest is perfected by registration under this Act before the other interest attaches to the account.

Security interests in financial property and intermediated securities

(3) A priority interest in personal property that is financial property or an intermediated security has priority, in proceedings in an Australian court, over another interest in the personal property (whether or not the other interest is a security interest) if:

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(a) the priority interest is perfected by registration under this Act before the other interest attaches to the personal property; and

(b) when the other interest arises in the personal property:

(i) the personal property is located in Australia; and

(ii) the secured party does not have possession or control of the personal property.

Note: For when personal property is located in a jurisdiction, see section 235.

Relationship with sections 239 and 240

(4) Subsections (2) and (3) apply in proceedings in an Australian court even if the law of another jurisdiction applies in the proceedings in relation to a security interest in an account or financial property under subsection 239(2) or 240(4) or (5).

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Part 2.7—Transfer of interests in collateral

78 Guide to this Part

This Part deals with the transfer of interests in collateral.

Collateral may be transferred despite a contrary provision in a security agreement (or a provision declaring the transfer to be a default), if the grantor and transferee consent, or by the operation of law.

The rights of a transferee of an account or chattel paper are subject to the contract between the account debtor and the transferor, and certain general law claims the account debtor may have against the transferor.

A modification of the contract (or a substituted contract) between the account debtor and the transferor is effective against the transferee except in certain situations (dishonesty, commercial unreasonableness or adverse effects on the transferee's rights or the transferor's ability to perform the contract).

A term in a contract between an account debtor and a transferor that imposes certain restrictions on the transfer of an account or chattel paper binds the transferor to the extent of making the transferor liable in damages for breach of contract, but is unenforceable against third parties.

79 Transfer of collateral despite prohibition in security agreement

(1) If collateral would be able to be transferred (including by sale, by creating a security interest or under proceedings to enforce a judgment) but for a provision in a security agreement prohibiting the transfer or declaring the transfer to be a default, the collateral may be transferred, despite the provision:

(a) by consent between the grantor and the transferee; or

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(b) by operation of law.

Note: See section 32 in relation to security interests in proceeds that arise as a result of a transfer.

(2) A transfer mentioned in subsection (1) does not prejudice the rights of the secured party under the security agreement or otherwise, including the right to treat a prohibited transfer as an act of default.

80 Rights on transfer of account or chattel paper—rights of transferee and account debtor

Rights of transferee subject to contractual terms and defences

(1) The rights of a transferee of an account or chattel paper (including a secured party or a receiver) are subject to:

(a) the terms of the contract between the account debtor and the transferor, and any equity, defence, remedy or claim arising in relation to the contract (including a defence by way of a right of set-off); and

(b) any other equity, defence, remedy or claim of the account debtor against the transferor (including a defence by way of a right of set-off) that accrues before the first time when payment by an account debtor to the transferor no longer discharges the obligation of the account debtor under subsection (8) to the extent of the payment.

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

Effect of modification or substitution of contract on transferee

(3) Unless the account debtor has otherwise agreed, a modification of, or substitution for, the contract between the account debtor and the transferor is effective against the transferee (including a secured party or a receiver) if:

(a) the account debtor and the transferor have acted honestly in modifying or substituting the contract; and

(b) the manner in which the modification or the substitution is made is commercially reasonable; and

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(c) the modification or substitution does not have a material adverse effect on:

(i) the transferee's rights under the contract; or

(ii) the transferor's ability to perform the contract.

Note: For the meaning of ***modification***, see section 10.

(4) Subsection (3) applies:

(a) to the extent that a transferred right to payment arising out of the contract has not been fully earned by performance; and

(b) even if there has been notice of the transfer to the account debtor.

(5) If a contract has been modified or substituted in the manner described in subsection (3), the transferee obtains rights that correspond to the rights of the transferor under the contract as modified or substituted.

(6) Nothing in subsections (3) to (5) affects the validity of a term in a transfer agreement that provides that a modification or substitution mentioned in subsection (3) is a breach of contract by the transferor.

Payment by account debtor after transfer

(7) If an account or chattel paper is transferred, the account debtor may continue to make payments under the contract to the transferor:

(a) until the account debtor receives a notice that:

(i) states that the amount payable or to become payable under the contract has been transferred; and

(ii) states that payment is to be made to the transferee; and

(iii) identifies the contract (whether specifically or by class) under which the amount payable is to become payable; or

(b) after receiving a notice under paragraph (a) (other than a notice from the transferor), if:

(i) the account debtor requests the transferee to provide proof of the transfer; and

(ii) the transferee fails to provide proof before the end of 5 business days after the day of the request.

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(8) Payment by an account debtor to a transferee in accordance with a notice under paragraph (7)(a) (including in the circumstances described in paragraph (7)(b)) discharges the obligation of the account debtor to the extent of the payment.

81 Rights on transfer of account or chattel paper—contractual restrictions and prohibitions on transfer

Scope

(1) This section applies to a term in a contract if:
  (a) the contract is between an account debtor and a transferor; and
  (b) the term restricts or prohibits transfer of any of the following for currency due or to become due:
    (i) the whole of an account that is the proceeds of inventory;
    (ii) the whole of an account that arises from granting a right (other than a right granted under a construction contract), or providing services (other than financial services), in the ordinary course of a business of granting rights or providing services of that kind (whether or not the account debtor is the person to whom the right is granted or the services are provided);
    (iii) the whole of an account that is the proceeds of an account mentioned in subparagraph (ii);
    (iv) chattel paper.

Statutory restriction on contracts

(2) The term in the contract:
  (a) is binding on the transferor, but only to the extent of making the transferor liable in damages for breach of contract; and
  (b) is unenforceable against third parties.

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Chapter 3—Specific rules for certain security interests

Part 3.1—Guide to this Chapter

82 Guide to this Chapter

This Chapter contains specific rules for certain security interests.

Part 3.2 contains some specific rules relating to agricultural interests (such as security interests in crops and livestock).

Part 3.3 deals with security interests in accessions to personal property.

Part 3.4 deals with security interests in personal property that loses its identity by being processed or commingled.

Part 3.5 deals with security interests in intellectual property.

Part 3.2—Agricultural interests

83 Guide to this Part

This Part includes rules on 3 topics:

(a) the relationship between a security interest in crops and interests in the land on which the crops are growing; and

(b) the capacity for a security interest to attach to crops while they are growing, and to the products of livestock, before the crops or products become proceeds (for example, the wool on a sheep's back before it is shorn); and

(c) the priority to be given to security interests in crops (and proceeds) granted to enable the crops to be produced, and security interests in livestock (and proceeds) granted to enable the livestock to be fed and developed.

Other provisions of this Act that deal with agricultural interests are subsections 31(4), (5) and (6) (meaning of ***proceeds*** of crops and livestock) and Division 6 of Part 4.3 (enforcement of security interests in crops and livestock).

84 Relationship between security interest in crops and interest in land

Effect of security interest in crops on lessor or mortgagee of land

(1) A security interest in crops does not prejudicially affect the rights of a lessor or mortgagee of land on which the crops are growing if:

(a) those rights existed at the time the security interest was created; and

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(b) the lessor or mortgagee has not consented in writing to the creation of the security interest.

Effect of sale etc. of land on perfected security interest in crops

(2) Subject to subsection (1), a perfected security interest in crops is not prejudicially affected by a subsequent sale, lease or mortgage of, or other encumbrance on, the land on which the crops are growing.

84A Attachment of security interests to crops while they are growing and to the products of livestock

Security interest in crops while they are growing

(1) To avoid doubt, a security interest may attach to crops while they are growing.

Security interest in the products of livestock

(2) To avoid doubt, a security interest may attach to the products of livestock before they become proceeds (for example, the wool on a sheep's back before the sheep is shorn).

Note 1: ***Livestock*** includes the products of livestock before they become proceeds (see section 10).

Note 2: For what are the ***proceeds*** of crops and livestock, see subsections 31(4), (5) and (6).

85 Priority of crops

A perfected security interest (the ***priority interest***) that is granted by a grantor in crops or the proceeds of crops has priority over any other security interest that is granted by the same grantor in the same crops or proceeds if:

(a) the priority interest is granted for value; and

(b) the priority interest is granted to enable the crops to be produced; and

(c) either:

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(i) the security agreement providing for the priority interest is made while the crops are growing; or

(ii) the crops are planted during the period of 6 months after the day the security agreement providing for the priority interest is made.

86 Priority of livestock

A perfected security interest (the ***priority interest***) that is granted by a grantor in livestock or the proceeds of livestock has priority over any other security interest (other than a purchase money security interest) that is granted by the same grantor in the same livestock or proceeds if:

(a) the priority interest is granted for value; and

(b) the priority interest is granted to enable the livestock to be fed or developed; and

(c) either:

(i) the livestock are held by the grantor at the time the security agreement providing for the priority interest is made; or

(ii) the livestock are acquired by the grantor during the period of 6 months after the day the security agreement providing for the priority interest is made.

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Part 3.3—Accessions

87 Guide to this Part

This Part deals with security interests in accessions to personal property.

A security interest in goods that become an accession to other goods continues in the accession.

The Part sets out the priority between an interest (whether or not a security interest) in an accession and the goods to which the accession is affixed.

A security interest arising in an accession before it is affixed to goods has priority over a security interest in the goods as a whole. However, there are exceptions relating to interests in the whole created after the accession is affixed and before the security interest in the accession is perfected.

A security interest arising in an accession after it is affixed will ordinarily be subordinate to an existing interest in the other goods (unless, for example, the holder of the existing interest agrees otherwise) and to a later interest in the other goods that arises before the interest in the accession is perfected.

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

88 Continuation of security interests in accessions

A security interest in goods that become an accession to other goods continues in the accession.

Note: However, a person might take an interest in the accession free of the security interest because of another provision of this Act.

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89 Default rule—interest in accession has priority

Except as otherwise provided in this Act, a security interest in goods that is attached at the time when the goods become an accession has priority over a claim to the goods as an accession made by a person with an interest in the whole.

90 Priority interest in whole—before security interest in accession is perfected

The interest of any of the following persons has priority over a security interest in goods that is attached at the time when the goods become an accession:

(a) a person who acquires for value an interest in the whole after the goods become an accession, but before the security interest in the accession is perfected;

(b) an assignee for value of a person with an interest in the whole at the time when the goods become an accession, but before the security interest in the accession is perfected;

(c) a person with a perfected security interest in the whole who makes an advance under the security agreement relating to the security interest after the goods become an accession, but before the security interest in the accession is perfected, and only to the extent of the advance;

(d) a person with a perfected security interest in the whole who acquires the right to retain the whole in satisfaction of the obligation secured after the goods become an accession, but before the security interest in the accession is perfected.

91 Priority interest in whole—security interest in accession attaches after goods become accession

A security interest in goods that attaches after the goods become an accession is subordinate to the interest of:

(a) a person who has an interest in the other goods at the time when the goods become an accession and who:

(i) has not consented to the security interest in the accession; and

(ii) has not disclaimed an interest in the accession; and

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(iii) has not entered into an agreement under which another person is entitled to remove the accession; and

(iv) is otherwise entitled to prevent the grantor from removing the accession; or

(b) a person who acquires an interest in the whole after the goods become an accession, but before the security interest in the accession is perfected.

92 Secured party must not damage goods when removing accession

A secured party who is entitled to remove an accession under section 123 (seizure of collateral) must remove the accession from the whole in a manner that causes no greater damage to the other goods, or that puts the person in possession of the whole to no greater inconvenience, than is necessarily incidental to the removal of the accession.

93 Reimbursement for damage caused in removing accessions

(1) A person, other than the grantor, who has an interest in the other goods at the time the goods become an accession is entitled to reimbursement for any damage to that person's interest in the other goods caused by the removal of the accession.

(2) Any reimbursement payable under subsection (1) does not include reimbursement for a reduction in the value of the property caused by the absence of the accession or by the necessity of the replacement of the accession.

94 Refusal of permission to remove accession

A person entitled to reimbursement under section 93 may refuse permission to remove the accession until the secured party has given adequate security for the reimbursement.

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95 Secured party must give notice of removal of accession

Notice required to be given by secured party

(1) A secured party who is entitled to remove an accession from the whole must give notice of the secured party's intention to remove the accession to each of the following persons in accordance with subsections (2) and (3):

(a) the grantor;

(b) a secured party with a security interest in the accession that has a higher priority.

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

(a) at least 10 business days before the day the accession is removed; or

(b) if the person has given a written notice to the secured party specifying a smaller number of days to apply for the purposes of this section—at least that number of days before the accession is removed.

(3) A notice must contain the following:

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

(b) a description of the accession and of the other goods;

(c) a statement of the obligation owed to the secured party, and the value of the accession if the accession were removed from the other goods;

(d) a statement of intention to remove the accession, unless the obligation secured by the security interest in the accession is discharged, or the value of the accession is paid, before the end of the period to which subsection (2) applies.

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

When notice is not required

(5) The secured party is not required to give a notice to a person under subsection (1) if, after the debtor defaults, the person gives written consent to the secured party to remove the accession without receiving a notice.

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

(a) the secured party believes on reasonable grounds that the accession will decline substantially in value if it is not disposed of immediately after default; or

(b) the cost of expenses for the retention of the accession that are secured against the accession is disproportionately large in relation to its value.

Note: In addition, a secured party is not required to give a notice in any of the circumstances set out in section 144 (when certain enforcement notices are not required).

(7) A person is not entitled to a notice under subsection (1) in relation to an accession to goods only because the person has an interest in another accession to the same goods.

96 When person with an interest in the whole may retain accession

A person, other than the grantor, who has an interest in the whole of goods that under this Act is subordinate to a security interest in an accession, may retain the accession if:

(a) the obligation to the secured party with a security interest that has priority over all other security interests in the accession is performed; or

(b) the secured party mentioned in paragraph (a) is paid the value of the accession at the time of payment, if the accession were to be removed from the goods.

97 Court order about removal of accession

A court may, on the application of a person entitled to receive a notice under section 95 (notice of removal of an accession), make an order:

(a) postponing the removal of the accession; or

(b) determining the amount payable to the secured party under section 96 for the retention of the accession.

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

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Part 3.4—Processed or commingled goods

98 Guide to this Part

This Part deals with security interests in goods that become an unidentifiable part of a larger product or mass.

A security interest in the original goods continues in the product or mass. The Part sets out perfection and priority rules that apply in this situation.

99 Continuation of security interests in goods that become processed or commingled

(1) A security interest in goods that subsequently become part of a product or mass continues in the product or mass if the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass.

Note: A person might take an interest in the product or mass free of the security interest because of the operation of another provision of this Act.

(2) Without limiting subsection (1), the identity of goods that are manufactured, processed, assembled or commingled is lost in a product or mass if it is not commercially practical to restore the goods to their original state.

100 Perfection of security interest in goods that become processed or commingled applies to product or mass

For the purposes of section 55 (default priority rules), perfection of a security interest in goods that subsequently become part of a product or mass is to be treated as perfection of the security interest in the product or the mass.

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101 Limit on value of priority of goods that become part of processed or commingled goods

Any priority that a security interest continuing in the product or mass has over another security interest in the product or mass is limited to the value of the goods on the day on which they became part of the product or mass.

102 Priority where more than one security interest continues in processed or commingled goods

(1) A perfected security interest continuing in a product or mass has priority over an unperfected security interest continuing in the same product or mass.

(2) If more than one perfected security interest continues in the same product or mass, each perfected security interest is entitled to share in the product or mass according to the ratio that the obligation secured by the perfected security interest bears to the sum of the obligations secured by all perfected security interests in the same product or mass.

(3) If more than one unperfected security interest continues in the same product or mass, each unperfected security interest is entitled to share in the product or mass according to the ratio that the obligation secured by the unperfected security interest bears to the sum of the obligations secured by all unperfected security interests in the same product or mass.

(4) For the purposes of this section, the obligation secured by a security interest does not exceed the value of the goods on the day on which the goods became part of the product or mass.

103 Priority of purchase money security interest in processed or commingled goods

Despite section 102, a perfected purchase money security interest in goods that continues in the product or mass has priority over:

(a) a non-purchase money security interest in the goods that continues in the product or mass; and

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(b) a non-purchase money security interest in the product or mass given by the same grantor.

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Part 3.5—Intellectual property

104 Guide to this Part

This Part includes some rules with a particular application to security interests in intellectual property and intellectual property licences.

If the exercise of rights by a secured party in relation to goods necessarily involves the exercise of intellectual property rights covered by the security interest, this Act applies to the intellectual property rights in the same way as it applies to the goods.

The Part also deals with a transfer of intellectual property that is the subject of a licence (or sub-licence) in which a security interest is granted. The security agreement binds the successors in title to the licensor or sub-licensor.

105 Implied references to intellectual property rights

Act applies to intellectual property rights etc.

(1) This Act applies to intellectual property rights (including rights exercisable under an intellectual property licence), in relation to goods, in the same way as it applies to the goods, if:

(a) the exercise by a secured party of rights in relation to the goods arising under a security agreement necessarily involves an exercise of the intellectual property rights; and

(b) the payment or obligation secured by the security interest is (in addition) secured by a security interest that is attached to the intellectual property rights.

Description of goods taken to include a description of intellectual property rights

(2) For the purposes of this Act, if a registration perfects the security interest in goods mentioned in subsection (1), the following

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descriptions are taken to include a description of the intellectual property rights concerned, or of an intellectual property licence required to exercise those rights:

(a) a description of the goods in the security agreement;

(b) the registered description of the goods;

(c) a description of the goods included in a notice under this Act.

(3) Subsection (2) applies subject to a contrary intention in the security agreement, registration or notice.

106 Intellectual property licences and transfers of intellectual property

(1) If:

(a) a security interest is granted in an intellectual property licence; and

(b) the intellectual property in which the licence is granted is later transferred; and

(c) the licensee of the intellectual property licence continues to hold the licence after the transfer;

the security agreement that provides for the security interest binds every successor in title to the licensor of the intellectual property licence to the same extent as the security agreement was binding on the licensor.

(2) If:

(a) a security interest is granted in a sub-licence granted under an intellectual property licence; and

(b) the intellectual property licence under which the sub-licence is granted is later transferred; and

(c) the licensee of the sub-licence continues to hold the sub-licence after the transfer;

the security agreement that provides for the security interest binds every successor in title to the licensor of the sub-licence to the same extent as the security agreement was binding on the licensor.

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Chapter 4—Enforcement of security interests

Part 4.1—Guide to this Chapter

107 Guide to this Chapter

This Chapter deals with how to enforce a security interest in personal property. Parties can contract out of some of the provisions of this Chapter.

Security interests in liquid assets can be enforced by giving a notice to the person who owes an amount to the grantor. Other kinds of assets can be seized and disposed of under Part 4.3. A secured party can also retain or purchase the collateral.

Proceeds arising from the disposal of collateral must be distributed in accordance with Part 4.4. That Part also contains other rules of general application in relation to the enforcement of security interests.

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Part 4.2—General rules

108 Guide to this Part

This Part provides general rules about the rights and remedies available to a party to a security agreement for enforcing a security interest in personal property. The Part does not apply to certain kinds of security interests.

Important rules include the following:

(a) a general standard of honesty and commercial reasonableness is to apply to enforcement actions;

(b) parties can contract out of specified provisions of this Chapter;

(c) if the same obligation is secured by both personal property and an interest in land, a secured party may decide to enforce the personal property interest in the same way as the interest in the land would be enforced, or to enforce the security interest under this Chapter;

(d) rules for the enforcement of security interests in certain liquid assets (accounts, chattel paper and negotiable instruments) by giving notice to specified persons or seizing proceeds;

(e) rules relating to the enforcement of security interests in crops and livestock.

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109 Application of this Chapter

Security interests to which this Chapter does not apply

(1) This Chapter does not apply to security interests that are provided for by the following:

(a) a transfer of an account or chattel paper that does not secure payment or performance of an obligation;

(b) a security interest that is incidental to a security interest referred to in paragraph (a);

(c) a PPS lease that does not secure payment or performance of an obligation;

(d) a commercial consignment that does not secure payment or performance of an obligation.

(2) This Chapter does not apply to security interests in goods that are located outside Australia.

Note: For where personal property is located, see section 235.

Security interests in investment instruments or intermediated securities that are perfected by possession or control

(3) This Chapter (apart from sections 110, 111, 113 and 140) does not apply in relation to a person who has perfected a security interest in:

(a) an investment instrument by taking possession or control of the instrument; or

(b) an intermediated security by taking control of the intermediated security.

(4) To avoid doubt, subsection (3) applies whether the person has perfected the security interest only by possession or control, or by another method as well.

Sections that do not apply to household property

(5) The following provisions do not apply in relation to collateral that is used by a grantor predominantly for personal, domestic or household purposes:

(a) sections 117 and 118 (relationship with land laws);

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(b) section 120 (enforcement of security interests in liquid assets);
(ba) section 126 (apparent possession of collateral);
(c) paragraphs 128(2)(b) and (c) (disposal of collateral by lease or licence);
(d) section 129 (disposal by purchase);
(e) section 134 (retention of collateral).

110 Rights and remedies

This Act does not derogate in any way from the rights and remedies the following parties to a security agreement have, apart from this Act, against each other in relation to a default by the debtor under the security agreement:

(a) the debtor;
(b) the grantor;
(c) a secured party.

111 Rights and duties to be exercised honestly and in a commercially reasonable manner

(1) All rights, duties and obligations that arise under this Chapter must be exercised or discharged:
(a) honestly; and
(b) in a commercially reasonable manner.

(2) A person does not act dishonestly merely because the person acts with actual knowledge of the interest of some other person.

112 Rights and remedies under this Chapter

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

(2) However, subsection (1) does not apply:
(a) if the secured party had title to the collateral immediately before starting to exercise any right or remedy provided by this Part; or

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(b) to the extent that it would otherwise prevent the secured party from dealing with the collateral by way of transfer because a transfer by the grantor would be prohibited or declared to be a default under a security agreement.

Note: See section 79 (transfer of collateral despite prohibition in security agreement).

(3) Without limiting subsection (1), under this Chapter a secured party may only seize, purchase or dispose of a licence subject to:

(a) the terms and conditions of the licence; and

(b) any applicable law of the Commonwealth, a State or a Territory.

113 Recovering judgment or issuing execution does not extinguish a security interest in collateral

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

114 Rights and remedies under this Chapter are cumulative

The rights and remedies provided by this Chapter are cumulative.

115 Contracting out of enforcement provisions

Collateral not used predominantly for personal, domestic or household purposes

(1) The parties to a security agreement that provides for a security interest in collateral that is not used predominantly for personal, domestic or household purposes may contract out of the following provisions in relation to the collateral (to the extent, if any, mentioned):

(a) section 95 (notice of removal of accession), to the extent that it requires the secured party to give a notice to the grantor;

(b) section 96 (when a person with an interest in the whole may retain an accession);

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(c) section 117 (obligations secured by interests in personal property and land);
(d) section 118 (enforcing security interests in accordance with land law decisions), to the extent that it allows a secured party to give a notice to the grantor;
(e) section 120 (enforcement of liquid assets);
(f) subsection 121(4) (enforcement of liquid assets—notice to grantor);
(g) section 123 (right to seize collateral);
(h) section 125 (obligation to dispose of or retain collateral);
(i) section 126 (apparent possession);
(j) section 128 (secured party may dispose of collateral);
(k) section 129 (disposal by purchase);
(l) section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor;
(m) paragraph 132(3)(d) (contents of statement of account after disposal);
(n) subsection 132(4) (statement of account if no disposal);
(o) subsection 134(1) (retention of collateral);
(p) section 135 (notice of retention);
(pa) Division 6 of Part 4.3 (seizure and disposal or retention of crops and livestock), or any particular provision of that Division;
(q) section 142 (redemption of collateral);
(r) section 143 (reinstatement of security agreement).

(2) However, if parties to a security agreement contract out of a provision, the provision continues to the extent that it gives rights to, and imposes obligations in relation to, persons who are not parties to the security agreement.

Example: Parties to a security agreement contract out of the right to seize property under section 123. A secured party who is not a party to the security agreement may seize the property under section 123.

(3) Despite subsection (2), if parties to a security agreement contract out of section 142 (redemption of collateral), the provision does not give any person (whether or not the person is a party to the agreement) a right to redeem collateral under section 142.

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Contracts between persons other than the grantor

(5) A person (including a secured party, but not including the grantor) who is entitled to receive a notice from a secured party under one or more provisions in this Chapter may contract with the secured party out of one or more of those provisions.

(6) 2 secured parties may contract out of the right of one of the secured parties to receive an amount under subsection 127(6) (payment of enforcing party's expenses) from the other secured party.

Contracting out in relation to controllers (other than receivers etc.)

(7) Subject to subsections (2), (3), (5) and (6), the parties to a security agreement may contract out of the application under subsection 116(2) of any provision of Part 4.3 (seizure and disposal or retention of collateral) in relation to property.

Note: Subsection 116(2) provides for the application of this Chapter while a person is a controller of the property other than a receiver, or a receiver and manager, of the property within the meaning of the *Corporations Act 2001*.

116 Application while there is a receiver or another controller of property

(1) This Chapter does not apply in relation to property while a person is a controller of the property in either of the following capacities:
  (a) receiver;
  (b) receiver and manager.

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

(2) This Chapter (except section 131) applies in relation to property while a person is a controller of the property in a capacity other than those mentioned in subsection (1) of this section.

Note 1: Section 131 requires a secured party disposing of collateral to obtain market value for the collateral. Section 420A of the *Corporations Act 2001* similarly requires a controller exercising a power of sale to obtain market value for the property sold.

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Note 2: Subsection 115(7) enables the parties to a security agreement to contract out of the application of Part 4.3 under subsection (2) of this section.

(3) Despite subsection (1), if a grantor of a security interest in property is an individual, this Chapter applies in relation to the security interest while a person is a receiver, or a receiver and manager, of the property.

(4) In this section, each of the following terms, in relation to property of a corporation, has the same meaning as in the *Corporations Act 2001*:

(a) controller;

(b) receiver;

(c) receiver and manager.

117 Obligations secured by interests in personal property and land

Scope

(1) This section applies if:

(a) the same obligation is secured by:

(i) a security interest in personal property; and

(ii) an interest in land; and

(b) either:

(i) the secured party's security interest in the personal property has the highest priority; or

(ii) every other secured party with a security interest in the personal property that has a higher priority has agreed in writing to the secured party's making a decision under this section.

Note 1: This section does not apply in relation to collateral that is used predominantly for personal, domestic or household purposes (see subsection 109(5)).

Note 2: Also, this section does not apply in relation to a security interest in collateral to which consumer credit legislation applies (see section 119).

Note 3: The interest in land might be an interest to which this Act would otherwise not apply (see subsection 8(2)).

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Decision by secured party

(2) The secured party may:

(a) make a decision to enforce the security interest in the personal property under this Chapter; or

(b) make a decision to enforce the security interest in the personal property in the same way as the interest in the land may be enforced under the land law.

(3) In making a decision under subsection (2), the secured party must act reasonably and only take into account the following matters:

(a) the respective values of the personal property and the land;

(b) whether there is any connection between, and the nature of any connection between, the personal property and the land;

(c) whether the land and the personal property are both located in the same State or Territory;

(d) such other matters as are relevant to the efficient enforcement of the security interest and the interest in the land.

Decision to enforce the security interest under this Chapter

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

*Meaning of **land law***

(5) In this Act:

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

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118 Enforcing security interests in accordance with land law decisions

Scope

(1) This section applies if:

(a) a secured party makes a decision (under paragraph 117(2)(b)) to enforce the security interest in the personal property in the same way as the interest in the land may be enforced under the land law; and

(b) unless section 144 applies, the secured party gives a notice in accordance with subsection (2) to the following persons:

(i) the grantor;

(ii) a secured party with a security interest in the personal property that is perfected immediately before the decision under paragraph 117(2)(b) is made;

(iii) any person who, by the time the secured party gives the notice, has notified the secured party in writing that the person claims an interest in the personal property.

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

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

(b) the notice:

(i) contains a description of the personal property to which the notice relates; and

(ii) sets out the effect of this section.

How security interest is to be enforced

(3) The secured party may enforce the security interest in the same way, with any necessary modification, as the interest in the land may be enforced under the land law.

(4) Subject to this section, and with any necessary modification, law in the same terms as that of the land law applies under this Act for the purposes of the enforcement of the security interest.

Example: The secured party has the same rights, remedies and duties in relation to the enforcement of the security interest in the personal property as

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the secured party has in relation to the enforcement of the interest in the land.

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

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

Note: For the meaning of ***modification***, see section 10.

Additional law that applies

(6) Section 140 (distribution of proceeds), section 117 and this section apply to the enforcement of the security interest in the personal property. Otherwise, this Chapter does not apply to the enforcement of the security interest in the personal property.

(7) In addition:

(a) the decision of the secured party (the ***first secured party***) under paragraph 117(2)(b) does not limit the rights of any other secured party (the ***other secured party***) who has a security interest in the personal property (whether granted before or after the first secured party's security interest); and

(b) the other secured party has standing in proceedings taken by (or on behalf of) the first secured party in enforcing the first secured party's security interest under this section; and

(c) the other secured party may apply to a court for the conduct of a judicially supervised sale for the purposes of enforcing the first secured party's security interest under this section; and

(d) the court may grant the application.

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

Exercise of powers etc. under applied law

(8) The Minister may make an agreement with the appropriate Minister of a State or Territory in relation to the exercise or performance of a power, duty or function (not being a power, duty

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or function involving the exercise of judicial power) by an authority of the State or Territory for the purposes of the law that applies by virtue of subsection (4).

(9) If such an agreement is in force, the power, duty or function may or must be exercised or performed accordingly.

(10) The Minister may make an agreement with the appropriate Minister of a State or Territory for the variation or revocation of an agreement made under this section in relation to the State.

(11) An agreement made under subsection (8) or (10) is not a legislative instrument.

This section does not affect land laws

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

119 Relationship with consumer credit legislation

(1) This Chapter, except sections 117 and 118, applies in relation to a security interest in collateral to which the National Credit Code applies.

(2) The regulations may provide that a specified provision of this Chapter is taken to have been complied with in specified circumstances if a specified provision of the National Credit Code has been complied with in those circumstances.

120 Enforcement of security interests in liquid assets—general

(1) This section applies if:

(a) an obligation (the ***secured obligation***) is secured by a security interest in collateral in the form of one of the following:

(i) an account;

(ii) chattel paper;

(iii) a negotiable instrument; and

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(b) one or more persons owe an amount to the grantor on the collateral; and

(c) the debtor defaults on the secured obligation.

Note: This section does not apply in relation to collateral that is used predominantly for personal, domestic or household purposes (see subsection 109(5)).

Rights of secured party

(2) A secured party may do either or both of the following:

(a) give a written notice to a person mentioned in paragraph (1)(b) that:

(i) sets out the effect of subsection (3); or

(ii) is in the approved form;

(b) seize any proceeds of the collateral to which the secured party is entitled under section 32.

Note: A secured party might be prevented from taking action under this subsection by a higher priority party (see subsection 121(3)).

(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 end of 5 business days after the later of:

(a) the day the notice is received; or

(b) the day the amount becomes due and payable.

Note: The period mentioned in this subsection may be extended by a court under section 293.

(4) The secured party must apply any amount received under paragraph (2)(b) or subsection (3) towards the secured obligation.

(5) If any amount is received under paragraph (2)(b) or subsection (3) in the form of currency, then the amount must be distributed in accordance with section 140.

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121 Enforcement of security interests in liquid assets—notice to higher priority parties and grantor

Notice to higher priority parties

(1) Unless section 144 applies, a secured party (the ***enforcing party***) who proposes to take action under subsection 120(2) in relation to a security interest in collateral must give a written notice to any other secured party (a ***higher priority party***) with a security interest in the collateral that has a higher priority.

(2) The notice must:
  (a) contain the name of the secured party giving the notice; and
  (b) contain a description of the collateral; and
  (c) state that the enforcing party proposes to take action under paragraph 120(2)(a) or (b), as the case requires; and
  (d) state the address to which a notice may be given under subsection (3); and
  (e) be given to each higher priority party:
    (i) at least 10 business days before the day the action is to be taken; or
    (ii) if a higher priority party has given a written notice to the enforcing party specifying a shorter period to apply for the purposes of this subsection—before the end of that period.

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

(3) A higher priority party who is given a notice under subsection (1) may, before any action is taken under subsection 120(2), give a written notice to the enforcing party informing the enforcing party of the higher priority party's proposal to take action under that subsection. If the higher priority party gives such a notice, the enforcing party is not entitled to take action under that subsection.

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Notice to grantor

(4) A secured party must give a written notice to the grantor of any action the secured party takes in accordance with subsection 120(2).

(5) The notice under subsection (4) must be given:

(a) before the end of 5 business days after the day the action is taken; or

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

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

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Part 4.3—Seizure and disposal or retention of collateral

Division 1—Introduction

122 Guide to this Part

This Part deals with the seizure and disposal or retention of collateral following default by a debtor under a security agreement.

Division 2 contains rules about when and how a secured party may seize collateral.

Division 3 deals with the disposal of collateral by a secured party after seizure of the collateral.

Division 4 deals with the retention of collateral by a secured party after seizure of the collateral.

If a secured party proposes to dispose of, or retain, collateral, the party must give notice to the grantor and any other secured party with a security interest in the collateral that has a higher priority. A notice of disposal may be given in the approved form, while a notice of retention must be given in the approved form.

A person may object if a secured party proposes to enforce a security interest by purchasing or retaining the collateral (see Division 5).

A person exercising or discharging rights, duties and obligations arising under this Part must act honestly and in a commercially reasonable manner (see section 111).

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Division 2—Seizing collateral

123 Secured party may seize collateral

(1) A secured party may seize collateral, by any method permitted by law, if the debtor is in default under the security agreement.

Note: For seizure of accessions, see sections 95 to 97.

Seizing intangible property

(2) For the purposes of this Act, unless subsection (3) applies, a secured party may seize intangible property only by giving a notice, stating that the giving of the notice constitutes seizure of the property, to the following persons:

(a) the grantor;

(b) if the intangible property is a licence—either:

(i) the licensor; or

(ii) the licensor's successor.

(3) Intangible property may be seized by another method, if so agreed between:

(a) the parties to the security agreement; or

(b) if the intangible property is a licence—the parties to the security agreement together with the licensor or the licensor's successor.

No perfection by seizure

(4) A secured party who seizes collateral under this section does not perfect the secured party's security interest in the collateral.

124 Secured party who has perfected a security interest in collateral by possession or control

(1) This section applies if:

(a) a secured party has perfected a security interest in collateral by possession or control of the collateral; and

(b) the debtor is in default under the security agreement.

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(2) A secured party may seize the collateral under section 123 by giving a notice to:
  (a) the grantor; and
  (b) if the collateral is a licence—either:
    (i) the licensor; or
    (ii) the licensor's successor.

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

125 Obligation to dispose of or retain collateral

(1) A secured party who seizes collateral under section 123 must:
  (a) dispose of the collateral in accordance with Division 3; or
  (b) take action to retain the collateral in accordance with Division 4.

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

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

126 Apparent possession of collateral

(1) If:
  (a) collateral cannot be readily moved from a grantor's premises; or
  (b) adequate storage facilities are not readily available for collateral;

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a secured party may seize the collateral under section 123 by taking apparent possession of the collateral.

Note: This section does not apply in relation to collateral that is used predominantly for personal, domestic or household purposes (see subsection 109(5)).

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

(3) To avoid doubt, a secured party who takes apparent possession of collateral in accordance with this section does not perfect the secured party's security interest in the collateral.

127 Seizure by higher priority parties—notice

Scope

(1) This section applies if, at any time while collateral is seized by a secured party (the ***enforcing party***) (whether under section 123 or otherwise) for the purposes of enforcement, another secured party (the ***higher priority party***) has a security interest in the collateral that has a higher priority under this Act.

Notice requiring enforcing party to give possession of collateral to higher priority party

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

Note: If a person has a perfected security interest in the collateral that ranks higher than that of the secured party, and the person does not give a notice under this section, the person retains a security interest in the collateral.

(3) However, the higher priority party must not give a notice to the enforcing party under subsection (2) unless the higher priority party would be entitled to seize the collateral (in the higher priority

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party's own right) in accordance with section 123, had the enforcing party not first seized the collateral.

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

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

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

Note: The period may also be extended by a court under section 293.

(5) A higher priority party who is given possession of collateral under this section is taken to have complied with the requirements of subsection 123(2) (notice of seizure) in relation to the seizure of the collateral.

Payment of enforcing party's expenses

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

Note: 2 secured parties can contract out of this provision (see subsection 115(6)).

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

(8) The amount payable under subsection (6) is the lesser of the following amounts:

(a) the amount mentioned in the subsection;

(b) the amount of any proceeds from the higher priority party's disposal of the collateral.

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(9) A higher priority party must pay an amount of expenses under subsection (6) before the end of 20 business days after the later of the following days:

(a) the day the higher priority party disposes of the collateral;

(b) the day the enforcing party gives the higher priority party evidence showing that the enforcing party incurred the amount.

Note: The period may be extended by a court under section 293.

(10) The amount under subsection (6) is a debt due to the enforcing party.

(11) The enforcing party may apply to a court to recover the amount of the debt, and the court may grant the application.

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

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Division 3—Disposing of collateral (including by purchasing collateral)

128 Secured party may dispose of collateral

(1) A secured party may dispose of collateral if the secured party has seized the collateral in the exercise of a right to seize the collateral on default by the debtor (whether under section 123 or otherwise).

Note 1: A secured party may dispose of collateral by purchasing the collateral (see section 129).

Note 2: The person who takes the collateral as a result of the disposal does so free of certain security interests (see section 133).

Note 3: The secured party may act as agent for the grantor in transferring title (see section 141).

Method of disposal

(2) A secured party may dispose of collateral under this section:
  (a) by private or public sale (including auction or closed tender); or
  (b) by lease, if the security agreement so provides; or
  (c) if the collateral is intellectual property—by licence.

Note 1: A different rule applies in relation to disposal by purchase (see subsection 129(3)).

Note 2: Paragraph (2)(b) does not apply in relation to collateral that is used predominantly for personal, domestic or household purposes (see subsection 109(5)).

(3) For the purposes of this Act, if collateral is disposed of by lease or licence, the disposal occurs at the time the lease or licence is entered into.

(4) The power to dispose of collateral by a lease or licence must be exercised in accordance with the terms and conditions of the security agreement.

(5) A secured party may, under subsection (1), dispose of the whole or part of the collateral.

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Note: The secured party must apply any proceeds etc. of a disposal under this section in accordance with section 140.

Disposal of licences

(6) The power to dispose of a licence must be exercised subject to:
  (a) the terms and conditions of the licence; and
  (b) any applicable law of the Commonwealth, a State or a Territory.

129 Disposal by purchase

(1) A secured party may, under subsection 128(1), dispose of collateral by purchasing the collateral.

Note: This section does not apply in relation to collateral that is used predominantly for personal, domestic or household purposes (see subsection 109(5)).

(2) However, the secured party may dispose of the collateral by purchasing it only if:
  (a) the secured party gives a notice under section 130 stating that the secured party proposes to purchase the collateral; and
  (b) no notice of objection is given to the secured party in accordance with subsection 137(2).

(3) Despite subsection 128(2) and section 131, a secured party may purchase collateral only:
  (a) by public sale (including auction or closed tender); and
  (b) by paying at least the market value at the time of the purchase.

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

130 Notice of disposal of collateral

(1) Unless subsection (5) of this section or section 144 applies, a secured party who proposes to dispose of collateral on default by the debtor (whether or not under section 128) must give a notice, in accordance with this section, to:
  (a) the grantor; and

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(b) any other secured party with a security interest in the collateral that has a higher priority.

(2) A notice must:

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

(b) contain a description of the collateral; and

(c) state that the secured party proposes to dispose of the collateral, unless an obligation is performed, or an amount is paid, to satisfy the obligation secured by the security interest in the collateral, on or before the day specified in accordance with subsection (3); and

(d) state that the notice is given for the purposes of this Act; and

(e) if the secured party is proposing to dispose of the collateral by purchase:

(i) contain details of rights of objection under Division 5; and

(ii) contain the address to which a notice of objection may be given under section 137; and

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

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

(3) For the purposes of paragraph (2)(c), the day specified in a notice given to a person:

(a) must be at least 10 business days after the day the notice is given; or

(b) if the person has given a written notice to the secured party specifying a shorter period to apply for the purposes of this section—before the end of that period.

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

When notice is not required

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

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(a) the secured party believes on reasonable grounds that the secured party was induced to enter into the relevant security agreement by fraud on the part of the debtor or the grantor; or

(b) the secured party believes on reasonable grounds that the collateral might perish before the end of 10 business days after the day the collateral is seized; or

(c) 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 immediately after the day the collateral is seized; or

(d) the secured party believes on reasonable grounds that the expense of preserving the collateral is disproportionately large in relation to its value; or

(e) the collateral is foreign currency; or

(f) the collateral is to be disposed of in accordance with the operating rules of a clearing and settlement facility.

131 Duty of secured party disposing of collateral to obtain market value

A secured party who disposes of collateral under section 128 (other than by purchasing the collateral) owes a duty, to any other person with a security interest in the collateral, and to the grantor, immediately before the disposal, to exercise all reasonable care:

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

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

Note: A different rule applies in relation to disposal by purchase (see subsection 129(3)).

132 Secured party to give statement of account

Statement of account following disposal

(1) Unless section 144 applies, a secured party must, on request by any other person with a security interest in the collateral, or the grantor,

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give the person (or grantor) a written statement of account, if the first-mentioned secured party disposes of collateral under section 128 (including by purchasing the collateral in accordance with section 129).

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

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

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

Note: The period may also be extended by a court under section 293.

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

(a) in the case of a disposal by a lease or licence—the total amount received, and expected to be received, during the period:

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

(ii) ending at the end of the lease or licence; and

(b) in any other case—the total amount received from the disposal of the collateral (or in the case of disposal by purchase, paid by the secured party) during the period:

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

(ii) ending at the time of the disposal of the collateral; and

(c) in any case—the amount of expenses relating to the disposal; and

(d) any amounts paid to other secured parties; and

(e) the balance owing by the secured party to the grantor, or by the debtor to the secured party, as the case may be.

Statement of account if no disposal

(4) A secured party who has not disposed of collateral before the end of 6 months after the day the collateral is seized must, in accordance with subsections (5) and (6), give a written statement of account for each period of 6 months after seizing the collateral, until the collateral is disposed of.

(5) The statement of account for a 6 month period must be given to any other person with a security interest in the collateral, or the

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grantor, if the other person (or the grantor) requests the statement for that period.

(6) A statement of account under subsection (4) must be given to a person before the end of:

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

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

Note: The period may also be extended by a court under section 293.

(7) A statement of account under subsection (4) must:

(a) state that the secured party has not disposed of the collateral; and

(b) show the total amount received in relation to the collateral during the period:

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

(ii) ending at the time the statement is given; and

(c) show the amount of expenses relating to the retention of the collateral before the disposal.

133 Disposing of collateral free of interests

(1) If collateral has been disposed of under section 128 (including by a secured party purchasing the collateral), a person takes the collateral as a result of the disposal free of all of the following interests in the collateral:

(a) the interest of the grantor;

(b) the security interest of the secured party who disposed of the collateral;

(c) all security interests in the collateral that have a lower priority than the security interest of that secured party.

Note: If a person has a perfected security interest in the collateral that ranks higher than that of the secured party, the person retains a security interest in the collateral.

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

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Division 4—Retaining collateral

134 Proposal of secured party to retain collateral

(1) A secured party may retain collateral if the secured party has seized the collateral in the exercise of a right to seize the collateral on default by the debtor (whether under section 123 or otherwise).

Note 1: This section does not apply in relation to collateral that is used predominantly for personal, domestic or household purposes (see subsection 109(5)).

Note 2: The secured party may act as agent for the grantor in transferring title (see section 141).

(2) However, the secured party may retain the collateral only if:

(a) the secured party gives a notice under section 135 to retain the collateral; and

(b) no notice of objection is given to the secured party in accordance with subsection 137(2).

135 Notice of retention of collateral

(1) A secured party (the ***retaining party***) who proposes to retain collateral under section 134 must (unless section 144 applies) give a notice of the proposal, in accordance with this section, to:

(a) the grantor; and

(b) if the security interest of the retaining party is not a purchase money security interest—a secured party who, at the time the retaining party gives the notice, has a registration that describes the collateral; and

(c) if the security interest of the retaining party is a purchase money security interest—a secured party over whom (or which) the retaining party has priority under section 62 or 63, but only if, at the time the retaining party gives the notice, the secured party has a registration that describes the collateral.

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

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

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(b) if the person has given a written notice to the secured party specifying a shorter period to apply for the purposes of this section—before the end of that period.

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

(3) A notice must:

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

(b) contain a description of the collateral; and

(c) state that the secured party proposes to retain the collateral, unless an obligation is performed, or an amount is paid, as mentioned in paragraph (d), on or before a specified day (being a day that is at least 10 business days after the day the notice is given); and

(d) state the obligation to be performed, or the amount of the payment required, before the day specified in accordance with paragraph (c), to satisfy the obligation secured by the security interest in the collateral; and

(e) contain details of rights of objection under Division 5; and

(f) contain the address to which a notice of objection may be given under section 137; and

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

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

136 Retaining collateral free of interests

Retaining collateral free of interests if notices have been given in accordance with section 135

(1) If:

(a) a secured party gives one or more notices in accordance with section 135 to retain collateral; and

(b) no notice of objection is given to the secured party in accordance with subsection 137(2);

then, at the end of the day specified in accordance with paragraph 135(3)(c), the secured party is entitled to take steps to have title to the collateral pass to the secured party.

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(2) At the time the title to the collateral passes to the secured party, the secured party takes the collateral free of all of the following interests in the collateral:

(a) the interest of the grantor;

(b) the security interest of the secured party to whom title passes;

(c) all security interests that have a lower priority than the security interest of that secured party.

Acquiring collateral that has been retained free of interests if notices have not been given in accordance with section 135

(3) A person takes collateral free of the interests referred to in subsection (2) if:

(a) a secured party is required to give one or more notices in relation to the collateral in accordance with section 135; and

(b) the secured party has not done so; and

(c) the person acquires the collateral from the secured party for new value; and

(d) the person has no actual knowledge that the requirements of section 135 have not been complied with.

(4) Subsection (3) applies in relation to a security interest referred to in paragraph (2)(c) whether or not a registration with respect to the security interest is effective.

Extinguishment of obligation owed to the secured party

(5) If a secured party (the ***retaining secured party***) takes collateral under this section free of the interests referred to in subsection (2):

(a) the debt or other obligation secured by the security interest held by the retaining secured party is extinguished; but

(b) paragraph (2)(c) does not have the effect that a debt or other obligation secured by another security interest in the collateral is extinguished, if the other security interest has a lower priority than the security interest of the retaining secured party.

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Division 5—Objection to purchase or retention

137 Persons entitled to notice may object to proposal

(1) This section applies if:

(a) a person is entitled to a notice under section 130 or 135; and

(b) a secured party gives the person one of the following notices:

(i) a notice under section 130 that the secured party proposes to purchase collateral;

(ii) a notice under section 135 that the secured party proposes to retain collateral.

(2) Before the end of the day specified in accordance with subsection 130(3) or 135(3), the person may give the secured party a notice (the ***notice of objection***) objecting to the purchase or retention.

Note: The secured party may request the person to provide proof of the person's interest under section 138.

(3) The secured party must sell or lease the collateral in accordance with section 128 if the secured party is given a notice of objection in accordance with subsection (2).

138 Person making objection may be requested by secured party to prove interest

(1) A secured party who, in accordance with subsection 137(2), is given a notice of objection by a person (other than the grantor) may request the person to provide proof of that person's interest.

(2) The notice of objection is taken not to have been given by the person in accordance with subsection 137(2) if the person does not provide proof of the person's interest before the end of 10 business days after the day the secured party's request is made.

Note: The period may be extended by a court under section 293.

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Division 6—Seizure and disposal or retention of crops and livestock

138A Meaning of *take* and *water source*

In this Act:

take fish includes:

(a) catch or kill fish; and

(b) gather or collect fish; and

(c) remove fish from any rock or other matter.

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

water source means:

(a) a river, lake, creek or pond, tidal waters or any other land that is submerged by water (whether permanently or intermittently or whether naturally or artificially); or

(b) any part of such a river, lake, creek or pond, tidal waters or submerged land.

138B Seizure and disposal or retention of crops

(1) Without limiting section 123 (secured party may seize collateral), for the purposes of seizing collateral under that section that is crops, or the proceeds of crops, the secured party may:

(a) take possession of the crops or the proceeds; or

(b) cut, gather or harvest the crops or the proceeds.

(2) The secured party may dispose of, or retain, collateral that is crops, or the proceeds of crops, after they have been taken, cut, gathered or harvested, subject to Divisions 2, 3, 4 and 5 (seizure, disposal or retention of collateral and objections).

(3) For the purposes of exercising a power under subsection (1) or (2), or performing any related function under Division 2, 3 or 4, the secured party may enter the land on which, or the water source in which, the crops are, or were, growing.

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

138C Seizure and disposal or retention of livestock

(1) Without limiting section 123 (secured party may seize collateral), for the purposes of seizing collateral under that section that is livestock, or the proceeds of livestock, the secured party may:

(a) take possession of the livestock or proceeds wherever it is located; or

(b) slaughter the livestock wherever it is located; or

(c) take livestock that is fish; or

(d) extract products from livestock (for example, by shearing sheep to extract wool).

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

(2) The secured party may dispose of, or retain, collateral that is livestock, or the proceeds of livestock, after it has been taken, slaughtered or extracted, subject to Divisions 2, 3, 4 and 5 (seizure, disposal or retention of collateral and objections).

(3) For the purposes of exercising a power under subsection (1) or (2), or performing any related function under Division 2, 3 or 4, the secured party may enter the land on which, or the water source in which, the livestock or proceeds is located.

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Part 4.4—Rules applying after enforcement

139 Guide to this Part

This Part contains rules about steps to be taken after a security interest in collateral has been enforced.

These rules deal with the following:

(a) the order of distribution of personal property or its proceeds;

(b) the transfer of title to collateral;

(c) redemption of collateral, or the reinstatement of security agreements, before disposal;

(d) when certain enforcement notices are not required.

A person exercising or discharging rights, duties and obligations arising under this Part must act honestly and in a commercially reasonable manner (see section 111).

140 Distribution of proceeds received by secured party

Scope

(1) This section applies if any amount, personal property or proceeds (within the ordinary meaning of that term) of collateral 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).

(1A) This section does not prevent the operation of another law of the Commonwealth, or a law of a State or Territory, to the extent that the law requires the amount, personal property or proceeds to be applied towards one or more obligations to persons that do not hold security interests (or any other interests) in the collateral before

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being applied towards any (or all) of the obligations mentioned in subsection (2).

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

Order of application

(2) The amount, personal property or proceeds must be applied in the following order:

(a) obligations to persons holding interests (other than security interests) in the collateral that have a higher priority (whether under this Act or otherwise) than the interest of the secured party;

Note: The interests referred to in this paragraph might be interests to which this Act would otherwise not apply (see subsection 8(2)).

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

Note: Reasonable expenses in relation to the enforcement of a security interest are taken to be secured by the security interest unless the parties agree otherwise (see subsection 18(5)).

(c) obligations to persons holding security interests in the collateral that have a higher priority (whether under this Act or otherwise) than the interest of the secured party;

(d) obligations to the secured party that are secured by the security interest in the collateral;

(e) obligations to persons holding interests or security interests in the collateral that have a lower priority (whether under this Act or otherwise) than the interest of the secured party;

(f) to the grantor.

Note: Sections 102 and 103 affect the operation of this section in relation to commingled property.

(3) An amount, personal property or proceeds must be applied against interests to which paragraph (2)(a), (c) or (e) applies in the order of their priority (whether under this Act or otherwise).

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(4) This section applies in relation to a security interest in collateral even if a person takes the collateral free of the security interest under section 133.

(5) An amount paid, or personal property or proceeds applied, in accordance with subsection (2) discharges an obligation secured by an interest in the collateral to the extent of the amount paid or the value of the proceeds or property applied.

(6) To avoid doubt, any amount paid by the higher priority party to an enforcing party in accordance with section 127 is, for the purposes of this section, an expense incurred by the higher priority party in relation to the enforcement of the security interest in the collateral.

(7) A secured party is not liable to an action, suit or proceeding in relation to an application of proceeds in accordance with this section if:

(a) the secured party applied the proceeds honestly; and

(b) the secured party applied the proceeds in a commercially reasonable manner.

141 Secured party may take steps to reflect transfer of title

A secured party who is entitled to dispose of, or retain, collateral under section 128 or 134 may take any steps necessary to reflect the transfer of title resulting from the disposal or retention that the person whose title to the collateral is extinguished because of the disposal or retention could take to reflect a transfer of title to the collateral.

142 Entitled persons may redeem collateral

(1) At any time before a secured party disposes of collateral under section 128, any other person with a security interest in the collateral, or the grantor, may redeem the collateral:

(a) by paying the amounts required to discharge the obligations, or by performing the obligations, secured by security interests in the collateral; and

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(b) by paying the amount of any expenses in relation to the enforcement of the security interest, the payment of which is secured by the security interest.

Note: Reasonable expenses in relation to the enforcement of a security interest are taken to be secured by a security interest unless the parties agree otherwise (see subsection 18(5)).

(2) However, a person must not redeem collateral under subsection (1) if the person agrees in writing after the default not to do so.

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

143 Entitled persons may reinstate security agreement

(1) At any time before a secured party disposes of or retains collateral (whether or not under this Chapter), a person may reinstate the security agreement by:

(a) paying the following amounts:

(i) amounts in arrears (disregarding amounts in arrears as a result of an acceleration clause in the security agreement);

(ii) the amount of any expenses, in relation to the enforcement of the security interest, the payment of which is secured by the security interest; and

Note: Reasonable expenses in relation to the enforcement of a security interest are taken to be secured by a security interest unless the parties agree otherwise (see subsection 18(5)).

(b) remedying any other default as a result of which the secured party proposes to dispose of, or retain, the collateral.

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

144 When certain enforcement notices are not required

A secured party is not required to give a notice to a person under section 95, 118, 121, 130, 132 or 135, if:

(a) after having made reasonable attempts, the secured party has failed to locate the person; or

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(b) for the grantor—after the debtor defaults, the grantor waives in writing the grantor's right to receive the notice; or

(c) for a person other than the grantor—the person (at any time) waives in writing the person's right to receive the notice; or

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

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

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Section 145

Chapter 5—Personal Property Securities Register

Part 5.1—Guide to this Chapter

145 Guide to this Chapter

This Chapter provides for the establishment and maintenance of a register with respect to personal property securities and certain prescribed personal property.

Part 5.2 deals with the establishment of the register and what it contains.

Registrations consist of ***financing statements***, and are amended by the registration of ***financing change statements***. Part 5.3 deals with the registration of these statements, including the data to be included and the issue of verification statements confirming their registration.

Part 5.4 contains rules about the timing of registrations and when a registration becomes ineffective, including the defects that make a registration ineffective.

Part 5.5 is about accessing the register to search for registered data and third party data.

Part 5.5A is about conditions on access to data through the register. In addition, the Part enables the provision, through the register (as a portal), of non-registered data about personal property from third parties.

Part 5.6 deals with the amendment of registrations after a demand for amendment is made.

Part 5.7 deals with removal of data from the register and the correction of registration errors.

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Part 5.8 provides for fees for registration and searching the register, the review of registration decisions and annual reports.

Part 5.9 establishes the offices of the Registrar of Personal Property Securities and the Deputy Registrar.

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Part 5.2—Establishment of the register

146 Guide to this Part

This Part sets up the Personal Property Securities Register.

The Registrar of Personal Property Securities is required to establish and maintain the register, and ensure that it is kept operational. However, the Registrar can refuse access to the register, and suspend its operation, in certain circumstances.

The register contains the following data:

(a) data with respect to security interests, and related data;

(b) data with respect to personal property prescribed by the regulations.

147 Personal Property Securities Register

(1) The Registrar must establish and maintain a register to be known as the Personal Property Securities Register.

(2) Data in the register is the property of the Commonwealth.

(3) The Registrar may keep the register in any form that he or she considers appropriate.

(4) The Registrar must ensure that the register is operational at all times, except:
  (a) while access is refused, or its operation is suspended, under subsection (5); or
  (b) in other circumstances prescribed by the regulations.

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(5) If the Registrar considers that it is not practical to provide access to the register, the Registrar may:
  (a) refuse access to the register; or
  (b) otherwise suspend the operation of the register, in whole or in part.

(6) If the Registrar refuses access to the register, or otherwise suspends the operation of the register in whole or in part, under subsection (5), the Registrar must publish a notice giving details of the refusal or other suspension of operation (including the period of refusal or suspension):
  (a) in a way prescribed by the regulations; or
  (b) if regulations are not made for the purposes of paragraph (a)—in the *Gazette*.

Note: The office of the Registrar of Personal Property Securities is established under Part 5.9.

148 What the register contains

The register is to contain the following data:
  (a) data in registered financing statements (as amended by any registered financing change statements) with respect to security interests;
  (b) data (if any) prescribed by regulations made for the purposes of this paragraph in relation to registrations, or possible registrations;
  (c) data in registered financing statements (as amended by any registered financing change statements) with respect to personal property, being personal property that is prescribed by regulations made for the purposes of this paragraph.

Note 1: If personal property is prescribed by regulations for the purposes of paragraph (c), this Act might not otherwise apply to interests in that property (see subsection 8(2)).

Note 2: Access to non-registered data held by third parties may be provided to persons accessing the register (see Part 5.5A).

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Part 5.3—Registration

149 Guide to this Part

A person may apply to the Registrar to register a financing statement, or a financing change statement, with respect to a security interest or certain personal property.

A registration may perfect a security interest, which may give the secured party an advantage under this Act in enforcing the interest.

A person must not make an application with respect to a security interest unless the person believes on reasonable grounds that the security interest is, or will be, held by a person stated in the application to be a secured party.

This Part also deals with verification statements, which verify the registration of financing statements and financing change statements.

The Registrar is responsible for giving verification statements to secured parties, who must give notice of the statements to grantors.

Publication may be used as an alternative to giving verification statements.

150 Registration—on application

(1) A person may apply to the Registrar to register a financing statement with respect to:
  (a) a security interest; or
  (b) personal property prescribed by regulations made for the purposes of paragraph 148(c).

(2) A person may apply to the Registrar to register a financing change statement to amend a registered financing statement.

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(3) The Registrar must register the financing statement or financing change statement in accordance with the application, but only if:
  (a) the application is in the approved form; and
  (b) the fee (if any) determined under section 190 has been paid; and
  (c) the Registrar is not satisfied that the application is:
    (i) frivolous, vexatious or offensive, or contrary to the public interest; or
    (ii) made in contravention of section 151 (belief about security interest); and
  (d) the registration would not be prohibited by the regulations.

Note 1: Section 161 authorises the description of collateral by a registration before or after a security agreement is made covering the collateral, or a security interest has attached to the collateral.

Note 2: The Registrar must give a verification statement to each secured party after the registration of a financing statement or a financing change statement (see section 156).

Note 3: Application may be made to the Administrative Appeals Tribunal for review of certain decisions of the Registrar about registration (see section 191).

Note 4: The requirement to pay a fee is satisfied if an arrangement for its payment has been approved under subsection 190(4).

151 Registration—belief about security interest

Requirements for collateral to secure obligation etc.

(1) A person must not apply to register a financing statement, or a financing change statement, that describes collateral, unless the person believes on reasonable grounds that the person described in the statement as the secured party is, or will become, a secured party in relation to the collateral (otherwise than by virtue of the registration itself).

Civil penalty:
  (a) for an individual—50 penalty units;
  (b) for a body corporate—250 penalty units.

Note: See Part 6.3 (Civil penalty proceedings).

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Example 1: A person applies to register a financing statement that describes collateral as "all present and after-acquired property" of the grantor described in the statement. It is sufficient to comply with this subsection if the applicant believes on reasonable grounds that the secured party described in the statement will take a security interest in a particular class of items of personal property held (or later acquired) by the grantor (see paragraph (b) of the definition of ***description*** in section 10).

Example 2: A person applies to register a financing statement that describes collateral as "fruit". It is sufficient to comply with this subsection if the applicant believes on reasonable grounds that the secured party described in the statement will take a security interest in apples (see paragraph (b) of the definition of ***description*** in section 10).

(2) If a financing statement, or a financing change statement, that describes collateral has been registered on the application of a person, the person must, within the period covered by subsection (3), apply to register a financing change statement to amend the registration to end its effect with respect to the collateral, if:

(a) the person described in the statement as the secured party has never, since the statement was registered, been a secured party in relation to the collateral (other than by virtue of the registration itself); and

(b) there are no reasonable grounds (or there are no longer any reasonable grounds) for the belief mentioned in subsection (1).

Civil penalty:

(a) for an individual—50 penalty units;

(b) for a body corporate—250 penalty units.

Note: See Part 6.3 (Civil penalty proceedings).

(3) The period covered by this subsection is as soon as practicable, or 5 business days, whichever is earlier, after:

(a) if there never have been, since the statement was registered, reasonable grounds for the belief mentioned in subsection (1)—the day of the registration time, or the amendment time, for the financing statement or financing change statement; or

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(b) if there are no longer any reasonable grounds for that belief—the day when there stopped being reasonable grounds for the belief.

Note: The period of 5 business days may be extended by a court under section 293.

(4) A person who wishes to establish that there were reasonable grounds for the belief mentioned in subsection (1) (at any particular time) bears an evidential burden in relation to the matter.

Note: For ***evidential burden***, see section 10.

Damages for contravention of requirements

(5) For the purposes of section 271 (but without limiting that section):

(a) compliance with subsection (1) or (2) is taken to be an obligation imposed on a person who applies, or is required to apply, for the registration of a financing statement or a financing change statement; and

(b) any person with an interest in personal property described in the financing statement or financing change statement is taken to be a person to whom that obligation is owed; and

(c) a contravention of subsection (1) or (2) is taken to be a failure to discharge that obligation.

Note: Section 271 gives a right to recover damages for any loss or damage in relation to such a failure.

Registration unaffected by contravention

(6) However, if a person applies for a registration of a financing statement or a financing change statement in contravention of subsection (1), and the statement is registered accordingly, the contravention does not affect the validity or effectiveness of the registration.

Registrations with respect to security interests only

(7) This section only applies in relation to a registration with respect to a security interest.

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152 Registration—location of personal property and interested persons outside Australia

A financing statement, or a financing change statement, may be registered whether or not:

(a) the personal property to which the statement relates is located in Australia; or

(b) any person who owns or has rights in that property is located in Australia.

Note 1: For when personal property is located in Australia, see section 235. For when bodies corporate, bodies politic or individuals are located in Australia, see section 235.

Note 2: For security interests in personal property outside Australia, see section 6.

153 Financing statements with respect to security interests

(1) A financing statement with respect to a security interest (including such a financing statement as amended by the registration of a financing change statement) consists of data that complies with the following table:

Financing statements with respect to security interests

Item	Data about:	Details of data
1	The secured party	The details prescribed by the regulations, in relation to each secured party, of: (a) the secured party; or (b) a person nominated by the secured party who has authority to act on behalf of the secured party.
2	The grantor	Whichever of the following is applicable: (a) if the collateral is consumer property, and is required by the regulations to be described by serial number—no grantor's details; (b) if the collateral is consumer property, and is not required by the regulations to be described by serial number—the grantor's name and date of birth, as evidenced in accordance with the regulations, and no other details;

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Financing statements with respect to security interests		
Item	**Data about:**	**Details of data**
		(c) in any other case—the grantor's details as prescribed by the regulations.
3	Giving of notices	The following: (a) an address (including an email address or fax number) for the giving of notices to the secured party (or secured parties) relating to the registration; (b) details of any identifier provided for the giving of notices to the secured party (or secured parties). Note: For identifiers, see section 289.
4	The collateral and proceeds	A collateral description in accordance with all of the following rules: (a) the collateral must be described as one of the following: (i) consumer property; (ii) commercial property; (b) the collateral may or must be described by serial number, if allowed or required by the regulations; (c) the collateral must belong to a single class of collateral prescribed by the regulations; (d) any description of proceeds must comply with the regulations. Note: 2 or more types of collateral that belong to different classes prescribed by the regulations must be described in separate registrations. However, 2 or more registrations can be effected through a single application.
5	The end time for registration	For all the collateral described in the statement, the following data: (a) for collateral other than consumer property or property described by a serial number: (i) no stated end time; or (ii) an end time for the registration no later than the time (the ***default time***) that is the end of the day 25 years after the registration time; or (iii) if the registration is amended to include or

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Financing statements with respect to security interests		
Item	**Data about:**	**Details of data**
		change (but not omit) an end time—an amended end time for the registration no later than the time (the ***default time***) that is the end of the day 25 years after the amendment time for that amendment; (b) for consumer property, or property described by a serial number: (i) an end time for the registration no later than the time (the ***default time***) that is the end of the day 7 years after the registration time; or (ii) if the registration is amended to change the end time—an amended end time for the registration no later than the time (the ***default time***) that is the end of the day 7 years after the amendment time for that amendment.
6	Subordination	An indication of whether the security interest is (or is to be) subordinated to any other security interest. However, this indication need not be included.
7	Security interest	An indication of whether the security interest is, or is to be, a purchase money security interest (to any extent) if the security interest is in respect of a class of collateral prescribed by the regulations for the purposes of this item.
8	Any matter prescribed by the regulations	Details of the matter prescribed by the regulations, whether or not the matter also comes under any of the other items in this table.

(2) If a person applies to register a financing statement (or a financing change statement) that would otherwise result in the statement of an end time in a financing statement not complying with item 5 of the table in subsection (1), the financing statement is taken to provide for the relevant default time mentioned in that item as the stated end time.

(3) A statement of end time does not comply with item 5 of the table in subsection (1) if it states an end time earlier than the registration

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time or amendment time in relation to the financing statement or financing change statement that provided for that end time.

154 Financing statements with respect to prescribed property

A financing statement with respect to personal property prescribed by regulations made for the purposes of paragraph 148(c) (including such a financing statement as amended by the registration of a financing change statement) consists of data that complies with the following table:

Financing statements with respect to prescribed property

Item	Data about:	Details of data
1	The person who owns or has an interest in the property	Details of the person, as prescribed by the regulations.
2	The property	Details relating to the property in accordance with the following rules: (a) the property must be of a single class, described in the registration; (b) a statement must be included of the reason why the property is registered.
3	Any matter prescribed by the regulations	Details of the matter prescribed by the regulations, whether or not the matter also comes under any of the other items in this table.

155 Meanings of *verification statement* and *registration event*

In this Act:

verification statement means a written statement in the approved form:

(a) verifying the registration of a financing statement or a financing change statement (each of which is a ***registration event***) with respect to a security interest, other than a financing change statement registered under section 185 (removal of old data) or 186 (incorrectly removed data); and

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(b) including other data (if any), including third party data (see section 176C), approved by the Registrar for that form in relation to the registration event, a secured party, a grantor, or collateral.

156 Verification statements—Registrar to give to secured parties

(1) The Registrar must ensure that a verification statement in relation to a registration event is given to the following persons:

(a) a person registered as a secured party in the registration immediately before the time of the registration event;

(b) a person registered as a secured party in the registration immediately after the time of the registration event.

Note: This section does not apply in relation to a registration event if the Registrar publishes a verification statement in relation to the event under section 158.

(2) If a registration event involves the amendment of a registration to change an address (including an email address or a fax number) for the giving of notices to a secured party, the Registrar must ensure that the verification statement is given to the secured party at both the previously registered address and the address as changed.

(3) If a registration event involves the amendment of a registration to omit a secured party, the Registrar must ensure that the verification statement in relation to the event is given to the secured party at the previously registered address for the secured party.

157 Verification statements—secured parties to give notice to grantors

Requirement to provide verification statement

(1) A person (the ***statement holder***) who is, under section 156, given a verification statement in relation to a registration event concerning a registration, must ensure that a notice of the statement, in the approved form, is given to the following persons as soon as reasonably practicable after the time of the registration event:

(a) a person registered as a grantor in the registration immediately before the time of the registration event;

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(b) a person registered as a grantor in the registration immediately after the time of the registration event.

Note: This section does not apply in relation to a registration event if the Registrar publishes a verification statement in relation to the event under section 158.

(2) Without limiting subsection (1), the approved form for notice of a verification statement:

(a) may authorise specified data in the verification statement not to be included in the notice; but

(b) must otherwise require the data in the verification statement to be included in the notice.

Exception—waiver by interested person of right to receive notice

(3) However, this section does not apply in relation to a person mentioned in paragraph (1)(a) or (b) if:

(a) the collateral to which the registration event relates is (immediately before or after the event) described in the registration as commercial property; and

(b) the person has, in writing, waived the right under this section to receive a notice in relation to registration events to which paragraph (a) applies.

Contravention of requirement

(4) If the statement holder contravenes a requirement under subsection (1) to ensure that a notice is given to an individual, the contravention constitutes an act or practice involving interference with the privacy of the individual for the purposes of section 13 of the *Privacy Act 1988*.

Note 1: These acts or practices may be the subject of complaints under section 36 of that Act.

Note 2: If a statement holder fails to discharge an obligation under this section, an action for damages may be available under section 271.

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158 Verification statements—publication as alternative

(1) The Registrar may publish, in a way prescribed by the regulations, a single verification statement in relation to a number of registration events if:

(b) the events affect a number of persons registered as secured parties (whether before or after the events); and

(b) the Registrar considers that it would be inconvenient for verification statements to be given to each registered (or formerly registered) secured party.

(2) Sections 156 and 157 do not apply in relation to a registration event if the Registrar publishes a verification statement in relation to the event under this section.

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Part 5.4—When a registration is effective

159 Guide to this Part

This Part provides for the time at which a description of collateral is registered. The precise timing of a registration may be significant in determining the priority to be given to a security interest in the collateral (see section 55).

This Part also deals with when a registration is effective and registration defects that may cause it to become ineffective.

A registration is effective from the registration time until the earliest of:

(a) the registered end time; or

(b) an amendment time; or

(c) the time when the registration stops being available for search in the register.

A registration is only ineffective because of a defect if there is a seriously misleading defect in data relating to the registration, or one of a number of particular defects set out in section 165 exists.

If a security interest in certain property becomes unperfected, the secured party may be obliged to take steps to end the effect of the registration.

160 Registration time—general

(1) A description of collateral starts to be registered in a registration with respect to a security interest, in relation to a particular secured party, at the moment (the ***registration time***) when the description becomes available for search in the register in relation to that secured party.

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Note 1: A written search result is evidence of a registration and of the registration time (see section 174).

Note 2: A registration may stop being effective even if it is available for search in the register (for example, because of a defect—see section 164).

Note 3: If 2 or more registrations describe the same collateral in relation to the same secured party, there may be different registration times for the collateral in relation to each of the registrations.

(2) The ***amendment time*** for an amendment to a registration is the moment when the amended registration becomes available for search in the register.

161 Registration time—security agreements and interests

Personal property may be described in a registration with respect to a security interest before or after:

(a) a security agreement is made covering the property; or

(b) a security interest attaches to the property.

162 Registration time—transfers

A financing statement, or a financing change statement, may be registered to reflect the transfer of a security interest, or of collateral, before or after the transfer.

163 Effective registration

(1) A registration with respect to a security interest that describes particular collateral, in relation to a secured party, is effective with respect to that collateral from the registration time for the description of the collateral until the earliest of the following times:

(a) the end time (if any) registered for the collateral;

(b) if the registration is amended to omit the collateral description—the amendment time;

(c) the time when the description of the collateral in the registration stops being available for search in the register (by reference to that time) in respect of the secured party.

Note: For the registration time for collateral, see section 160.

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(2) This section is subject to sections 164, 165 and 166 (defects in registration).

164 Defects in registration—general rule

(1) A registration with respect to a security interest that describes particular collateral is ineffective because of a defect in the register if, and only if, there exists:

(a) a seriously misleading defect in any data relating to the registration, other than a defect of a kind prescribed by the regulations; or

(b) a defect mentioned in section 165.

(2) In order to establish that a defect is seriously misleading, it is not necessary to prove that any person was actually misled by it.

(3) A registration that describes particular collateral is not ineffective only because the registration is ineffective with respect to other collateral described in the registration.

165 Defects in registration—particular defects

For the purposes of paragraph 164(1)(b), a defect in a registration that describes particular collateral exists at a particular time if any of the following circumstances exist:

(a) in a case in which the collateral is required by the regulations to be described by serial number in the register—no search of the register by reference to that time, and by reference only to the serial number of the collateral, is capable of disclosing the registration;

(b) in a case in which the collateral is not required by the regulations to be described by serial number in the register—no search of the register by reference to that time, and by reference only to the grantor's details (required to be included in the registered financing statement under section 153), is capable of disclosing the registration;

(c) if the registered financing statement (as amended, if at all) indicates that a security interest in the collateral is a purchase money security interest (to any extent)—the security interest

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is not a purchase money security interest (to any extent) in the collateral;

(d) in any case—circumstances in relation to the data related to the registration that are prescribed by the regulations.

166 Defects in registration—temporary effectiveness

Scope

(1) This section applies if:

(a) one of the following defects in a registration that describes particular collateral arises at a particular time (the ***defect time***):

(i) a defect mentioned in paragraph 165(a) or (d);

(ii) a defect mentioned in paragraph 165(b), other than a defect resulting from a change of the grantor in relation to the collateral; and

(b) the defect does not arise only because of an irregularity, omission or error in a financing statement or a financing change statement.

Example: A defect mentioned in paragraph 165(a) may occur if there is a change in the serial number under which collateral is required to be described in the register. For example, a patent may be required to be described by serial number (a Patent Application Number or a Patent Number). The Patent Application Number may be changed to a Patent Number when the patent is registered on the patents register.

Note: A change of the grantor may occur if the collateral described in the registration is transferred. In this case, the secured party's security interest may be temporarily perfected for a certain period (see section 34).

Registration is temporarily unaffected by the defect

(2) Despite sections 164 and 165, the defect does not make the registration ineffective for the period starting at the defect time and ending at the earliest of the following times:

(a) the end time for the registration (as registered immediately before the defect time);

(b) the end of the month that is 60 months after the defect time;

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(c) the end of 5 business days after the day the secured party acquires actual or constructive knowledge of the defect.

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

Registration becomes ineffective

(3) However, the registration becomes ineffective with respect to the collateral under sections 164 and 165 because of the defect immediately after the earliest time mentioned in subsection (2), unless, at or before that time, the registration is amended to correct the defect.

167 Security interest in certain property becomes unperfected

Scope

(1) This section applies in relation to a registration with respect to a security interest if:

(a) collateral described in the registration is:

(i) used, or intended to be used, predominantly for personal, domestic or household purposes; or

(ii) registered with a serial number (see subsection (3)); and

(b) a security interest in the collateral that was perfected by the registration becomes unperfected at a particular time (the ***unperfection time***); and

(c) the end time for the registration is a time more than 5 business days after the day the unperfection time occurs.

Requirement to end effective registration

(2) The secured party must, before the end of 5 business days after the day the unperfection time occurs, apply to register a financing change statement under section 150 amending the registration to end its effect.

Note 1: The period may be extended by a court under section 293.

Note 2: If the secured party fails to discharge the obligation under this section, an action for damages may be available under section 271.

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When collateral is registered with a serial number

(3) For the purposes of this section, collateral is registered with a serial number at a particular time only if a search of the register by reference to that time and by reference only to the serial number of the collateral is capable of disclosing the registration.

168 Maintenance fees

(1) The Registrar may give a secured party in respect of a registration with respect to a security interest a written notice requiring the secured party to pay the fee (determined under section 190) stated in the notice within 28 days after the notice is given in order to maintain the effectiveness of the registration.

(2) If the fee is not paid within 28 days after the notice is given, the Registrar may register a financing change statement amending the registration to end its effect.

Note 1: The Registrar must give a verification statement to each secured party after the registration of a financing change statement (see section 156).

Note 2: Application may be made to the Administrative Appeals Tribunal for review of certain decisions of the Registrar about registration (see section 191).

Note 3: The requirement to pay a fee is satisfied if an arrangement for its payment has been approved under subsection 190(4).

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Part 5.5—Accessing the register to search for data

169 Guide to this Part

This Part is about accessing the register to search for data about personal property.

Anyone may access the register to search the register for data with respect to a security interest or personal property. Searches can only be undertaken by reference to certain criteria, for example the details of a grantor, or a serial number.

A search by reference to an individual grantor's details, and the use of data obtained by a search, is only authorised if the search is undertaken for a purpose stated in this Part.

A civil penalty applies in respect of unauthorised searches, and damages may be available (under section 271). In addition, an unauthorised search may be investigated under the *Privacy Act 1988*.

The written search results may be used as evidence in a court or tribunal.

A person may apply to obtain:

(a) copies of registered financing statements and verification statements; and

(b) reports of certain matters relating to registered data in relation to the person.

170 Search—general

(1) A person may apply to the Registrar for access to the register to search for data in relation to a security interest or personal property (or both).

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(2) The Registrar must:

(a) give the person access to the register to search for the data, in accordance with the application; and

(b) if, in the application, the person requests a written search result in relation to the data—ensure that the person is able to obtain a written search result in relation to the data, in the appropriate form under section 174.

(3) However, the Registrar may give the person access to the register to search for the data only if:

(a) the search is authorised under sections 171 and 172; and

(b) the application is in the approved form; and

(c) the person pays the fee determined under section 190; and

(d) access to the data is not prohibited by the regulations.

Note 1: Application may be made to the Administrative Appeals Tribunal for review of the Registrar's decision under this section to refuse to give a person access to the register to search for data (see section 191).

Note 2: The requirement to pay a fee is satisfied if an arrangement for its payment has been approved under subsection 190(4).

171 Search—criteria

(1) A person may access the register to search for data by reference to the following criteria:

(a) a grantor's details (as required to be included, if at all, in a registered financing statement under section 153);

(b) a serial number by which collateral may (or must) be described in the register;

(c) the time of the search;

(d) an earlier nominated time, but only with the consent of the Registrar;

(da) a unique identifier allocated by the Registrar to a registered financing statement;

(e) any other criteria prescribed by the regulations.

Note: If a registration is no longer effective, details of the registration can still be found by searching the register by reference to an earlier time when the registration was still effective (see paragraph (d)). However, data removed from the register may not

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be available for search by reference to an earlier time (see Part 5.7).

(2) The Registrar must ensure that the way in which the results of a search are worked out in response to an application for the search is determined in accordance with any regulations made for the purposes of this subsection.

172 Search—by reference to details of grantor who is an individual

Scope

(1) This section applies if a person proposes to access the register to search for data by reference to the details of a grantor (other than that person) who is an individual.

Individual grantor details—permitted searches

(2) The following table sets out which persons (***searchers***) may access the register to search for data, and for what purpose:

Individual grantor details—permitted searches

Item	Searchers	Purpose
1	A person (the ***first person***), or another person with the first person's consent	To disclose any registration in which the first person is registered as a grantor or a secured party.
2	A secured party in relation to a registration	A purpose that relates to a security interest attached to collateral described in the registration.
3	A grantor in relation to a registration	A purpose that relates to a security interest attached to the collateral described in the registration.
4	A person	To disclose any registration in which the person is registered as a secured party.
5	A person	To disclose whether collateral to which a security interest is attached is described in a registration.
6	A person	To disclose whether or not personal property is described in a registration, if:

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Section 172

Individual grantor details—permitted searches		
Item	**Searchers**	**Purpose**
		(a) the property is to be purchased or dealt with by the person; or (b) the person has an interest in the property.
7	A person	To establish whether to provide credit to, or obtain a guarantee or an indemnity from, a person named in the search application or a person with an interest in the personal property described in the application.
8	A person	To establish whether to provide credit to, or obtain a personal guarantee or an indemnity from an associate (within the meaning of section 11 or subsection 12(2) of the *Corporations Act 2001*) of a body corporate named in the search application or of a body corporate with an interest in the personal property described in the application.
9	A person	To establish whether to invest in, with, or through, a person named in the search application.
10	A person	To establish whether to invest in, with, or through, an associate (within the meaning of section 11 or subsection 12(2) of the *Corporations Act 2001*) of a body corporate named in the search application or of a body corporate with an interest in the personal property described in the application.
11	The Registrar	A purpose that relates to the administration of this Act.
12	A person who has taken control of the property of an individual who is insolvent under administration, within the meaning of the *Corporations*	A purpose that relates to the searcher's control of the property.

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Individual grantor details—permitted searches		
Item	**Searchers**	**Purpose**
	Act 2001	
13	An Official Receiver in Bankruptcy within the meaning of the *Bankruptcy Act 1966*	A purpose that relates to the exercise of a power, or the performance of a function, of that Official Receiver in Bankruptcy.
14	The legal personal representative of an individual (including a deceased individual)	A purpose that relates to the exercise of a power, or the performance of a function, as legal personal representative.
15	A government entity within the meaning of the *A New Tax System (Australian Business Number) Act 1999*	A purpose that relates to the exercise of a power, or the performance of a function, of that entity, unless the purpose is covered by another purpose listed in this table.
16	A government entity within the meaning of the *A New Tax System (Australian Business Number) Act 1999*	A purpose that relates to the maintenance of the law, including the prevention, detection, investigation or prosecution of contraventions of laws (whether the penalty for contravention is criminal or civil).
17	The holder of a lien or charge, or a creditor	A purpose that relates to the enforcement of the lien or charge, or the creditor's rights, as the case may be.
18	A bailiff, or sheriff, of a court of the Commonwealth, a State or a Territory	A purpose that relates to the enforcement of a court order or warrant.
19	A person	To advise another person in connection with any of the purposes referred to in this table.

Search otherwise than for authorised purpose

(3) A searcher mentioned in an item in the table in subsection (2) must not, otherwise than for the purpose specified in the item:

(a) access the register to search for data; or

(b) use data obtained as a result of accessing the register, unless the searcher has also obtained the data lawfully from another source.

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Civil penalty:

(a) for an individual—50 penalty units;

(b) for a body corporate—250 penalty units.

Note: See Part 6.3 (Civil penalty proceedings).

(4) A person who wishes to establish that a searcher mentioned in an item in the table in subsection (2) did an action mentioned in paragraph (3)(a) or (b) for the purpose specified in the item bears an evidential burden in relation to the matter.

Note: For ***evidential burden***, see section 10.

(5) For the purposes of section 195A (Registrar—investigations), the Registrar may do either or both of the following:

(a) investigate a suspected contravention of subsection (3);

(b) decline to investigate, or to investigate further, a suspected contravention of subsection (3).

Recovery of damages for contravention

(6) For the purposes of section 271:

(a) compliance with subsection (3) is taken to be an obligation imposed on a person who accesses the register to search for data, or uses data obtained as a result of accessing the register to search for data; and

(b) the obligation is taken to be owed to the grantor by reference to whose details the search is undertaken; and

(c) a contravention of subsection (3) is taken to be a failure to discharge that obligation.

Note: Section 271 gives a right to recover damages for any loss or damage in relation to such a failure.

173 Search—interference with privacy

Scope

(1) This section applies if:

(a) a person obtains access to the register and searches the register for data (whether or not the access is obtained as a result of an application under section 170); and

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(b) as a result of the search, the person obtains personal information about an individual within the meaning of that Act.

Unauthorised search or use of personal information is an interference with privacy

(2) If the search, or the use of the personal information, is unauthorised under subsection (3) or (4), the search or use constitutes an act or practice involving interference with the privacy of the individual for the purposes of section 13 of the *Privacy Act 1988*.

Note: These acts or practices may be the subject of complaints under section 36 of that Act.

(3) The search is unauthorised if:
(a) the search is not authorised under section 171; or
(b) the search is prohibited under subsection 172(3); or
(c) access to the data for a search of that kind is prohibited by regulations made for the purposes of paragraph 170(3)(d).

(4) The use of the personal information is unauthorised (unless the data has been obtained lawfully from another source) if:
(a) the search is not authorised under section 171; or
(b) the use of the personal information is prohibited under subsection 172(3); or
(c) access to the data for a search of that kind is prohibited by regulations made for the purposes of paragraph 170(3)(d).

174 Search—written search results and evidence etc.

Search result as evidence

(1) A written search result in the appropriate form (see subsection (3)) is admissible as evidence in a court or tribunal and is, in the absence of evidence to the contrary, proof of the matters stated in the search result.

(2) Without limiting subsection (1), the matters that may be stated in a search result include the following:

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(a) the registered description of collateral at a particular time;
(b) the time of the registration of a financing statement, any financing change statement and the end time for a registration;
(c) the chronological order of any of the events mentioned in paragraph (b), in relation to one or more registrations.

Appropriate form of search result

(3) A search result is in the ***appropriate form*** if:
(a) it purports to be issued by the Registrar in the approved form; or
(b) it purports to be issued by one of the following:
(i) an officer or agency of the Commonwealth authorised by the Registrar;
(ii) an officer or agency of a State or Territory authorised by the Registrar; or
(c) it purports to be:
(i) issued by a person prescribed by the regulations; and
(ii) if the Registrar approves a form for the purposes of this subparagraph—in the approved form.

(4) The Registrar may include, or may authorise to be included, in a search result, any data, including third party data (see section 176C), determined by the Registrar in relation to a secured party, a grantor or personal property.

Evidence of transient electronic communications etc.

(5) If a search result is covered by paragraph (b) of the definition of ***writing*** in section 10, evidence of the search result may be given by the production of a recording of the search result mentioned in that paragraph.

Instruments of approval

(6) The Registrar may, by written instrument, authorise an officer or agency for the purposes of subparagraph (3)(b)(i) or (ii).

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(7) The Registrar may, by legislative instrument, determine data for the purposes of subsection (4).

175 Copies of financing statements and verification statements

On application by a person in the approved form, accompanied by the fee (if any) determined under section 190, the Registrar may give the person:

(a) a copy of any registered financing statement (as amended by any registered financing change statement) in relation to which the person is registered as a secured party; or

(b) a copy of a verification statement that relates to such a registered financing statement.

Note 1: Application may be made to the Administrative Appeals Tribunal for review of the Registrar's decision under this section to refuse to give a person a copy of a registered financing statement or verification statement (see section 191).

Note 2: The requirement to pay a fee is satisfied if an arrangement for its payment has been approved under subsection 190(4).

176 Reports by Registrar

Reports about particular persons

(1) On application by a person in the approved form, accompanied by the fee (if any) determined under section 190, the Registrar may give the person a report of matters determined under subsection (3) relating to registered data in relation to the person.

Note 1: Application may be made to the Administrative Appeals Tribunal for review of the Registrar's decision under this section to refuse to give a person a report (see section 191).

Note 2: The requirement to pay a fee is satisfied if an arrangement for its payment has been approved under subsection 190(4).

(2) The Registrar may, at the Registrar's initiative, give a person a report of matters relating to registered data in relation to the person (whether or not the matters are determined under subsection (3)).

(3) The Registrar may, by legislative instrument, determine matters that may be the subject of reports under this section.

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Section 176

Reports for the purposes of the administration of this Act

(4) For the purposes of the administration of this Act, the Registrar may prepare a report of any matter relating to registered data.

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Part 5.5A—Conditions on data access

176A Guide to this Part

Access to registered data and third party data through the register may be provided subject to conditions, including conditions about the subsequent use of the data. Damages may be available (under section 271) in respect of a contravention of conditions of access.

The Registrar may arrange with a third party (prescribed by the regulations) under this Part for the provision of access to non-registered data, held by the third party, through the register (as a portal).

For example, the Registrar may arrange with a prescribed third party to provide users of the register with data held by the third party that relates to motor vehicles. As a result, third party data concerning a motor vehicle may be provided on a verification statement or search result that relates to that vehicle, whether or not the data is specifically requested.

176B Access to registered data—conditions

Scope

(1) This section applies if a person applies for:
  (a) the registration of a financing statement or a financing change statement (under section 150); or
  (b) access to the register to search for data (under section 170); or
  (c) a copy of a registered financing statement or verification statement (under section 175).

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Registered data conditions

(2) The person may be required to comply with conditions (***registered data conditions***) in relation to registered data received as a result of the application, as part of the approved form for the application.

Note: For approved forms, see section 302.

(3) ***Registered data conditions*** includes, but is not limited to, conditions relating to the use of registered data.

(4) The person's compliance with the registered data conditions may be required whether or not:

(a) the application relates to personal property that is the subject of registered data; or

(b) in the case of an application for access to the register to search for data—the person is applying for access to the register to search for registered data; or

(c) in the case of an application for a copy of a registered financing statement—the applicant also applies for a copy of a verification statement in relation to the financing statement.

Recovery of damages for contravention

(5) For the purposes of section 271:

(a) compliance with the registered data conditions as required under subsection (2) of this section is taken to be an obligation imposed on the person by this Act; and

(b) the obligation is taken to be owed to the Commonwealth; and

(c) a contravention of a registered data condition is taken to be a failure to discharge that obligation.

Note: Section 271 gives a right to recover damages for any loss or damage relating to such a failure.

(6) If the person (the ***applicant***) applies on behalf of another person (the ***principal***):

(a) both the applicant and the principal may be required, by the approved form for the application, to comply with the registered data conditions; and

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(b) an obligation is taken to be imposed under subsection (5) on both the applicant and the principal, in each of their personal capacities, to comply with the registered data conditions.

176C Access to third party data

Agreement with third parties

(1) The Registrar may make an arrangement with a person (the ***third party***) prescribed by regulations made for the purposes of this section to enable:

(a) data (***third party data***) held by the third party with respect to personal property to be included in verification statements; and

(b) access to the register to be given to applicants under section 170 (search—general) to search for third party data; and

(c) third party data to be included in search results under section 174; and

(d) applications for registration under section 150, for access to the register under section 170 or for copies of registered financing statements or verification statements under section 175 to be subject to conditions (***third party data conditions***) relating to third party data obtained as a result of such applications.

Example: An arrangement between the Registrar and a third party to enable third party data relating to motor vehicles to be included in verification statements and search results.

(2) ***Third party data*** does not include personal information, within the meaning of the *Privacy Act 1988*, about an individual.

(3) ***Third party data conditions*** includes, but is not limited to, conditions relating to the use of the third party data.

Use of third party data

(4) A person may be required to comply with third party data conditions, as part of the approved form for application, if the person applies:

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(a) for the registration of a financing statement or a financing change statement (under section 150); or
(b) for access to the register to search for data (under section 170); or
(c) for a copy of a registered financing statement or verification statement (under section 175).

Note: For approved forms, see section 302.

(5) A person's compliance with third party data conditions may be required whether or not:
(a) the application relates to personal property that is the subject of the third party data; or
(b) in the case of an application for access to the register to search for data—the person is applying for access to the register to search for the third party data; or
(c) in the case of an application for a copy of a registered financing statement—the applicant also applies for a copy of a verification statement in relation to the financing statement.

Recovery of damages for contravention

(6) For the purposes of section 271:
(a) compliance with the third party data conditions as required under subsection (4) of this section is taken to be an obligation imposed on the person by this Act; and
(b) the obligation is taken to be owed to the third party; and
(c) a contravention of one of the third party data conditions is taken to be a failure to discharge that obligation.

Note: Section 271 gives a right to recover damages for any loss or damage relating to such a failure.

(7) If a person (the ***applicant***) makes an application mentioned in subsection (4) on behalf of another person (the ***principal***):
(a) both the applicant and the principal may be required, by the approved form for the application, to comply with the third party data conditions; and

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(b) an obligation is taken to be imposed under subsection (6) on both the applicant and the principal, in each of their personal capacities, to comply with the third party data conditions.

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Part 5.6—Amendment demands

Division 1—Introduction

177 Guide to this Part

A person with an interest in collateral may require changes to the registration, by way of an ***amendment demand*** given to the secured party.

An amendment demand may be made if:

(a) the obligation owed by a debtor to the secured party is not secured by collateral described in the registration; or

(b) the particular collateral in which the person has an interest does not secure any obligation owed by a debtor to the secured party.

An amendment demand, if not voluntarily complied with, may be pursued by an administrative process activated by the Registrar, or by an application to a court. The secured party may also apply to a court to oppose an amendment demand.

178 How amendment demands are given

(1) A person with an interest (including a security interest) in collateral described in a registration with respect to a security interest may give a demand (an ***amendment demand***), in writing, to the secured party for a financing change statement to be registered to amend the registration as authorised by the following table:

Note: If the secured party does not comply with the amendment demand, the demand may be enforced under Subdivision A (administrative process) or Subdivision B (judicial process) of Division 2.

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Authorised amendments		
Item	**When amendment is authorised**	**What amendment is authorised**
1	No collateral described in the registration secures any obligation (including a payment) owed by a debtor to the secured party.	Amendment to end effective registration (including an amendment to remove the registration).
2	The particular collateral in which the person has an interest does not secure any obligation (including a payment) owed by a debtor to the secured party.	Amendment to omit the collateral.

(2) Data removed from the register because of an amendment in compliance with the amendment demand must not be made available for search in the register by reference to any time before (or after) the time of removal, if the Registrar so decides for the purposes of this subsection.

Note 1: Application may be made to the Administrative Appeals Tribunal for review of the Registrar's decision that the removed data is not to be made available for search in the register (see section 191).

Note 2: Incorrectly removed data may be restored under section 186.

(3) A secured party must not require payment for compliance with an amendment demand in relation to collateral that:

(a) at the time the security interest attached to the collateral, the grantor intended to use predominantly for personal, domestic or household purposes; or

(b) the grantor is using predominantly for personal, domestic or household purposes.

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Division 2—Amendment demands: administrative and judicial process

Subdivision A—Administrative process

179 Scope of Subdivision

(1) This Subdivision applies if:

(a) a secured party is given an amendment demand; and

(b) an application has not been made to register a financing change statement in compliance with the demand before the end of 5 business days after the day the demand is given to the secured party; and

(c) there are no proceedings currently before a court (including a court of appeal), in relation to an application under section 182, that relate to the amendment demanded.

(2) This Subdivision stops applying if:

(a) a financing change statement is registered in accordance with the amendment demand; or

(b) proceedings come before a court (including a court of appeal), in relation to an application under section 182, that relate to the amendment demanded.

No application to security trust instruments

(3) This Division does not apply in relation to a security interest if the security agreement providing for the interest is an instrument or other document:

(a) by which a person issues or guarantees, or provides for the issue or guarantee of, an obligation secured by a security interest; and

(b) in which another person is appointed as trustee for the person to whom the obligation secured by the security interest is owed.

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180 Administrative process—amendment notices

Amendment notice given by Registrar

(1) The Registrar may give the secured party a notice (an ***amendment notice***), in accordance with subsection (5), of the amendment demanded.

At the initiative of the Registrar

(2) An amendment notice may be given at the initiative of the Registrar, if the Registrar suspects on reasonable grounds that the amendment demanded is authorised under section 178.

In response to a statement by the person who gave the amendment demand

(3) The person who gave the amendment demand to the secured party may give a statement in the approved form to the Registrar:
  (a) stating the amendment demanded; and
  (b) including anything else prescribed by the regulations.

Note: The provision of false or misleading information in the statement may be an offence against Part 7.4 of the *Criminal Code*.

(4) An amendment notice must be given in response to a statement under subsection (3) as soon as practicable after the statement is given (unless an amendment notice has already been given at the initiative of the Registrar).

Amendment notices

(5) An amendment notice is given in accordance with this subsection if:
  (a) the notice is in the approved form; or
  (b) the notice:
    (i) states the amendment demanded; and
    (ii) invites the secured party to submit a response to the amendment demand in writing to the Registrar before the end of 5 business days after the day the notice is

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given (or an extended period approved by the Registrar); and

(iii) sets out the effect of section 181 (amendment of registration); and

(iv) if a statement is given under subsection (3)—includes a copy of the statement.

Note: The provision of false or misleading information in any response to the invitation may be an offence against Part 7.4 of the *Criminal Code*.

181 Administrative process—registration amendments

(1) If an amendment notice is given to a secured party under section 180, after the end of the period covered by subsection (3), the Registrar must (at his or her initiative) register a financing change statement amending the registration (including an amendment to remove the registration) in accordance with the amendment demand, unless the Registrar suspects on reasonable grounds that the amendment is not authorised under section 178.

(2) However, the Registrar may register such a financing change statement before the end of the period covered by subsection (3) if:

(a) the secured party has responded to the invitation in the amendment notice; and

(b) the Registrar has no reason to believe that the secured party intends to give a further response.

(3) The period covered by this subsection is:

(a) 5 business days after the day the amendment notice is given to the secured party; or

(b) a longer period approved by the Registrar (in relation to the particular amendment demand, or to a class of amendment demands) after the amendment notice is given to the secured party.

(4) In making a decision about whether to register a financing change statement amending the registration in accordance with the amendment demand, the Registrar must consider:

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(a) the response (if any) of the secured party to the invitation in the amendment notice; and

(b) any other relevant information.

(5) Data removed from the register because of an amendment under this section must not be made available for search in the register by reference to any time before (or after) the time of removal, if the Registrar so decides for the purposes of this subsection.

Note 1: The provision of false or misleading information in any response to the invitation may be an offence against Part 7.4 of the *Criminal Code*.

Note 2: The Registrar must give a verification statement to each secured party after the registration of a financing change statement (see section 156).

Note 3: Application may be made to the Administrative Appeals Tribunal for review of certain decisions of the Registrar about registration (see section 191).

Note 4: This section stops applying if proceedings come before a court under section 182 in relation to the amendment demanded (see subsection 179(2)).

Note 5: Incorrectly removed data may be restored under section 186.

Subdivision B—Judicial process

182 Judicial process for considering amendment demand

(1) The following persons may apply to a court for an order in relation to an amendment demand:

(a) the secured party;

(b) the person who gave the amendment demand.

(2) The person who gave the amendment demand cannot make an application under this section before the end of 5 business days after the day the demand is given to the secured party.

Note: The period may be extended by a court under section 293.

(3) A person with an interest (including a security interest) in the collateral described in the registration has the right to appear before the court on an application under this section.

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Note 1: The Registrar also has the power to intervene in the proceeding (see section 218).

Note 2: For which courts have jurisdiction, and for transfers between courts, see Part 6.2.

(4) On an application under this section, a court may make the following orders:

(a) if the court considers the amendment demanded to be authorised under section 178—an order requiring the Registrar to register a financing change statement amending the registration (including an amendment to remove the registration);

(b) if the court does not consider the amendment demanded to be so authorised—one or more of the following orders:

(i) an order restraining the Registrar from registering a financing change statement amending the registration at the Registrar's initiative (under section 181);

(ii) an order restraining the person who gave the amendment demand from making such further amendment demands as the court specifies;

(iii) an order restraining the Registrar from giving the secured party amendment notices under section 180 in relation to such further amendment demands as the court specifies;

(c) any other order that the court thinks fit.

(5) The Registrar must comply with a court order to register a financing change statement as soon as reasonably practicable after receiving the order.

Note: The Registrar must give a verification statement to each secured party after the registration of a financing change statement (see section 156).

(6) Data removed from the register because of an amendment under this section must not be made available for search in the register by reference to any time before (or after) the time of removal, if the Registrar so decides.

Note: Incorrectly removed data may be restored under section 186.

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Part 5.7—Removal of data and correction of registration errors

183 Guide to this Part

The Registrar may remove data in certain situations, for example if its retention is contrary to the public interest.

The Registrar may also remove old data, restore removed data and correct errors or omissions made by the Registrar.

184 Removal of data—general grounds

(1) The Registrar may (at his or her initiative) register a financing change statement to remove data (including an entire registration) from the register if the Registrar is satisfied that:

(a) the application to register the data was frivolous or vexatious, the data is offensive, or the retention of the data in the register is contrary to the public interest; or

(b) the registration of the data is prohibited by regulations made for the purposes of paragraph 150(3)(d); or

(c) the removal of the data is required or permitted by the regulations made for the purposes of this paragraph; or

(d) the application to register the data was not made in the approved form; or

(e) the removal is required urgently:

(i) in the public interest; or

(ii) for reasons prescribed by regulations made for the purposes of this subparagraph.

Note 1: The Registrar must give a verification statement to each secured party after the data is removed (see section 156).

Note 2: Application may be made to the Administrative Appeals Tribunal for review of the Registrar's decision to remove data from the register under paragraph (a), (b) or (c) (see section 191).

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(2) Data removed from the register under this section must not be made available for search in the register by reference to any time before (or after) the time of removal:

(a) in relation to data removed under paragraph (1)(a), (b) or (c)—if the Registrar so decides for the purposes of this paragraph; and

(b) in relation to data removed under paragraph (1)(d)—if the Registrar so decides for the purposes of this paragraph;

(c) in relation to data removed under paragraph (1)(e)—in all cases.

Note: Application may be made to the Administrative Appeals Tribunal for review of the Registrar's decision under paragraph (a) (see section 191).

(3) If subsection (2) applies in relation to data removed from the register, this Act otherwise applies as if the data is not, and never has been, included in the register.

Note: Incorrectly removed data may be restored under section 186.

185 Removal of data—registration ineffective for 7 years or more

The Registrar may (at his or her initiative) register a financing change statement to remove data (including an entire registration) with respect to a security interest from the register to reflect the fact that the registration has been ineffective under section 163 for 7 years or more.

186 Incorrectly removed data—restoration

(1) The Registrar may (at his or her initiative) register a financing change statement to restore data to the register (including an entire registration) if it appears to the Registrar that the data was incorrectly removed from the register under this Act.

(2) If data is restored to the register under subsection (1), for the purposes of this Act the data is taken never to have been removed from the register.

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187 Records of removed data

The removal of data from the register under this Act does not prevent the Registrar from keeping a record of the removed data in whatever form the Registrar considers appropriate.

188 Correction of registration errors

(1) The Registrar may (at his or her initiative) register a financing change statement to amend a registration to correct an error or omission made by the Registrar.

(2) If a registration is corrected under subsection (1), this Act applies as if the error or omission had never been made.

Note 1: The Registrar must give a verification statement to each secured party after the registration of a financing change statement (see section 156).

Note 2: Application may be made to the Administrative Appeals Tribunal for review of the Registrar's decision to register a financing change statement (see section 191).

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Part 5.8—Fees, administrative review and annual reports

189 Guide to this Part

This Part provides for fees for registration and searching the register, the review of registration decisions and the obligation of the Registrar to prepare annual reports on the operation of this Act.

190 Registration and search fees

Determination of fees and arrangements

(1) The Minister may, by legislative instrument, determine fees for the purposes of this Act.

(2) The Minister may, by a legislative instrument made under subsection (1), determine the kinds of arrangements for the payment of fees under the instrument that may be approved under subsection (4).

(3) If this Act requires the payment of a determined fee for a particular purpose, without limiting subsection (6), that requirement is satisfied if an arrangement for its payment has been approved under subsection (4).

Approval of arrangements

(4) The Registrar may approve an arrangement (of a kind determined under subsection (2)) in relation to the payment of fees by a person for the purposes of this section on application by the person in the approved form, accompanied by the fee (if any) determined under subsection (1).

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Miscellaneous

(5) The fees determined under subsection (1) must not be such as to amount to taxation.

(6) The amount of a fee, except a fee to maintain a registration (determined for the purposes of section 168), is a debt due to the Commonwealth, and may be recovered by the Commonwealth by application to a court.

Note 1: If a fee to maintain a registration is not paid within 28 days, the Registrar may end the effective registration of the collateral (see section 168).

Note 2: For which courts have jurisdiction, and for transfers between courts, see Part 6.2.

191 Review of decisions

An application may be made to the Administrative Appeals Tribunal for review of the following decisions made by the Registrar:

(a) a decision to refuse to register a financing statement, under subsection 150(1);

(b) a decision to refuse to register a financing change statement, under subsection 150(2);

(c) a decision to register a financing change statement to amend the register to end the effect of a registration, under subsection 150(2);

(d) a decision to refuse to give a person access to the register to search for data, under section 170;

(e) a decision to refuse to give a person a copy of a registered financing statement in relation to which the person is registered as a secured party, or of a verification statement, under section 175;

(f) a decision to refuse to give a person a report relating to registered data in relation to the person, under subsection 176(1);

(g) a decision to register a financing change statement in accordance with an amendment demand, under subsection 181(1);

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(h) a decision to refuse to register a financing change statement in accordance with an amendment demand, under subsection 181(1);

(i) a decision to register a financing change statement to remove data from the register, under paragraph 184(1)(a), (b) or (c);

(j) a decision that data removed from the register is not to be made available for search in the register, under subsection 178(2) or 181(5) or paragraph 184(2)(a);

(k) a decision to register a financing change statement to restore incorrectly removed data to the register, under section 186;

(l) a decision to register a financing change statement to amend a registration to correct an error or omission made by the Registrar, under section 188;

(m) a decision to register a financing change statement to remove migrated data from the register, under subsection 334(2).

192 Annual reports

(1) The Registrar must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on the operation of this Act during that financial year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

(2) The Registrar must include in the report:

(a) details of each occasion on which access to the register was refused, or the operation of the register was otherwise suspended, during the financial year under subsection 147(5); and

(b) any information necessary to demonstrate that fees determined under subsection 190(1) do not amount to taxation.

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Part 5.9—Registrar of Personal Property Securities

193 Guide to this Part

This Part establishes the offices of the Registrar of Personal Property Securities and the Deputy Registrar.

Both are appointed by the Minister and engaged under the *Public Service Act 1999*.

The Part also includes provision for the delegation of the Registrar's powers.

194 Registrar—establishment of office

(1) There is to be a Registrar of Personal Property Securities.

(2) The Registrar is to be:
  (a) engaged under the *Public Service Act 1999*; and
  (b) appointed as Registrar of Personal Property Securities by the Minister by written instrument.

(3) The office of the Registrar of Personal Property Securities is not a public office for the purposes of the *Remuneration Tribunal Act 1973*.

195 Registrar—functions and powers

(1) The Registrar has the functions given under this Act or any other Act.

(2) The Registrar has power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions.

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195A Registrar—investigations

(1) The Registrar may conduct an investigation into any matter for the purpose of performing his or her functions.

(2) If the Registrar believes on reasonable grounds that a person has information that is relevant to an investigation under subsection (1), the Registrar may, by written notice given to the person, require the person to give any such information to the Registrar, within the period and in the way specified in the notice.

(3) The period specified in a notice under subsection (2) must be at least 14 days after the notice is given.

(4) A person contravenes this subsection if:
  (a) the person has been given a notice under subsection (2); and
  (b) the person fails to comply with the notice.

  Civil penalty:
  (a) for an individual—50 penalty units;
  (b) for a body corporate—250 penalty units.

  Note: See Part 6.3 (Civil penalty proceedings).

(5) A notice under subsection (2) of this section must set out the effect of the following provisions:
  (a) subsection (4) of this section;
  (b) section 137.1 of the *Criminal Code* (giving false or misleading information).

(6) Despite subsection (2), the Registrar cannot give a notice under that subsection to:
  (a) the Commonwealth, a State or a Territory; or
  (b) an officer or agency of the Commonwealth, a State or a Territory.

196 Registrar—acting appointments

(1) The Minister may, by written instrument, appoint a person engaged under the *Public Service Act 1999* to act as the Registrar:

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(a) during a vacancy in the office of Registrar (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Registrar:

(i) is absent from duty or from Australia; or

(ii) is, for any reason, unable to perform the duties of the office.

(2) Anything done by, or in relation to, a person purporting to act under an appointment is not invalid merely because:

(a) the occasion for the appointment had not arisen; or

(b) there was a defect or irregularity in connection with the appointment; or

(c) the appointment had ceased to have effect; or

(d) the occasion to act had not arisen or had ceased.

Note: For general provisions about appointments, see also sections 20 and 33A of the *Acts Interpretation Act 1901*.

197 Registrar—delegation

(1) The Registrar may, by written instrument, delegate all or any of his or her functions or powers to:

(a) a person engaged under the *Public Service Act 1999*; or

(b) another person determined by the Registrar, by written instrument, for the purposes of this section.

Note: The Registrar may determine a particular person or a class of persons under paragraph (b), and may apply the determination in relation to particular matters or classes of matters (see subsection 33(3A) of the *Acts Interpretation Act 1901*).

(2) A delegate must, if required by the instrument of delegation, perform a delegated function, or exercise a delegated power, under the direction or supervision of:

(a) the Registrar; or

(b) a Deputy Registrar; or

(c) a person engaged under the *Public Service Act 1999*.

Note: For further provisions relating to delegations, see sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

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198 Registrar—resignation

(1) The Registrar may resign by writing signed by him or her and given to the Minister.

(2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

199 Registrar—termination

(1) The Minister may terminate the appointment of the Registrar by written instrument.

(2) The appointment of the Registrar is terminated if the Registrar stops being engaged under the *Public Service Act 1999* for any reason.

200 Deputy Registrar—establishment of office

(1) There is to be at least one Deputy Registrar of Personal Property Securities (a ***Deputy Registrar***).

(2) A Deputy Registrar is to be:
  (a) engaged under the *Public Service Act 1999*; and
  (b) appointed as a Deputy Registrar of Personal Property Securities by the Minister by written instrument.

(3) The office of Deputy Registrar of Personal Property Securities is not a public office for the purposes of the *Remuneration Tribunal Act 1973*.

201 Deputy Registrar—functions and powers

(1) Subject to any direction by the Registrar, a Deputy Registrar has all the functions and powers of the Registrar, except the powers of delegation under section 197.

(2) A function or power of the Registrar, when performed or exercised by a Deputy Registrar, is taken to have been performed or exercised by the Registrar.

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(3) The performance of a function, or the exercise of a power, of the Registrar by a Deputy Registrar does not prevent the performance of the function, or the exercise of the power, by the Registrar.

(4) If the performance (or exercise) of a function or power by the Registrar is dependent on the opinion, belief or state of mind of the Registrar in relation to a matter, that function or power may be performed (or exercised) by a Deputy Registrar on his or her opinion, belief or state of mind in relation to that matter.

(5) If the operation of a provision of this Act or another Act is dependent on the opinion, belief or state of mind of the Registrar in relation to a matter, that provision may operate on the opinion, belief or state of mind of a Deputy Registrar in relation to that matter.

202 Deputy Registrar—resignation

(1) A Deputy Registrar may resign by writing signed by him or her and given to the Minister.

(2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

203 Deputy Registrar—termination

(1) The Minister may terminate the appointment of a Deputy Registrar by written instrument.

(2) The appointment of a Deputy Registrar is terminated if the Deputy Registrar stops being engaged under the *Public Service Act 1999* for any reason.

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Chapter 6—Judicial proceedings

Part 6.1—Guide to this Chapter

204 Guide to this Chapter

This Chapter deals with the role of the courts in proceedings that relate to security interests in personal property.

Part 6.2 is about judicial proceedings generally.

Part 6.3 deals with proceedings for contravention of a civil penalty provision.

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Part 6.2—Judicial proceedings generally

Division 1—Introduction

205 Guide to this Part

This Part is about judicial proceedings in a court with respect to matters arising under this Act or in relation to a security agreement or a security interest.

Jurisdiction is conferred on the Federal Court, the Federal Circuit Court, courts of States and Territories and the Family Court. PPS matters can be transferred between courts in accordance with procedures set out in this Part.

The Registrar may intervene in judicial proceedings.

206 Scope of this Part

(1) This Part deals with the jurisdiction of a court with respect to a matter (a ***PPS matter***):

(a) arising under a provision of this Act authorising an application to be made to a court; or

(b) otherwise arising in relation to this Act, other than a matter in respect of which the Federal Court or the Federal Circuit Court has jurisdiction under the *Administrative Decisions (Judicial Review) Act 1977*; or

(c) otherwise arising in relation to a security agreement or a security interest.

(2) This Part operates to the exclusion of:

(a) the *Jurisdiction of Courts (Cross-vesting) Act 1987*; and

(b) section 39B of the *Judiciary Act 1903*.

(3) This Part does not limit the operation of the provisions of the *Judiciary Act 1903* other than section 39B.

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(4) Without limiting subsection (3), this Part does not limit the operation of subsection 39(2) of the *Judiciary Act 1903* in relation to matters arising under this Act.

(5) Nothing in this Part affects any other jurisdiction of any court.

(6) This Part does not apply to matters arising under Part 6.3 (civil penalty proceedings).

Division 2—Conferral of jurisdiction

207 Jurisdiction of courts

Jurisdiction is conferred on a court mentioned in an item in the following table with respect to a PPS matter, subject to the limits on the court's jurisdiction (if any) specified in the item:

Jurisdiction of courts

Item	Court on which jurisdiction is conferred	Limits of jurisdiction
1	The Federal Court	No specified limits.
2	The Federal Circuit Court	The court does not have jurisdiction to award an amount for loss or damage that exceeds: (a) $750,000; or (b) if another amount is prescribed by the regulations—that other amount.
3	A superior court, or lower court, of a State or Territory	The court's general jurisdictional limits, including (but not limited to) limits as to locality and subject matter, to the extent that the Constitution permits.
4	The Family Court	No specified limits.

208 Cross-jurisdictional appeals

The following table has effect:

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Cross-jurisdictional appeals		
Item	**Unless expressly provided by a law of the Commonwealth, a State or a Territory, an appeal with respect to a PPS matter does not lie from a decision of ...**	**to any of the following courts:**
1	the Federal Court	(a) the Federal Circuit Court; (b) a court of a State; (c) a court of a Territory; (d) the Family Court.
2	the Federal Circuit Court	(a) a court of a State; (b) a court of a Territory.
3	a court of a State (other than a State Family Court)	(a) the Federal Court; (b) the Federal Circuit Court; (c) a court of another State; (d) a court of a Territory; (e) the Family Court; (f) a State Family Court of the same State.
4	a court of the Australian Capital Territory	(a) the Federal Court; (b) the Federal Circuit Court; (c) a court of a State; (d) a court of another Territory; (e) the Family Court.
5	a court of the Northern Territory	(a) the Federal Court; (b) the Federal Circuit Court; (c) a court of a State; (d) a court of another Territory; (e) the Family Court.
6	a court of an external Territory	(a) the Federal Circuit Court; (b) a court of a State; (c) a court of another Territory (whether internal or external); (d) the Family Court.

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Cross-jurisdictional appeals		
Item	**Unless expressly provided by a law of the Commonwealth, a State or a Territory, an appeal with respect to a PPS matter does not lie from a decision of ...**	**to any of the following courts:**
7	the Family Court	(a) the Federal Court; (b) the Federal Circuit Court; (c) a court of a State; (d) a court of a Territory.
8	a State Family Court	(a) the Federal Court; (b) the Federal Circuit Court; (c) the Supreme Court of the same State; (d) a court of another State; (e) a court of a Territory.

209 Courts to act in aid of each other

In PPS matters, all of the following must severally act in aid of, and be auxiliary to, each other:

(a) courts on which jurisdiction is conferred under this Part;

(b) officers of, or under the control of, those courts.

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Division 3—Transfers between courts

210 Application of this Division

Scope

(1) This Division applies if all the following conditions are satisfied:

(a) a proceeding with respect to a PPS matter is pending, or has come, before a court (the ***transferring court***) on which jurisdiction is conferred under this Part in relation to the matter;

(b) jurisdiction is also conferred on another court (the ***receiving court***) under this Part with respect to either of the following (the ***transfer matter***):

(i) the entire proceeding;

(ii) an application in the proceeding;

(c) the receiving court has the power to grant the remedies sought before the transferring court in relation to the transfer matter.

Transfers to which other legislation applies

(2) This Division does not apply to a transfer between the courts mentioned in an item in the following table, except as provided by paragraph 211(2)(b):

Transfers to which other legislation applies

Item	Transferring court	Receiving court
1	The Federal Court	The Federal Circuit Court.
2	The Family Court	The Federal Circuit Court.
3	The Federal Circuit Court	The Federal Court or the Family Court.

Note 1: Paragraph 211(2)(b) gives the Federal Circuit Court the power to transfer a matter to the Federal Court with a recommendation that the Federal Court transfer the matter to a superior court other than the Federal Court.

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Note 2: Transfers mentioned in the table are covered by other legislation as follows:

(a) for a transfer mentioned in item 1—section 32AB of the *Federal Court of Australia Act 1976*;

(b) for a transfer mentioned in item 2—sections 33A to 33C of the *Family Law Act 1975*;

(c) for a transfer mentioned in item 3—section 39 of the *Federal Circuit Court of Australia Act 1999*.

211 Exercise of transfer power

General rule

(1) If section 212 (which deals with the criteria for transfers) is satisfied, the transferring court may transfer to the receiving court:

(a) the transfer matter; and

(b) if the transferring court considers it necessary or convenient—any related application (or all related applications) in the proceeding.

Cross-jurisdictional transfers between lower courts and superior courts

(2) However, if the transferring court is a lower court, and the transferring court considers that section 212 is satisfied in relation to the transfer of a matter mentioned in subsection (1) of this section to a receiving court that is a superior court other than the relevant superior court:

(a) the transferring court does not have the power to transfer the matter to that receiving court; but

(b) the transferring court may:

(i) transfer the matter to the relevant superior court; and

(ii) give the relevant superior court a recommendation that the matter be transferred to that receiving court by the relevant superior court.

(3) In this Act:

lower court means:

(a) the Federal Circuit Court; or

(b) a court of a State or Territory that is not a superior court.

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relevant superior court, in relation to a lower court, means:

(a) if the lower court is the Federal Circuit Court—the Federal Court; or

(b) if the lower court is a court of a State or Territory—the Supreme Court of the State or Territory.

superior court means:

(a) the Federal Court; or

(b) a Supreme Court of a State or Territory; or

(c) the Family Court; or

(d) a State Family Court.

212 Criteria for transfers between courts

General

(1) The transferring court may make a transfer under section 211 only if it appears to the transferring court, taking into account the considerations covered by subsection (2), that:

(a) the transfer matter arises out of, or is related to, another proceeding pending, or that has come, before a receiving court; or

(b) it is otherwise in the interests of justice that the transfer matter be determined by a receiving court.

Relevant considerations

(2) The considerations covered by this subsection include, but are not limited to, the following:

(a) the principal location, or place of business, of the parties in relation to the transfer matter;

(b) where the event (or events) that are the subject of the transfer matter took place;

(c) the desirability of related proceedings being heard in the same State or Territory;

(d) any relevant recommendation received under subsection 211(2);

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(e) the suitability (taking into account the considerations mentioned in paragraphs (a) to (d) and any other consideration) of having the transfer matter determined by the receiving court.

213 Initiating transfers between courts

A court may make a transfer under section 211:

(a) on the application of a party made at any stage; or

(b) at the court's own initiative.

214 Documents and procedure

If a transferring court transfers a proceeding or application to another court under section 211:

(a) the Registrar (or other proper officer) of the transferring court must give the Registrar (or other proper officer) of the other court all documents filed in the transferring court in respect of the proceeding or application, as the case may be; and

(b) the other court must proceed as if:

(i) the proceeding or application had been originally instituted or made in the other court; and

(ii) the same proceedings had been taken in the other court as were taken in the transferring court.

215 Conduct of transferred proceedings

(1) Subject to any applicable rules of court, a court must, in dealing with a PPS matter transferred to the court under section 211, apply rules of evidence and procedure that:

(a) are applied in any superior court; and

(b) the court considers appropriate to be applied in the circumstances.

(2) If a proceeding with respect to a PPS matter is transferred under section 211 from a transferring court to another court, the other court must deal with the proceeding as if, subject to any order of the transferring court, the steps that had been taken for the purposes of the proceeding in the transferring court (including the

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making of an order), or similar steps, had been taken in the other court.

216 Entitlement to practise as barrister or solicitor

Scope

(1) This section applies if a proceeding with respect to a PPS matter in a transferring court is transferred to another court under section 211.

Right to appear

(2) A person who is entitled to practise as a legal practitioner (however described) in the transferring court has the same entitlements to practise in relation to the matters covered by subsection (3) in the other court that the person would have if the other court were a federal court exercising federal jurisdiction.

(3) This subsection covers the following matters:
   (a) the PPS matter;
   (b) any other proceeding out of which the PPS matter arises or to which the PPS matter is related, if the other proceeding is to be determined together with the PPS matter.

217 Limitation on appeals

An appeal does not lie from a decision of a court:
   (a) in relation to the transfer of a proceeding under section 211; or
   (b) as to which rules of evidence and procedure are to be applied under subsection 215(1).

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Division 4—Registrar's role in judicial proceedings

218 Intervention in judicial proceedings

(1) The Registrar may, on behalf of the Commonwealth, intervene in a proceeding in a court with respect to a PPS matter.

(2) If the Registrar intervenes in the proceeding:
  (a) the Registrar is taken to be a party to the proceeding; and
  (b) subject to this Act, the Registrar has all the rights, duties and liabilities of such a party; and
  (c) without limiting paragraph (b), the Registrar may appear and be represented by a legal practitioner (however described).

219 Initiation of judicial proceedings

Scope

(1) This section applies if the Registrar considers it to be in the public interest for a person to bring and carry on a proceeding in a court for the recovery of damages with respect to a PPS matter.

Initiation of proceedings by Registrar

(2) The Registrar may, on behalf of the Commonwealth, cause the proceeding to be begun and carried on in the person's name.

(3) If the person is not a constitutional corporation, the Registrar must obtain the person's written consent to the exercise of the Registrar's power under subsection (2).

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Part 6.3—Civil penalty proceedings

Division 1—Introduction

220 Guide to this Part

This Part sets up a framework for determining liability under a civil penalty provision.

On application by the Registrar, the Federal Court of Australia can order the payment of a civil penalty for a serious breach of a civil penalty provision (Division 2).

Division 3 deals with the interaction of civil penalty proceedings with criminal proceedings.

Division 4 is about enforceable undertakings relating to contraventions of civil penalty provisions.

The Registrar may accept a written undertaking for the payment of a specified amount to the Commonwealth within a specified period. The undertaking is given by a person who has taken action that contravenes a civil penalty provision.

221 What is a civil penalty provision?

A subsection of this Act (or a section of this Act that is not divided into subsections) is a ***civil penalty provision*** if:

(a) the words "civil penalty" and one or more amounts in penalty units are set out at the foot of the subsection (or section); or

(b) another provision of this Act specifies that the subsection (or section) is a civil penalty provision.

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Division 2—Obtaining an order for a civil penalty

222 Federal Court may order person to pay pecuniary penalty for contravening civil penalty provision

Application for order

(1) Within 6 years of a person (the ***wrongdoer***) contravening a civil penalty provision, the Registrar may apply on behalf of the Commonwealth to the Federal Court for an order that the wrongdoer pay the Commonwealth a pecuniary penalty.

Court may order wrongdoer to pay pecuniary penalty

(2) If the Court is satisfied that the wrongdoer has contravened a civil penalty provision, and the Court is satisfied that the contravention is serious, the Court may order the wrongdoer to pay to the Commonwealth for each contravention the pecuniary penalty that the Court determines is appropriate (but not more than the relevant amount specified for the provision).

Determining amount of pecuniary penalty

(3) In determining the pecuniary penalty, the Court must have regard to all relevant matters, including:
  (a) the nature and extent of the contravention; and
  (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
  (c) the circumstances in which the contravention took place; and
  (d) whether the person has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct.

Conduct contravening more than one civil penalty provision

(4) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Act against a person in relation to the contravention of any one or more of those provisions. However, the person is not liable to more than one

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pecuniary penalty under this section in respect of the same conduct.

223 Contravening a civil penalty provision is not an offence

A contravention of a civil penalty provision is not an offence.

224 Persons involved in contravening civil penalty provision

(1) A person must not:
  (a) aid, abet, counsel or procure a contravention of a civil penalty provision; or
  (b) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
  (c) be in any way directly or indirectly knowingly concerned in, or party to, a contravention of a civil penalty provision; or
  (d) conspire to contravene a civil penalty provision.

(2) This Part applies to a person who contravenes subsection (1) in relation to a civil penalty provision as if the person had contravened the provision.

225 Recovery of a pecuniary penalty

If the Federal Court orders a person to pay a pecuniary penalty:
  (a) the penalty is payable to the Commonwealth; and
  (b) the Commonwealth may enforce the order as if it were a judgment of the Court.

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Division 3—Civil penalty proceedings and criminal proceedings

226 Civil proceedings after criminal proceedings

The Federal Court must not make a pecuniary penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

227 Criminal proceedings during civil proceedings

(1) Proceedings for a pecuniary penalty order against a person for a contravention of a civil penalty provision are stayed if:

(a) criminal proceedings are started or have already been started against the person for an offence; and

(b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

(2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

228 Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a pecuniary penalty order has been made against the person.

229 Evidence given in proceedings for penalty not admissible in criminal proceedings

Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the individual if:

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(a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and

(b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

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Division 4—Enforceable undertakings relating to contraventions of civil penalty provisions

230 Acceptance of undertakings relating to contraventions of civil penalty provisions

(1) This section applies if the Registrar considers that an action taken by a person contravenes a civil penalty provision.

(2) The Registrar may accept a written undertaking given by the person in relation to the action, in which the person undertakes to pay a specified amount to the Commonwealth within a specified period.

(3) The person may withdraw or vary the undertaking at any time, but only with the consent of the Registrar.

231 Enforcement of undertakings

(1) If the Registrar considers that a person who gave an undertaking under section 230 has breached any of its terms, the Registrar may apply to the Federal Court for an order under subsection (2).

(2) If the Federal Court is satisfied that the person has breached a term of the undertaking, the Court may make either or both of the following orders:

(a) an order directing the person to comply with that term of the undertaking;

(b) any other order that the Court considers appropriate.

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Chapter 7—Operation of laws

Part 7.1—Guide to this Chapter

232 Guide to this Chapter

This Chapter deals with how this Act interacts with other laws.

Part 7.2 deals with the interaction of Australian and foreign laws relating to security interests.

Part 7.3 deals with the constitutional operation of this Act.

Part 7.4 deals with the interaction of this Act with other Commonwealth laws and with State and Territory laws.

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Part 7.2—Australian laws and those of other jurisdictions

233 Guide to this Part

This Part is about how Australian laws interact with foreign laws.

In court proceedings, this Part describes which law will govern the validity, perfection and effect of perfection or non-perfection of a security interest.

The Commonwealth may provide that a particular law governs a security interest and parties can agree that the law of the Commonwealth governs a security interest.

The rules for determining the governing law in relation to a security interest differ depending on the type of interests.

For example, for a security interest in goods, the question of the governing law may be dependent on the location of the goods. However, for certain intangible property and financial property this will generally be determined by the location of the grantor.

234 Scope of this Part

General rule

(1) In proceedings in an Australian court, the law of the jurisdiction specified by this Part in relation to a security interest governs the validity, perfection and effect of perfection or non-perfection of the security interest.

Preservation of contractual obligations

(2) However, this Part does not affect the law that governs contractual obligations (including any obligations arising under a security agreement).

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235 Meaning of *located*

Location of personal property

(1) For the purposes of this Act, personal property (including chattel paper, an investment instrument and a negotiable instrument) is ***located*** in the particular jurisdiction in which the personal property is situated.

(2) However:

(a) an investment instrument that is not evidenced by a certificate is ***located*** in the jurisdiction the law of which governs the transfer of the investment instrument; and

(b) a negotiable instrument that is evidenced by an electronic record is ***located*** in the jurisdiction the law of which governs the negotiable instrument; and

(c) chattel paper that is evidenced by an electronic record is ***located*** in the jurisdiction the law of which governs the chattel paper.

Location of a person

(3) A body corporate is ***located*** in the jurisdiction in which the body corporate is incorporated.

(4) A body politic is ***located*** in the jurisdiction of the body politic.

(5) An individual is ***located*** at the individual's principal place of residence.

Location within Australia

(6) For the purposes of this Act, in the application of this section in relation to Australia:

(a) the ***jurisdiction*** in which personal property is located under subsection (1), or in which an individual is located under subsection (5), is the jurisdiction of the State or Territory in which the property, or the individual's principal place of residence, is situated (as the case may be); and

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(b) a reference to the law of that jurisdiction is a reference to the law of that State or Territory, and to the law of the Commonwealth as it applies in that State or Territory.

Location within a foreign country that has a federal character

(7) For the purposes of this Act, in the application of this section in relation to a foreign country that is divided into territorial units that have their own rules of law about security interests (distinct from those that apply to the foreign country generally):

(a) the ***jurisdiction*** in which personal property is located under subsection (1), or in which an individual is located under subsection (5), is the jurisdiction of the territorial unit in which the property, or the individual's principal place of residence, is situated; and

(b) a reference to the law of that jurisdiction is a reference to the law of that territorial unit, and to the law of the foreign country as it applies in that territorial unit.

236 Commonwealth laws may provide for governing law

Despite any other provision of this Part, a law of the Commonwealth may provide that that law, or any other law of the Commonwealth, governs a security interest.

237 Express agreement

(1) Despite sections 238, subsections 239(1) and (2) and section 240, the law of the Commonwealth (other than the law relating to conflict of laws) governs a security interest if:

(a) the grantor is an Australian entity at the time the security interest attaches to the collateral; and

(b) the security agreement that provides for the security interest expressly provides that the law of the Commonwealth, or that law as it applies in a particular State or Territory, governs the security interest.

(2) However, a security agreement may not provide for the law of the Commonwealth, or that law as it applies in a particular State or

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Territory, to govern a security interest in the following intangible property:

(a) an account;

(b) a transfer of:

(i) an account; or

(ii) chattel paper;

(c) intellectual property or an intellectual property licence.

Note 1: For the law that governs security interests in such kinds of intangible property, see section 239.

Note 2: The parties to a security agreement may provide that the law of the Commonwealth governs a security interest in an ADI account if it would not be manifestly contrary to public policy (see subsection 239(5)).

238 Governing laws—goods

Main rules

(1) The validity of a security interest in goods is governed by the law of the jurisdiction (other than the law relating to conflict of laws) in which the goods are located when the security interest attaches, under that law, to the goods.

Note 1: Under section 237, the parties to a security agreement may expressly provide for the law of the Commonwealth to apply instead.

Note 2: For when personal property is located in a jurisdiction, see section 235.

(1A) At a particular time, the perfection, and the effect of perfection or non-perfection, of a security interest in goods is governed by the law of the jurisdiction (other than the law relating to the conflict of laws) in which the goods are located at that time.

Goods that are moved

(2) Despite subsections (1) and (1A), the validity, perfection, and the effect of perfection or non-perfection, of a security interest in goods is governed by the law of a particular jurisdiction (the ***destination jurisdiction***), other than the law relating to the conflict of laws, if:

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(a) at the time (the ***attachment time***) the security interest attaches, under that law, to the goods, it was reasonable to believe that the goods would be moved to the destination jurisdiction; and

(b) the goods are currently located in the destination jurisdiction.

(2A) Subsection (2) applies from the attachment time.

Goods that are normally moved between jurisdictions

(3) Despite subsections (1) to (2A), the validity, perfection, and the effect of perfection or non-perfection, of a security interest in goods is governed by the law of a jurisdiction (including the law relating to conflict of laws) if:

(a) the grantor is located in that jurisdiction when the security interest attaches, under that law, to the goods; and

(b) the goods are of a kind that is normally used in more than one jurisdiction; and

(c) the goods are not used predominantly for personal, domestic or household purposes.

Note: For the location of bodies corporate, bodies politic and individuals, see section 235.

Goods entered on registers of ships

(4) Despite subsections (1A) to (3), at a particular time, the perfection, and the effect of perfection or non-perfection, of a security interest in goods is governed by the law of a country if:

(a) the goods are entered in a register of ships maintained by the country containing the names and particulars of ships; and

(b) in proceedings in the country, the law of that country governs title to the goods.

239 Governing laws—intangible property

Main rules

(1) The validity of a security interest in intangible property is governed by the law of the jurisdiction (other than the law relating to conflict

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of laws) in which the grantor is located when the security interest attaches, under that law, to the property.

(2) At a particular time, the perfection, and the effect of perfection or non-perfection, of a security interest in intangible property is governed by the law of the jurisdiction (other than the law relating to conflict of laws) in which the grantor is located at that time.

Intellectual property

(3) In relation to a security interest in intellectual property or an intellectual property licence:

(a) subject to paragraph (c), the validity of the security interest is governed by the law of the jurisdiction (other than the law relating to conflict of laws) in which the grantor is located when the security interest attaches, under that law, to the property or licence; and

(b) subject to paragraph (c), at a particular time, the perfection, and the effect of perfection or non-perfection, of the security interest is governed by the law of the jurisdiction (other than the law relating to conflict of laws) in which the grantor is located at that time; and

(c) the following matters are governed by the law of the jurisdiction (other than the law relating to conflict of laws) by or under which the property or licence is granted, if that law provides for the public registration or recording of the security interest, or of a notice relating to the security interest:

(i) whether a successor in title to the grantor's interest in the property or licence takes it free of a security interest;

(ii) the validity of the security interest against a transferee of the property or licence.

ADI accounts

(4) Despite subsections (1) and (2), a security interest in an ADI account is governed by the law of the jurisdiction (other than the law relating to conflict of laws) that governs the ADI account.

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(5) However, the parties to a security agreement may agree in writing that the law of another jurisdiction governs the security interest in the ADI account if:

(a) the ADI consents in writing; and

(b) applying the law of that other jurisdiction would not be manifestly contrary to public policy.

Rights evidenced by letters of credit not covered

(6) This section does not apply to a right evidenced by a letter of credit that states that the letter of credit must be presented on claiming payment or requiring the performance of an obligation.

Note 1: For the priority of a security interest in an account if there is no foreign register, see section 77.

Note 2: For the location of bodies corporate, bodies politic and individuals, see section 235.

Note 3: Under section 237, the parties to a security agreement may expressly provide for the law of the Commonwealth to apply instead.

Note 4: Rights mentioned in subsection (6) are dealt with in the same way as financial property by section 240.

240 Governing laws—financial property and rights evidenced by letters of credit

Validity rules

(1) The validity of a security interest in financial property, or property covered by subsection (2), is governed by the law of the jurisdiction (other than the law relating to conflict of laws) in which the grantor is located when the security interest attaches, under that law, to the property.

(2) This subsection covers property that is a right evidenced by a letter of credit that states that the letter of credit must be presented on claiming payment or requiring the performance of an obligation.

(3) However, the validity of a security interest to which subsection (1) applies is governed by the law of Australia if:

(a) the security interest has attached under the law of a place in Australia; and

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(b) at the time of attachment:

(i) the property is located in Australia; and

(ii) the secured party has possession or control of the property sufficient to perfect the security interest under this Act.

Perfection rules

(4) At a particular time, the perfection, and the effect of perfection or non-perfection, of a security interest in financial property, or property covered by subsection (2), is governed by the law of the jurisdiction (other than the law relating to conflict of laws) in which the grantor is located at that time.

(5) However, at a particular time, the perfection, and the effect of perfection or non-perfection, of a security interest mentioned in subsection (4) is governed by the law of Australia if, at that time:

(a) the property is located in Australia; and

(b) the secured party has possession or control of the property sufficient to perfect the security interest under this Act.

Non-negotiable documents of title

(6) Despite subsections (1) to (5), a security interest in a non-negotiable document of title is governed by the law of the jurisdiction (other than the law relating to conflict of laws) in which the goods to which the document of title relates are located when the security interest attaches, under that law, to the document of title.

Negotiable instruments not evidenced by a certificate

(7) Despite subsections (1) to (5), a security interest in a negotiable instrument that is not evidenced by a certificate is governed by the law of the jurisdiction (other than the law relating to conflict of laws) that governs the negotiable instrument.

Note 1: For the priority of a security interests in financial property if there is no foreign register, see section 77.

Note 2: For the location of bodies corporate, bodies politic and individuals, see section 235.

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241 Governing laws—proceeds

(1) The validity of a security interest in proceeds is governed by the law of the jurisdiction (other than the law relating to conflict of laws) that governed the validity of the security interest in the collateral that gave rise to the proceeds.

(2) The perfection, and the effect of perfection or non-perfection, of a security interest in proceeds is governed by the law of the jurisdiction (other than the law relating to conflict of laws) that governed the perfection, and the effect of perfection or non-perfection, of the security interest in the collateral that gave rise to the proceeds.

(3) This section applies despite any other provision of this Part.

(4) However, this section does not apply in relation to proceeds that are an account unless the account arises from the dealing that gave rise to the proceeds.

Note: If this section does not apply in relation to proceeds that are an account, the law governing the validity and the perfection of a security interest consisting of a transfer of the account is determined by the law of the jurisdiction in which the grantor is located (see section 239 (governing laws—intangible property)).

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Part 7.3—Constitutional operation

Division 1—Introduction

242 Guide to this Part

This Part is about the constitutional operation of this Act in the States and Territories, and outside Australia, as follows:

(a) this Act operates in any State that has given the Commonwealth power to legislate accordingly for the purposes of paragraph 51(xxxvii) of the Constitution;

(b) this Act operates in any State to the extent that other constitutional powers permit its operation;

(c) this Act operates in a Territory, and outside Australia, to the extent that it can under the Constitution.

A security interest in collateral in relation to which this Act operates under this Part has priority over a security interest in the same collateral in relation to which this Act does not operate under this Part.

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Division 2—Constitutional basis

243 Constitutional basis for this Act

Operation in a referring State

(1) It is the Commonwealth Parliament's intention that this Act should operate in a referring State to the extent that it can in accordance with:

(a) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)); and

(b) the legislative powers that the Commonwealth Parliament has because of a reference or adoption by the Parliament of the referring State under paragraph 51(xxxvii) of the Constitution.

Note: For the meaning of ***referring State***, see section 244.

Operation in a non-referring State

(2) It is the Commonwealth Parliament's intention that this Act should operate in a non-referring State to the extent that it can in accordance with the Commonwealth Parliament's legislative powers under section 51 of the Constitution (other than paragraph 51(xxxvii)), including (but not limited to) the powers relating to the matters mentioned in sections 246 to 250.

Operation in a Territory

(3) It is the Commonwealth Parliament's intention that this Act should operate in a Territory to the extent that it can in accordance with the Commonwealth Parliament's legislative powers under:

(a) section 122 of the Constitution; and

(b) section 51 of the Constitution (other than paragraph 51(xxxvii)).

Note: This Act extends to Norfolk Island, but only extends to other external Territories if regulations are made to provide for that extension (see section 7).

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(4) Despite subsection 22(3) of the *Acts Interpretation Act 1901*, this Act as applying in a Territory is a law of the Commonwealth.

Operation outside Australia

(5) It is the Commonwealth Parliament's intention that this Act should operate outside Australia to the extent that it can in accordance with the Commonwealth Parliament's legislative powers under:
  (a) paragraph 51(xxix) of the Constitution; and
  (b) the other legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)).

Note 1: For the application of Australian and foreign law in relation to a security interest, see section 6 and Part 7.2.

Note 2: For the relationship between this Act and other Australian laws, see Part 7.4.

244 Meaning of *referring State*

General meaning

(1) A State is a ***referring State*** if, for the purposes of paragraph 51(xxxvii) of the Constitution, the Parliament of the State has, before the registration commencement time:
  (a) referred the matters covered by subsections (3) and (4) to the Commonwealth Parliament; or
  (b) both:
    (i) adopted the relevant version of this Act; and
    (ii) referred the matters covered by subsection (4) to the Commonwealth Parliament.

Note 1: For ***registration commencement time***, see section 306.

Note 2: Subsections (5), (6) and (7) deal with when a State stops being a ***referring State***.

(2) A State is a ***referring State*** even if the State's referral law provides that:
  (a) the reference to the Commonwealth of a matter covered by subsection (3) or (4) is to terminate in particular circumstances; or

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(b) the adoption of the relevant version of this Act is to terminate in particular circumstances; or

(c) any or all of the State's amendment references have not commenced in relation to a particular kind (or kinds) of personal property (or so commence at or after the registration commencement time); or

(d) the reference to the Commonwealth Parliament of a matter covered by subsection (3) or (4) has effect only:

(i) if, and to the extent that, the matter is not otherwise included in the legislative powers of the Commonwealth Parliament (otherwise than by a reference under paragraph 51(xxxvii) of the Constitution); or

(ii) if and to the extent that the matter is included in the legislative powers of the Parliament of the State.

Reference covering the relevant version of this Act

(3) This subsection covers the matters to which the referred provisions relate, to the extent of making laws with respect to those matters by including the referred provisions in the relevant version of this Act.

Amendment references

(4) This subsection covers the referred PPS matters (as defined by section 245), to the extent of making laws with respect to those matters by making express amendments of this Act in relation to each of the following kinds of personal property:

(a) personal property (other than fixtures and water rights);

(b) fixtures;

(c) transferable water rights.

When a State stops being a referring State

(5) A State stops being a ***referring State*** if:

(a) in the case where the Parliament of the State has referred to the Commonwealth Parliament the matters covered by subsection (3)—that reference terminates; or

(b) in the case where the Parliament of the State has adopted the relevant version of this Act—the adoption terminates.

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(6) A State also stops being a ***referring State*** if the State's amendment reference in relation to personal property (other than fixtures or water rights):

(a) terminates; or

(b) is qualified or restricted to any degree.

(7) However, a State does not stop being a ***referring State*** only because the State's amendment reference in relation to fixtures or transferable water rights (or each of them):

(a) terminates; or

(b) is qualified or restricted to any degree.

Definitions

(8) In this section:

amendment includes the insertion, omission, repeal, substitution or relocation of words or matter.

amendment reference of a State means a reference by the Parliament of the State to the Parliament of the Commonwealth of the referred PPS matters in relation to personal property covered by paragraph (4)(a), (b) or (c).

express amendment means the direct amendment of this Act, but does not include the enactment by a Commonwealth Act of a provision that has, or will have, substantive effect otherwise than as part of the text of this Act.

referral law, of a State, means the law of the State that refers the matters covered by subsection (4) to the Parliament of the Commonwealth.

referred provisions means the provisions of the relevant version of this Act, to the extent to which they deal with matters that are included in the legislative powers of the Parliaments of the States.

relevant version of this Act means:

(a) if, at the time the State's referral law was enacted, this Act had not been enacted—this Act as originally enacted; or

(b) otherwise—this Act as originally enacted, and as amended:

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(i) by the *Personal Property Securities (Consequential Amendments) Act 2009* and the *Personal Property Securities (Corporations and Other Amendments) Act 2010*; or

(ii) by the *Personal Property Securities (Consequential Amendments) Act 2009*, the *Personal Property Securities (Corporations and Other Amendments) Act 2010* and the *Personal Property Securities (Corporations and Other Amendments) Act 2011*; or

(iii) from time to time, until the earliest time that any provision of the State's referral law commences.

transferable water rights, in relation to a State, means any water rights that are transferable under the general law or a law of the State by the holder of the right (whether or not the right is exclusive, and whether or not a transfer is restricted or requires consent).

water rights, in relation to a State, means any rights, entitlements or authorities, whether or not exclusive, that are granted by or under the general law or a law of the State in relation to the control, use or flow of water, but does not include any right, entitlement or authority that is:

(a) granted by or under a law of the State; and

(b) declared by that law not to be personal property for the purposes of this Act.

245 Meaning of *referred PPS matters*

(1) In this Act, ***referred PPS matters***, in relation to personal property covered by paragraph 244(4)(a), (b) or (c), means:

(a) the matter of security interests in the personal property; and

(b) without limiting the generality of paragraph (a), each of the following matters:

(i) the recording of security interests, or information with respect to security interests, in the personal property in a register;

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(ii) the recording in such a register of any other information with respect to the personal property (whether or not there are any security interests in the personal property);

(iii) the enforcement of security interests in the personal property (including priorities to be given as between security interests, and as between security interests and other interests, in the personal property).

(2) However, ***referred PPS matters*** does not include the matter of making provision with respect to personal property or interests in personal property in a manner that excludes or limits the operation of a law of a State to the extent that the law makes provision with respect to:

(a) the creation, holding, transfer, assignment, disposal or forfeiture of a right, entitlement or authority that is granted by or under a law of the State; or

(b) limitations, restrictions or prohibitions concerning the kinds of interests that may be created or held in, or the kinds of persons or bodies that may create or hold interests in, a right, entitlement or authority that is granted by or under a law of the State; or

(c) without limiting the generality of paragraph (a) or (b)—any of the following matters:

(i) the forfeiture of property or interests in property (or the disposal of forfeited property or interests) in connection with the enforcement of the general law or any law of the State;

(ii) the transfer, by operation of that law of the State, of property or interests in property from any specified person or body to any other specified person or body (whether or not for valuable consideration or a fee or other reward).

(3) In this section:

forfeiture means confiscation, seizure, extinguishment, cancellation, suspension or any other forfeiture.

register means any system for recording interests or information (whether in written or electronic form).

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246 Non-referring State operation—overview

Operation

(1) This Act operates in a non-referring State in relation to a security interest, or another interest, in personal property:

(a) while the interest in the personal property is covered by any of the following:

(i) section 247 (which deals with persons);

(ii) section 248 (which deals with activities);

(iii) section 249 (which deals with interests); and

(b) without limiting paragraph (a), to the extent that Chapter 5 (Personal Property Securities Register) applies in relation to the personal property under section 250.

(2) To avoid doubt, subsection (1) applies to a non-referring State at a particular time even if no State is a referring State at that time.

Constitutional meaning of terms

(3) Unless the contrary intention appears, a word or phrase used in sections 247 to 250 that is used in the Constitution has the same meaning as it has in the Constitution.

247 Non-referring State operation—persons

(1) This Act operates in a non-referring State, in relation to a security interest in personal property, while:

(a) the obligation secured by the security interest is owed by or to a person covered by subsection (3); or

(b) the grantor of the security interest is a person covered by subsection (3).

(2) This Act operates in a non-referring State, in relation to an interest (other than a security interest) in personal property, while the interest is held by a person covered by subsection (3).

(3) This subsection covers the following persons:

(a) a bankrupt or an insolvent;

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(b) an Official Receiver of the estate of a bankrupt, or a registered trustee of a bankrupt, within the meaning of the *Bankruptcy Act 1966*;
(c) a constitutional corporation;
(d) the Commonwealth, or an agency of the Commonwealth.

248 Non-referring State operation—activities

(1) This Act operates in a non-referring State in relation to a security interest, or another interest, in personal property, if the interest arises in the course of any of the following activities:
(a) trade or commerce with other countries, or among the States;
(b) activities undertaken by a constitutional corporation;
(c) banking, other than State banking;
(d) State banking extending beyond the limits of the State concerned;
(e) insurance, other than State insurance;
(f) State insurance extending beyond the limits of the State concerned;
(g) using postal, telegraphic, telephonic, or other like services;
(h) supplying goods or services to the Commonwealth, or an agency of the Commonwealth;
(i) conduct by the Commonwealth, or an agency of the Commonwealth;
(j) an activity related to a fishery in Australian waters beyond territorial limits.

(2) However, this Act stops operating under subsection (1) in a non-referring State in relation to a security interest, or another interest, in personal property, if, after the interest arises:
(a) the interest is dealt with; and
(b) that dealing is not in the course of an activity to which subsection (1) applies.

(3) Subsection (2) does not limit the operation of this Act in a non-referring State otherwise than under this section.

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249 Non-referring State operation—interests

General rule

(1) This Act operates in a non-referring State in relation to a security interest, or another interest, in personal property, if the interest includes an interest in any of the following:

(a) a constitutional corporation;

(b) money borrowed on the public credit of the Commonwealth;

(c) an ADI account, other than an ADI account relating to State banking;

(d) an ADI account that relates to State banking extending beyond the limits of the State concerned;

(e) a policy of insurance, other than State insurance;

(f) a policy of State insurance extending beyond the limits of the State concerned;

(g) a bill of exchange or a promissory note;

(h) copyright, a patent of an invention or design, or a trade mark;

(i) a facility that provides postal, telegraphic, telephonic or other like services;

(j) a fishery in Australian waters beyond territorial limits;

(k) a lighthouse, lightship, beacon or buoy.

Constitutional interests exclusively—severable operation

(2) Without limiting subsection (1), this Act also has the effect it would have if this Act operated in a non-referring State in relation to a security interest, or another interest, in personal property, to the extent only that the interest were in any of the things mentioned in that subsection.

250 Non-referring State operation—inclusion of data in register

Chapter 5 of this Act (Personal Property Securities Register) operates in a non-referring State in relation to personal property.

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251 Personal property taken free of security interest when Act begins to operate

A person to whom personal property is transferred takes the property free of a security interest in the property at a particular time (the ***relevant time***) if:

(a) this Act did not operate under this Part in relation to the security interest at a previous time; and

(b) if this Act had so operated, the person would have taken the property free of the security interest under this Act (other than this section); and

(c) at the relevant time, this Act begins to operate under this Part in relation to the security interest.

252 Priority between constitutional and non-constitutional security interests

A security interest in collateral in relation to which this Act operates under this Part has priority over a security interest in the same collateral in relation to which this Act does not operate under this Part.

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Division 3—Constitutional guarantees

252A No constitutional preference to one State over another

A provision of this Act does not apply to the extent that the operation of the provision would give, or result in the giving of, preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

252B No unjust acquisition of property

(1) A provision of this Act does not apply to the extent that the operation of the provision would result in an acquisition of property from a person otherwise than on just terms.

(2) In subsection (1):

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

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Part 7.4—Relationship between Australian laws

Division 1—Introduction

253 Guide to this Part

This Part deals with the interaction of this Act with other Australian laws.

This Act is not intended to exclude or limit the operation of any other law if that other law is capable of operating concurrently with this Act.

If there is an inconsistency between this Act and another law, regulations may be made to resolve the inconsistency.

Other laws prevail over this Act in certain situations, as follows:

(a) certain specified Commonwealth laws prevail;

(b) other laws may govern security agreements;

(c) other laws may include restrictions on acquiring or dealing with personal property or a security interest;

(d) State or Territory laws may exclude certain matters from coverage under this Act.

However this Act prevails over other laws in relation to certain requirements relating to the registration and form of security interests, and their assignment, attachment and perfection.

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Division 2—Concurrent operation

254 Concurrent operation—general rule

(1) This Act is not intended to exclude or limit the operation of any of the following laws (a ***concurrent law***), to the extent that the law is capable of operating concurrently with this Act:

(a) a law of the Commonwealth (other than this Act);

(b) a law of a State or Territory;

(c) the general law.

(2) Without limiting subsection (1), this Act is not intended to exclude or limit the concurrent operation of a concurrent law, to the extent that the law has the effect of:

(a) providing for whether a matter or other thing that is created, arises or is provided for under the concurrent law constitutes personal property; or

(b) subject to section 258, prohibiting or limiting a person creating, acquiring or dealing with personal property or a security interest in personal property; or

(c) without limiting paragraph (b):

(i) prohibiting or limiting the right of a person to hold, transfer or assign a security interest in personal property; or

(ii) imposing limitations or additional obligations or requirements in relation to the enforcement of a security interest in personal property; or

(d) subject to sections 261 and 264, requiring or enabling a person to register a security interest (within the meaning of section 261); or

Note 1: Section 261 provides that a failure to register the security interest under the law does not limit the effect of the security interest or a security agreement for the security interest.

Note 2: Section 264 provides that, to the extent that the law would restrict or otherwise affect the operation of section 19 (attachment) or 21 (perfection) of this Act, the operation of the law is excluded.

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(e) subject to section 262, requiring or enabling a person to register the assignment of a security interest (within the meaning of that section); or

Note: Section 262 provides that a failure to register the assignment under the law does not limit the effect of the assignment, the security interest or a security agreement for the security interest.

(f) subject to section 263, requiring a security agreement for a security interest, or for an assignment of a security interest (within the meaning of that section) to be in a particular form, or to be witnessed or executed in a particular way; or

Note: Section 263 provides that a failure to comply with such a requirement does not limit the effect of the security agreement, the security interest or the assignment.

(g) operating to extinguish (however described) a security interest in circumstances other than those provided under this Act; or

(h) providing for, or in relation to, a matter in a way that is expressly allowed by or under this Act.

Note: The following provisions of this Act expressly allow for the operation (or the limited operation) of State and Territory laws:

(a) section 73 (interests arising under laws of the Commonwealth, States and Territories);
(b) section 110 (rights and remedies of debtors and secured parties);
(c) section 119 (relationship with credit legislation);
(ca) section 140 (distribution of proceeds received by secured party);
(d) section 208 (cross-jurisdictional appeals);
(e) section 271 (entitlement to damages for breach of duties or obligations);
(f) subsections 275(5) and (6) (secured party to provide certain information relating to security interest);
(g) section 285 (service or giving of notices).

(3) To avoid doubt, this section does not apply to a law of a State or Territory, or the general law, to the extent that there is a direct inconsistency between this Act and that law.

255 Concurrent operation—regulations may resolve inconsistency

(1) The regulations may:

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(a) provide that a provision of this Act (or an instrument made under this Act) does not apply to a matter that is dealt with by a law (the ***specified law***) of the Commonwealth, a State or a Territory specified by the regulations; or

(b) modify the operation of this Act (or an instrument made under this Act) so that no inconsistency arises between the operation of a provision of this Act or the instrument and the operation of a law (the ***specified law***) of the Commonwealth, a State, or a Territory specified by the regulations.

(2) Without limiting subsection (1), regulations made for the purposes of that subsection may provide that a provision of this Act (or an instrument made under this Act):

(a) does not apply to:

(i) a specified person; or

(ii) a specified body; or

(iii) specified circumstances; or

(iv) a specified person or body, in specified circumstances; or

(b) does not prohibit an act to the extent to which the prohibition would otherwise give rise to an inconsistency with the specified law; or

(c) does not require a person to do an act to the extent to which the requirement would otherwise give rise to an inconsistency with the specified law; or

(d) does not authorise a person to do an act to the extent to which the conferral of that authority on the person would otherwise give rise to an inconsistency with the specified law; or

(e) does not impose an obligation on a person to the extent to which complying with that obligation would require the person to not comply with an obligation imposed on the person under the specified law; or

(f) authorises a person to do something for the purposes of this Act (or an instrument made under this Act) that the person:

(i) is authorised to do under the specified law; and

(ii) would not otherwise be authorised to do under this Act (or the instrument); or

(g) will be taken to be satisfied if the specified law is satisfied.

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(3) This section does not apply in relation to the following provisions:

(a) paragraphs (c) and (d) of the definition of ***licence*** in section 10;

(b) paragraph (b) of the definition of ***personal property*** in section 10.

Note: Certain rights, entitlements and authorities under Commonwealth, State and Territory law, as declared by the relevant law, are excluded from the definitions of ***personal property*** and ***licence*** (in section 10).

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Division 3—When other laws prevail

256 When other laws prevail—certain other Commonwealth Acts

If there is any inconsistency between this Act and one of the following Acts (the ***other Act***), the other Act prevails to the extent of the inconsistency:

(a) the *Payment Systems and Netting Act 1998*;

(b) the *Cheques Act 1986*;

(c) the *Bills of Exchange Act 1909*.

257 When other laws prevail—security agreements

Scope

(1) This section sets out restrictions on the extent to which a security agreement is effective according to its terms under subsection 18(1).

Operation of other laws dealing with security agreements

(2) Subsection 18(1) is subject to each of the following laws:

(a) a law of the Commonwealth (other than this Act);

(b) a law of a State or a Territory;

(c) the general law.

(3) However, a law mentioned in subsection (2) does not apply:

(a) to the extent (if any) to which the operation of the law is affected by Division 4 (when this Act prevails); and

(b) to the extent (if any) prescribed by the regulations.

Note: Division 4 restricts the operation of State and Territory laws in certain respects, for example by preventing formal requirements under those laws from affecting the validity of security interests.

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258 When other laws prevail—personal property, security interests and matters excluded from State amendment referrals

Personal property and security interests

(1) This Act (apart from Division 4), or any instrument made under this Act, does not have an effect covered by subsection (2) to the extent to which that effect would give rise (apart from this subsection) to a direct inconsistency between this Act, or the instrument, and a law covered by subsection (3).

Note: Division 4 restricts the operation of State and Territory laws in certain respects, for example by preventing formal requirements under those laws from affecting the validity of security interests.

(2) The following effects of a law are covered by this subsection:
  (a) prohibiting or limiting a person creating, acquiring or dealing with personal property or a security interest in personal property;
  (b) without limiting paragraph (a):
    (i) prohibiting or limiting the right of a person to hold, transfer or assign a security interest in personal property; or
    (ii) imposing limitations or additional obligations or requirements in relation to the enforcement of a security interest in personal property.

(3) The following laws are covered by this subsection:
  (a) a law of the Commonwealth (other than this Act, or an instrument made under this Act);
  (b) a law of a referring State (while the State is a referring State);
  (c) a law of a Territory;
  (d) the general law.

(4) Subsection (1) does not apply to an effect of a law to the extent (if any) prescribed by the regulations.

Matters excluded by State amendment referrals

(5) Any provisions of this Act, or an instrument made under this Act, that would (apart from this subsection) operate, or purport to

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operate, to exclude or limit the operation of a law of a referring State do not operate to exclude or limit the operation of the law to the extent to which the law makes provision for a matter mentioned in paragraph 245(2)(a), (b) or (c).

Note: Subsection 245(2) provides exceptions to the scope of the matters (called PPS referred matters) in relation to which referring States have given an amendment reference to the Commonwealth (see subsection 244(4)).

(6) Subsection (5) only applies in relation to a law of a referring State while the State is a referring State.

259 When other laws prevail—exclusion by referring State law or Territory law

Scope

(1) This section applies if a law of a referring State, or of a Territory, declares a matter to be an excluded matter for the purposes of this section in relation to:

(a) the whole of this Act (or an instrument made under this Act); or

(b) a specified provision of this Act (or an instrument made under this Act); or

(c) this Act (or an instrument made under this Act), other than a specified provision; or

(d) this Act (or an instrument made under this Act), otherwise than to a specified extent.

Matters excluded by declaration

(2) This Act (and any instrument made under this Act), apart from Division 4 (when this Act prevails), does not apply in relation to the excluded matter to the extent provided by the declaration.

Regulations under this Act may affect operation of declaration

(3) Subsection (2) does not apply to the declaration to the extent (if any) prescribed by the regulations.

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Division 4—When this Act prevails

261 When this Act prevails—registration requirements

Scope

(1) This section applies if a law (the ***applicable law***) of a State or Territory has the effect of requiring or enabling a person to register a security interest.

Example: A law of a State or Territory may have this effect by requiring a person to register any interest acquired by the person in a motor vehicle including, but not limited to, a security interest.

(2) For the purposes of this section, a person ***registers a security interest*** under an applicable law if, under (or in accordance with) that law, the person registers, or otherwise discloses, any of the following:

(a) the security interest;

(b) a security agreement providing for the security interest;

(c) collateral covered (or to be covered) by the security interest.

Failure to register under applicable law

(3) A failure to register the security interest under the applicable law does not:

(a) affect the validity, priority or enforceability of the security interest, or of a security agreement providing for the security interest; or

(b) otherwise limit the effect of the security interest, or a security agreement providing for the security interest.

Note: In other respects this Act is not intended to exclude or limit the concurrent operation of the applicable law (see section 254).

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262 When this Act prevails—assignment requirements

Scope

(1) This section applies if a law (the ***applicable law***) of a State or Territory has the effect of requiring or enabling a person to register the assignment of a security interest.

(2) For the purposes of this section, a person ***registers the assignment of a security interest*** under an applicable law if, under (or in accordance with) that law, the person registers, or otherwise discloses, any of the following in relation to a security interest that is (or is to be) assigned, however the assignment is described in that law:

(a) the assignment;

(b) a security agreement providing for the assignment;

(c) collateral covered (or to be covered) by the security interest.

(3) An assignment of a security interest mentioned in this section includes (but is not limited to) the following, however described in the applicable law:

(a) the transfer of the security interest;

(b) the creation of the security interest;

(c) the devolution of the security interest from a deceased person to another person upon the death of the deceased person.

Failure to register under applicable law

(4) A failure to register the assignment of the security interest under the applicable law does not:

(a) affect the validity of the assignment; or

(b) affect the validity, priority or enforceability of the security interest, or of a security agreement providing for the security interest; or

(c) otherwise limit the effect of the assignment, the security interest or of a security agreement providing for the security interest.

Note: In other respects this Act is not intended to exclude or limit the concurrent operation of the applicable law (see section 254).

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263 When this Act prevails—formal requirements relating to agreements

Scope

(1) This section applies if a law (the ***applicable law***) of a State or Territory:

(a) relates (whether expressly or by implication) to a security agreement for a security interest in collateral, or for an assignment (however described) of a security interest in collateral; and

(b) has the effect of requiring the security agreement:

(i) to be in a particular form; or

(ii) to be witnessed or executed in a particular way; and

(c) is prescribed by regulations made for the purposes of this section.

Example: A law of a State or Territory requires a security agreement to be in a particular form if the law requires the instrument evidencing the agreement to use a particular form of words, or to be executed on paper of a particular sort.

(2) An assignment of a security interest mentioned in this section includes (but is not limited to) the following, however described in the applicable law:

(a) the transfer of the security interest;

(b) the giving of the security interest;

(c) the devolution of the security interest from a deceased person to another person upon the death of the deceased.

Failure to comply with formal requirement under applicable law

(3) Without limiting section 261 or 262, a failure to comply with the requirement under the applicable law does not:

(a) affect the validity or enforceability of the security agreement; or

(b) affect the validity, priority or enforceability of the security interest; or

(c) affect the validity of the assignment (if relevant); or

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(d) otherwise limit the effect of the security agreement, the security interest or the assignment (if relevant).

Note: In other respects this Act is not intended to exclude or limit the concurrent operation of the applicable law (see section 254).

264 When this Act prevails—attachment and perfection of security interests

To the extent that a law of a State or Territory would have the effect of restricting or otherwise affecting the operation of the following provisions, the operation of the law is excluded by force of this section:

(a) section 19 (when a security interest attaches to personal property);

(b) section 21 (how a security interest is perfected).

Example: If a law of a State or Territory would have the effect of requiring a security interest to be registered under the law before it is taken to attach, or to be perfected, under this Act, the operation of the law is excluded by force of this section.

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Chapter 8—Miscellaneous

Part 8.1—Guide to this Chapter

265 Guide to this Chapter

This Chapter contains rules about the following:

(a) the vesting of certain unperfected security interests (Part 8.2);

(b) damages and compensation for contraventions of this Act (Part 8.3);

(c) the provision of information relating to security interests (Part 8.4);

(d) the giving of notices and rules about timing (Part 8.5);

(e) the onus of proof in judicial proceedings, and what constitutes knowledge (Part 8.6);

(f) approved forms and regulations (Part 8.7).

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Part 8.2—Vesting of certain unperfected security interests

266 Guide to this Part

This Part provides for the vesting of an unperfected security interest in the grantor in certain circumstances.

In the event of the bankruptcy of an individual grantor, or the winding up or the entry into administration of a body corporate grantor, a secured party's unperfected security interest vests in the grantor. However, some security interests are unaffected by this rule.

Some secured parties are entitled to damages or compensation in relation to the vesting of unperfected interests under this Part.

267 Vesting of unperfected security interests in the grantor upon the grantor's winding up or bankruptcy etc.

Scope

(1) This section applies if:

(a) any of the following events occurs:

(i) an order is made, or a resolution is passed, for the winding up of a company or a body corporate;

(ii) an administrator of a company or a body corporate is appointed (whether under section 436A, 436B or 436C of the *Corporations Act 2001*, under that section as it is applied by force of a law of a State or Territory, or otherwise);

(iii) a company or a body corporate executes a deed of company arrangement (whether under Division 10 of Part 5.3A of the *Corporations Act 2001*, under that

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Division as it is applied by force of a law of a State or Territory, or otherwise);

(iv) a sequestration order is made against a person (the ***bankrupt***) under the *Bankruptcy Act 1966*;

(v) a person (the ***bankrupt***) becomes a bankrupt by force of section 55, 56E or 57 of the *Bankruptcy Act 1966*; and

(b) a security interest granted by the body corporate, company or bankrupt is unperfected at whichever of the following times applies:

(i) in the case of a company or body corporate that is being wound up—when, on a day, the event occurs by virtue of which the winding up is taken to have begun or commenced on that day (whether under section 513A or 513B of the *Corporations Act 2001*, under either section as applied by force of a law of a State or Territory, or otherwise);

(ii) in the case of any other company or body corporate—when, on a day, the event occurs by virtue of which the day is the section 513C day for the company or body, within the meaning of the *Corporations Act 2001* (including that Act as it is applied by force of a law of a State or Territory, or otherwise);

(iii) in the case of a bankrupt—when a sequestration order is made against the bankrupt under the *Bankruptcy Act 1966*, or when he or she becomes a bankrupt by force of section 55, 56E or 57 of that Act.

Note 1: For the meaning of ***company***, see section 10.

Note 2: See also Division 2A of Part 5.7B of the *Corporations Act 2001*.

Security interest vested in grantor

(2) The security interest held by the secured party vests in the grantor immediately before the event mentioned in paragraph (1)(a) occurs.

Note: This subsection does not apply to certain security interests (see section 268).

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Title of person acquired for new value without knowledge

(3) Subsection (2) does not affect the title of a person to personal property if:

(a) the person acquires the personal property for new value from a secured party, from a person on behalf of a secured party, or from a receiver in the exercise of powers:

(i) conferred by the security agreement that provides for the security interest; or

(ii) implied by the general law; and

(b) at the time the person acquires the property, the person has no actual or constructive knowledge of the following (as the case requires):

(i) the filing of an application for an order to wind up the company;

(ii) the passing of a resolution to wind up the company;

(iii) the appointment of an administrator of the company under section 436A, 436B or 436C of the *Corporations Act 2001*;

(iv) the execution of a deed of company arrangement by the company.

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

267A Vesting in grantor of security interest that attaches after winding up etc.

Vesting of security interest

(1) A security interest vests in the grantor when it attaches to the collateral if:

(a) paragraph 267(1)(a) applies in relation to the grantor; and

(b) before the time (the ***critical time***) mentioned in paragraph 267(1)(b), the grantor enters into a security agreement with the secured party that provides for the secured party to take a security interest in collateral from the grantor; and

(c) at the critical time:

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(i) the security interest has not attached to the collateral; and

(ii) there is no registration that would perfect the security interest when it attaches to the collateral; and

(d) after the critical time, the security interest attaches to the collateral; and

(e) at the time of attachment:

(i) the security interest is unperfected; or

(ii) if the security interest is perfected, it is perfected only by a registration for which the registration time is after the critical time.

Note: This section does not apply to certain security interests (see section 268).

Property acquired for new value without knowledge

(2) Subsection (1) does not affect the title of a person to personal property if:

(a) the person acquires the personal property for new value from a secured party, from a person on behalf of a secured party, or from a receiver in the exercise of powers:

(i) conferred by the security agreement providing for the security interest; or

(ii) implied by the general law; and

(b) at the time the person acquires the property, the person has no actual or constructive knowledge of the following (as the case requires):

(i) the filing of an application for an order to wind up the company;

(ii) the passing of a resolution to wind up the company;

(iii) the appointment of an administrator of the company under section 436A, 436B or 436C of the *Corporations Act 2001*;

(iv) the execution of a deed of company arrangement by the company.

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

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268 Security interests unaffected by section 267

Security interests to which vesting rule does not apply

(1) Subsection 267(2) and section 267A (security interests vested in grantor) do not apply to the following security interests:

(a) a security interest provided for by any of the following transactions, if the interest does not secure the payment or performance of an obligation:

(i) a transfer of an account or chattel paper;

(ii) a PPS lease, if paragraph (e) (serial numbered goods) of the definition of ***PPS lease*** in subsection 13(1) applies to the lease, and none of paragraphs (a) to (d) of that definition applies to the lease;

(iii) a commercial consignment;

(aa) a security interest for which perfection, and the effect of perfection or non-perfection, is governed by the law of a foreign jurisdiction at the time mentioned in paragraph 267(1)(b);

(b) a security interest covered by subsection (2) of this section.

Example: An example of a security interest mentioned in subparagraph (a)(ii) is a PPS lease of goods that does not secure the payment or performance of an obligation, if:

(a) the goods leased may or must be described by serial number in accordance with the regulations; and

(b) the lease is for a term of between 90 days and 1 year; and

(c) paragraphs (c) and (d) of the definition of ***PPS lease*** in subsection 13(1) do not apply to the lease.

Security interests and subordinated debts

(2) This subsection covers a security interest in an account if all of the following conditions are satisfied:

(a) a person (the ***obligor***) owes money to another person (the ***senior creditor***);

(b) the obligor also owes money to a third person (the ***junior creditor***);

(c) an agreement between the senior creditor and the junior creditor provides (in substance):

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(i) for the postponement or subordination of the obligor's debt to the junior creditor, to the obligor's debt to the senior creditor; and

(ii) in the event of the obligor's debt to the junior creditor being discharged (whether wholly or partly) by the obligor transferring personal property to the junior creditor—for the junior creditor to transfer the property, or proceeds of the property, to the senior creditor to the value of the amount owed by the obligor to the senior creditor; and

(iii) in the event that the property or proceeds are not transferred—for the junior creditor to hold the property or proceeds on trust for the senior creditor to that value; and

(iv) in the event of such a trust arising—for a security interest to be granted by the junior creditor to the senior creditor over the personal property or proceeds securing payment of the obligor's debt to the senior creditor;

(d) the security interest is a security interest granted under the agreement, in the circumstances described in subparagraph (c)(iv).

269 Certain lessors, bailors and consignors entitled to damages

Scope

(1) This section applies if either of the following security interests is vested in the grantor under section 267 or 267A:

(a) a security interest of a consignor under a commercial consignment (see paragraph 12(3)(b));

(b) a security interest of a lessor or bailor under a PPS lease (see paragraph 12(3)(c)).

Entitlement to damages and compensation

(2) The consignor, or lessor or bailor:

(a) is taken to have suffered damage immediately before the time the security interest vests in the grantor under section 267 or 267A (as the case requires); and

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(b) may recover an amount of compensation from the grantor equal to the greater of the following amounts:

(i) the amount determined in accordance with the lease, bailment or consignment;

(ii) the sum of the market value of the leased, bailed or consigned property immediately before the time mentioned in paragraph 267(1)(b), and the amount of any other damage or loss resulting from the termination of the lease, bailment or consignment.

Note: The lessor, bailor or consignor may be able to prove the amount of compensation in proceedings related to the bankruptcy or winding-up of the grantor.

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Part 8.3—Exercise and discharge of rights, duties and obligations

270 Guide to this Part

This Part provides a right to recover damages for a failure to discharge a duty or obligation imposed by this Act.

271 Entitlement to damages for breach of duties or obligations

(1) If a person fails to discharge any duty or obligation imposed on the person by this Act:

(a) the person to whom the duty or obligation is owed; and

(b) any other person who can reasonably be expected to rely on performance of the duty or obligation;

has a right to recover damages for any loss or damage that was reasonably foreseeable as likely to result from the failure.

(2) Nothing in subsection (1) limits or affects any liability that a person may incur under any of the following:

(a) a law of the Commonwealth, a State or a Territory;

(b) the general law.

272 Liability for damages

Despite section 271, none of the following persons is liable to an action, suit or proceeding for damages for, or in respect of, anything done honestly, or honestly omitted to be done, in the exercise, or purported exercise, of any power conferred by this Act or the regulations:

(a) the Commonwealth;

(b) the Registrar, or a delegate of the Registrar;

(c) a Deputy Registrar;

(d) the Minister;

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(e) a Minister of a State or Territory, or another authority of a State or Territory, in relation to the exercise or performance of a power, duty or function pursuant to an agreement made for the purposes of section 118 (proceeding as if personal property were land);

(f) a member of the Registrar's staff;

(g) a person who is acting as a member of the Registrar's staff;

(h) a person who is authorised to perform or exercise a function or power of, or on behalf of, the Registrar.

273 Application of Act not affected by secured party having title to collateral

The fact that title to collateral is in a secured party rather than a grantor does not affect the application of any provision of this Act relating to rights, duties, obligations and remedies.

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Part 8.4—Provision of information by secured parties

274 Guide to this Part

This Part enables an interested person to request a secured party who holds a security interest in collateral to provide information about the interest.

This Part sets out procedural rules for making, and complying with, such requests.

275 Secured party to provide certain information relating to security interest

Requests for information

(1) An interested person mentioned in subsection (9) may request a secured party who holds a security interest in collateral to send or make available to the interested person, or any other person, any of the following:

(a) a copy of the security agreement that provides for the security interest;

(b) a statement in writing setting out the amount or the obligation that is secured by the security interest and the terms of payment or performance of the obligation, as at the day specified in the request;

(c) a written approval or correction of an itemised list of personal property attached to the request indicating in which items of property the security interest is granted, as at the day specified in the request;

(d) a written approval or correction of the following attached to the request, as at the day specified in the request:

(i) the amount or the obligation that is secured by the security interest;

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(ii) the terms of payment or performance of the obligation.

(2) A request made under subsection (1) must specify an address to which the information requested under that subsection must be sent or at which the information must be made available.

(3) A request made in accordance with paragraph (1)(b), (c) or (d) must not specify a day later than 20 business days after the day the request is made.

Note: The period may be extended by a court under section 293.

Compliance with request

(4) Subject to subsections (5) and (6), a person who receives a request made under subsection (1) must respond to the request.

Note 1: A person who receives a request but who no longer has a security interest in collateral must respond to the request in accordance with section 276.

Note 2: Section 277 deals with the time for responding to a request.

Note 3: A person who responds to a request might be prevented from denying the accuracy etc. of information provided (see section 283).

(5) A secured party is not required to respond to a request made under subsection (1) if the information requested under that subsection must be, or has already been, made available to the person who made the request, under any of the following:

(a) a law of the Commonwealth, a State or a Territory;

(b) the general law.

(6) A secured party is not required to respond to a request made under subsection (1) if:

(a) subject to subsection (7), the secured party and the debtor have agreed (the ***confidentiality agreement***) in writing that neither the secured party nor the debtor will disclose information of the kind mentioned in subsection (1); or

(b) the response would contravene any of the following:

(i) a law of the Commonwealth, a State or a Territory;

(ii) the general law; or

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(c) the response would disclose information that is protected against disclosure by a duty of confidence.

(7) Paragraph (6)(a) does not apply if:

(a) the confidentiality agreement is made after the security agreement that provides for the security interest is made; or

(b) at the time the request is received, the debtor is in default under the security agreement; or

(c) the debtor, in writing, authorises the disclosure of the information; or

(d) the grantor requests the secured party to give the information to the grantor; or

(e) the request is made by an auditor of the grantor, if the grantor is a body corporate.

(8) If:

(a) a request is made in accordance with paragraph (1)(c); and

(b) the secured party claims a security interest provided for by a security agreement in any of the following:

(i) all of the grantor's present and after-acquired property;

(ii) all of the grantor's present and after-acquired property except for an item or class of personal property described in the security agreement;

(iii) all of a specified class of personal property of the grantor;

the secured party may indicate this instead of approving or correcting the itemised list of property.

Interested persons

(9) For the purposes of this section, the following persons are interested persons:

(a) the grantor in relation to the collateral in which the security interest is granted;

(b) a person with another security interest in the collateral mentioned in paragraph (a);

(c) an auditor of a grantor mentioned in paragraph (a), if the grantor is a body corporate;

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(d) an execution creditor with an interest in the collateral;
(e) an authorised representative of any of the above.

(10) A secured party who receives a request made under subsection (1) that purports to be made by an interested person may act as if the person is entitled to make the request, unless the secured party has actual knowledge that the person is not entitled to make it.

276 Obligation to disclose successor in security interest when request made

(1) This section applies if:
(a) a person makes a request under subsection 275(1); and
(b) the person (the ***previously secured party***) to whom the request was made no longer has a security interest in the collateral.

(2) The previously secured party must respond to the request by sending, or making available, to the person making the request the name and address of:
(a) the immediate successor in interest; and
(b) the latest successor in interest (if known).

Note: Section 277 deals with the time for responding to a request.

277 Time for responding to a request

(1) A person required to respond to a request under section 275 or 276 must respond before the end of 10 business days after the day the request is received.

(2) Subsection (1) does not apply if the person has been exempted from responding to the request, or the time for responding to the request has been extended, under section 278.

Note: The time for responding to a request may also be affected by subsection 279(5) or section 281.

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278 Application to court for exemption or extension of time to respond to requests

(1) A person required to respond to a request under section 275 or 276 may apply to a court for an order:

(a) exempting the person (either wholly or partly) from responding to the request; or

(b) extending the time for responding to the request.

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

(2) On application by the person for an order under paragraph (1)(a), the court may make the order if it is satisfied that, in the circumstances, it would be unreasonable for the person to respond to the request.

(3) On application by the person for an order under paragraph (1)(b), the court may make the order if it is satisfied that, in the circumstances, it would be unreasonable for the person to respond to the request:

(a) within the time allowed under section 277; or

(b) within the time (if any) ordered by a court under section 281.

279 Persons may recover costs arising from request

(1) A person required to respond to a request under section 275 or 276 may charge the person making the request a fee for providing information in response to the request.

(2) A fee imposed under subsection (1) must not:

(a) exceed the reasonable marginal costs of providing the information; or

(b) be such as to amount to taxation.

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

(3) Despite subsection (1), a grantor mentioned in paragraph 275(9)(a), or the grantor's authorised representative, who has requested information under section 275, is entitled to be provided information free of charge unless:

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(a) that information has already been provided to the grantor or the authorised representative under section 275 or 276 in response to a request; and

(b) that request was made within the previous 6 months.

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

(4) The grantor or the authorised representative is also entitled to be provided information free of charge, despite subsection (3), if there has been a material change in the information since the information was last provided to the grantor or the authorised representative.

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

(5) A person is not required to respond to a request under section 275 or 276 if:

(a) the person imposes a fee under subsection (1) for providing the information; and

(b) the fee has not been paid; and

(c) an order under section 281 that the person charge a nil amount, or provide the information free of charge, has not been made.

280 Application to court for response to request etc.

(1) A person who makes a request under section 275 may apply to a court for an order under this section if the person required to respond to the request has:

(a) not responded to the request:

(i) within the time specified in section 277; or

(ii) within the time ordered by the court under subsection 278(3) or section 281; or

(b) provided an incomplete or incorrect response; or

(c) refused to respond to the request because of subsection 275(5) or (6).

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

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(2) On application, the court may make an order requiring the person who received the request to:
  (a) respond to the request within a specified period; or
  (b) provide a complete and correct response within a specified period.

281 Application to court in relation to costs charged

(1) A person (the ***interested person***) who has requested information under section 275 may apply to a court for an order if:
  (a) the person required to respond to the request imposes a fee under subsection 279(1) for providing the information; and
  (b) the interested person:
    (i) believes that the fee exceeds the reasonable marginal costs of providing the information; or
    (ii) if the interested person is a grantor or the grantor's authorised representative—believes that the information has not already been provided to the grantor or the authorised representative in response to a request made under section 275 within the previous 6 months; or
    (iii) if the interested person is a grantor or the grantor's authorised representative—believes that there has been a material change in the information since the information was last provided to the grantor or the authorised representative.

Note: For which courts have jurisdiction, and for transfers between courts, see Part 6.1.

(2) If the court is satisfied that the fee imposed under subsection 279(1) exceeds the reasonable marginal costs of providing the information, the court may, on application by the interested person, make an order:
  (a) stating an amount (including a nil amount) that is to be imposed as a fee; and
  (b) stating a time within which the request must be responded to after the fee has been paid.

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

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(3) If the court is satisfied that:

(a) the information has not already been provided to the grantor or the grantor's authorised representative in response to a request made under section 275 within the previous 6 months; or

(b) there has been a material change in the information since the information was last provided to the grantor or the authorised representative;

the court may, on application by the interested person, make an order:

(c) that the information be provided to the grantor, or the authorised representative, free of charge; and

(d) stating a time within which the request must be responded to.

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

Consequential orders

(4) If the court makes an order under this section, it may also make any other consequential orders that it considers appropriate.

282 Consequences of not complying with court order

If a person fails to comply with a court order made under section 280 or 281, the court may, on the application of the person who made the request under section 275:

(a) make an order extinguishing the security interest to which the request relates, together with an order requiring the Registrar to register a financing change statement amending the registration accordingly; or

(b) make such other orders as the court thinks necessary to ensure compliance with the request.

283 Estoppels against persons who respond to a request

(1) For the purposes of this Act, a person who responds to a request made under section 275 is prevented from denying any of the things mentioned in subsection (2) of this section to any of the

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following persons to the extent that that person relies on the response:

(a) the person who makes the request;

(b) any other person who the person who responds to the request actually knows will rely on the response.

(2) For the purposes of subsection (1), a person is prevented from denying the following things:

(a) that a copy of a security agreement provided in response to a request made in accordance with paragraph 275(1)(a) is a true copy of the security agreement;

(b) if the person corrected information in response to a request made in accordance with paragraph 275(1)(b), (c) or (d):

(i) the accuracy of information provided in response to the request before the correction; or

(ii) the accuracy of the information provided in response to the request.

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Part 8.5—Notices and timing

284 Guide to this Part

This Part deals with notices that must be given under this Act, and how those notices must be given.

The Part also empowers a court to make an order extending a period within which something under this Act must be done.

A reference to time in this Act is a reference to time by legal time in the Australian Capital Territory.

285 Application of this Part—notices etc.

This Part does not apply to notices or other documents served or given:

(a) in, or for the purposes of, any proceedings in a court or a tribunal of the Commonwealth or a State or Territory; or

(b) in accordance with a procedure specified in a security agreement for serving or giving notices or other documents.

286 Notices—writing

A notice or any other document required or permitted to be given to any person for the purposes of this Act must be in writing.

Note: ***Writing*** may include the display or representation of words or data by any form of communication, if recorded in a certain way (see section 10).

287 Notices—registered secured parties

A notice or document required or permitted to be given, for the purposes of this Act, to a person registered as a secured party must be given to the person, by one of the following methods, at the

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address specified in the registration for the giving of notices to the person:

(a) leaving it at the address;

(b) sending it to the address by pre-paid post;

(c) sending it to the address by fax or by email.

Note: For the giving of verification statements by the Registrar, see section 156.

288 Notices—more than one registered secured party

(1) This section applies if:

(a) a registration includes 2 or more secured parties; and

(b) a notice or document is required or permitted to be given to each of the secured parties.

(2) The notice or document may be given to each of the secured parties by giving a single notice in accordance with section 287.

289 Notices etc. must be given to persons registered as secured parties using identifier

Despite anything in this Part, a notice or document is, for the purposes of this Act, taken not to have been given to a person registered as a secured party if:

(a) the Registrar approves a manner of including an identifier in a notice or document; and

(b) an identifier is specified in the registration for the giving of notices to the person; and

(c) the notice or document does not include the identifier in the manner approved by the Registrar.

290 Notices—deceased persons

If a notice or document is required or permitted to be given to a person for the purposes of this Act and the person is deceased, a copy of the notice or document must be given to:

(a) the legal personal representative of the deceased person; or

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(b) on application by the person giving the notice, such person as a court directs.

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

291 Notices—Court orders

(1) Despite anything in this Part, if a notice or other document is required or permitted by this Act to be given to a person, a court may, on application by a person who is required or permitted to give the notice or document, make an order:

(a) directing that the notice or document be given in any manner specified by the court; or

(b) dispensing with any requirement to give the notice or document, either unconditionally or subject to conditions.

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

(2) In considering whether to make an order under subsection (1), the court must have regard to the following matters:

(a) the efficient administration of this Act;

(b) any other matter that the court considers relevant.

292 Notices—formal defects

A notice purportedly given under this Act is not invalid as a result of a formal defect or an irregularity, unless:

(a) a person applies to a court objecting on that ground; and

(b) the court is satisfied that substantial injustice has been caused by the defect or irregularity; and

(c) the court is satisfied that the injustice cannot be remedied by an order of the court.

293 Timing—applications for extension of time

(1) On application, a court may make an order extending the number of business days in a period specified in the following provisions if the court is satisfied that it is just and equitable to do so:

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(a) paragraphs 62(3)(b) (perfection of purchase money security interests);
(b) paragraphs 63(c) and (d) (priority between competing purchase money security interests);
(c) paragraph 64(1)(b) (priority between non-purchase money security interest and purchase money security interest);
(d) subsection 120(3) (payment of amount owed to secured party in enforcing security interests in liquid assets);
(e) paragraphs 121(2)(e) and (5)(a) (notice to higher priority parties and grantor of enforcement of liquid assets);
(f) subsection 127(4) (compliance with notice from higher priority party);
(g) subsection 127(9) (payment of amount by higher priority party);
(h) paragraph 130(2)(c) (notice of disposal of collateral);
(i) paragraphs 132(2)(a) and (6)(a) (giving statements of account);
(j) paragraph 135(2)(a) (notice of retention of collateral);
(k) subsection 138(2) (giving proof of interest);
(l) subsection 151(3) (belief about security interest);
(m) paragraph 166(2)(c) (when defect makes registration ineffective);
(n) subsection 167(2) (application for amendment of registration);
(o) subsection 182(2) (application for amendment after demand);
(p) subsection 275(3) (information required by request).

(2) The court may make the order even if the period has ended.

(3) In making an order to extend a period under subsection (1), the court must take into account the following:
(a) whether the need to extend the period arises as a result of an accident, inadvertence or some other sufficient cause;
(b) whether extending the period would prejudice the position of any other secured parties or other creditors;
(c) whether any person has acted, or not acted, in reliance on the period having ended.

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294 Timing—references to time in this Act

(1) In this Act, a reference to a particular time is a reference to that time by legal time in the Australian Capital Territory.

(2) To avoid doubt, a reference to a particular time includes a reference to a particular time by reference to the end of period.

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Part 8.6—Onus of proof and knowledge

295 Guide to this Part

This Part provides that the onus of proving certain facts lies with the person asserting those facts.

The Part also defines ***constructive knowledge*** and provides specific rules about knowledge requirements relating to bodies corporate and other entities and transfers between persons who have close associations with each other.

296 Onus of proof

In a proceeding in Australia under this Act, the onus of proving the following facts lies with the person asserting those facts:

(a) the fact that a security interest attaches to personal property;

(b) the fact that a security interest is perfected by registration;

(c) the fact that a person takes personal property free of a security interest, except in relation to sections 43 and 47;

(d) the fact that a person takes personal property free of a security interest under subsection 47(1);

(e) the fact that a person does not take personal property free of a security interest under subsection 47(2);

(f) the fact that a person who purchases collateral pays at least the market value of the collateral at the time of the purchase;

Note: See paragraph 129(3)(b).

(g) the fact that a person acquires personal property without actual or constructive knowledge as mentioned in paragraph 267(3)(b);

(h) the fact that a fee referred to in subsection 279(1) does not exceed the reasonable marginal costs of providing information;

Note: See subsection 279(2).

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(i) the fact that information has been provided to a grantor or the grantor's authorised representative under section 275 or 276 in response to a request made within the previous 6 months;

Note: See subsection 279(3).

(j) the fact that there has not been a material change in information provided to a grantor or the grantor's authorised representative since the information was last provided to the grantor or the authorised representative;

Note: See subsection 279(4).

(k) the fact that the fee imposed under subsection 279(1) exceeds the reasonable marginal costs of providing information;

Note: See subsection 281(2).

(l) the fact that:

(i) information has not been provided to the a grantor or a grantor's authorised representative in response to a request made under section 275 within the previous 6 months; or

(ii) there has been a material change in information since the information was last provided to a grantor or a grantor's authorised representative.

Note: See subsection 281(3).

297 Meaning of *constructive knowledge*

For the purposes of this Act, a person (the ***first person***) has ***constructive knowledge*** of a circumstance if the first person would have had actual knowledge of the circumstance if the first person had:

(a) made the inquiries that would ordinarily have been made by an honest and prudent person in the first person's situation; or

(b) made the inquiries that would be made by an honest and prudent person with the first person's actual knowledge in the first person's situation.

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Section 298

298 Actual or constructive knowledge by bodies corporate and other entities

(1) If it is necessary to establish that a body corporate has actual or constructive knowledge of a particular circumstance, it is sufficient to show:

(a) that a director, employee or agent of the body corporate, being a director, employee or agent who is responsible for acting on behalf of the body corporate in relation to such a circumstance, had that knowledge; or

(b) that both of the following apply:

(i) the circumstance is communicated to a director, employee or agent of the body corporate;

(ii) if the director, employee or agent had exercised reasonable care, the circumstance would have been brought to the attention of a director, employee or agent of the body corporate who is responsible for acting on behalf of the body corporate in relation to such a circumstance.

(2) If it is necessary to establish that a person other than a body corporate has actual or constructive knowledge of a particular circumstance, it is sufficient to show:

(a) that an employee or agent of the person, being an employee or agent who is responsible for acting on behalf of the person in relation to such a circumstance, had that knowledge; or

(b) that both of the following apply:

(i) the circumstance is communicated to an employee or agent of the person;

(ii) if the employee or agent had exercised reasonable care, the circumstance would have been brought to the attention of an employee or agent of the person who is responsible for acting on behalf of the person in relation to such a circumstance.

(3) Paragraphs (1)(b) and (2)(b) do not require a person to bring information to the attention of another person unless:

(a) doing so is part of the person's regular duties; or

(b) the person has reason to know both of the following:

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(i) the transaction to which the circumstance relates;
(ii) that the transaction would be materially affected by the information.

299 Actual or constructive knowledge in relation to certain property transfers

(1) This section applies if:
(a) a person (the ***transferee***) acquires personal property from another person (the ***transferor***); and
(b) any of the following applies:
(i) the transferee is a member of the same household as the transferor;
(ii) the transferee is an associated entity (within the meaning of the *Corporations Act 2001*) of the transferor, or the transferor is such an associated entity of the transferee;
(iii) the transferee is a director or officer (within the meaning of the *Corporations Act 2001*) of the transferor, or the transferor is such a director or officer of the transferee.

(2) For the purposes of this Act, the following is to be presumed, unless the contrary is shown beyond reasonable doubt:
(a) the transferee had actual or constructive knowledge that the acquisition constituted a breach of the security agreement that provides for a security interest in the personal property;
(b) the transferee had actual or constructive knowledge of a security interest in the personal property;
(c) value was not given by the transferee for the interest acquired.

300 Registration of data does not constitute constructive notice

A person does not have notice, or actual or constructive knowledge, about the existence or contents of a registration merely because data in the registration is available for search in the register.

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Part 8.7—Forms and regulations

301 Guide to this Part

This Part enables the Registrar to approve forms for the purposes of this Act. Broad parameters are set out for what may be required by an approved form, including the way in which the form must be given to another person.

This Part also empowers the Governor-General to make regulations for this Act.

302 Approved forms

(1) This section applies if this Act requires or authorises something to be in the approved form.

(2) To be in the ***approved form***, the thing must:

(a) be in writing in a form approved by the Registrar; and

(b) include the information, statements, explanations or other matters required by the form approved for the purposes of paragraph (a); and

(c) include any other material (including documents) required by that form; and

(d) be given in accordance with any requirements specified by the Registrar for the purpose.

Note: ***Writing*** may include the display or representation of words or data by any form of communication, if recorded in a certain way (see section 10).

Example: Examples of forms that could be approved (see paragraph (2)(a)) are as follows:

(a) an interactive form provided on the internet;

(b) a communication exchange provided by an interactive voice recognition telephone system;

(c) a digital communication enabling computer to computer interaction.

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(3) The Registrar may, by written instrument, approve a form for the purposes of paragraph (2)(a).

(4) Without limiting subsection (2), a form approved under subsection (3) may specify a requirement that the applicant comply with registered data conditions (see section 176B) or third party data conditions (see section 176C), or both, for applications under any of the following sections:

(a) section 150 (registration);

(b) section 170 (search);

(c) section 175 (copies of financing statements and verification statements).

(5) A form approved under subsection (3) may provide for a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time, despite section 46AA of the *Acts Interpretation Act 1901*.

303 Regulations

The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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Chapter 9—Transitional provisions

Part 9.1—Guide to this Chapter

304 Guide to this Chapter

This Chapter deals with the way this Act will apply when the positive rules established by this Act begin to operate. It also provides for some other matters that will have less relevance over time (fixed and floating charges, in Part 9.5), or a once-only application (the review in Part 9.6).

Part 9.2 defines key concepts for the Chapter.

Part 9.3 deals with the initial application of this Act. Generally speaking, the Act starts to apply at the registration commencement time, which is 1 February 2012 (the first day of the month that is 26 months after this Act was given the Royal Assent), or another time determined by the Minister.

Part 9.4 contains provisions that relate to transitional security interests. These are interests in existence at the registration commencement time or arising afterwards under security agreements made before the registration commencement time.

This includes rules about the attachment, perfection and priority of transitional security interests.

Part 9.4 also deals with the migration of data from existing Commonwealth, State and Territory registers onto the Personal Property Securities Register.

Part 9.5 contains specific rules relating to fixed and floating charges.

Part 9.6 provides for an independent review of the operation of the Act 3 years after it starts to apply.

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Part 9.2—Key concepts

305 Guide to this Part

This Part contains definitions of the following terms used in this Chapter (and elsewhere in this Act):

(a) migration time;

(b) registration commencement time;

(c) transitional security agreement;

(d) transitional security interest.

306 Meaning of *migration time* and *registration commencement time*

Migration time

(1) For the purposes of this Act, the ***migration time*** is:

(a) the start of the first day of the month that is 25 months after the month in which this Act is given the Royal Assent; or

(b) another time determined by the Minister.

Example: If this Act were given the Royal Assent on 10 December 2009, the migration time under paragraph (a) would be the start of 1 January 2012.

Registration commencement time

(2) For the purposes of this Act, the ***registration commencement time*** is at:

(a) the start of the first day of the month that is 26 months after the month in which this Act is given the Royal Assent; or

(b) another time determined by the Minister.

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Example: If this Act were given the Royal Assent on 10 December 2009, the registration commencement time under paragraph (a) would be the start of 1 February 2012.

(3) The Minister may only determine a time for the purposes of paragraph (2)(b) that is on a day that is at least 28 days after the day on which the migration time occurs.

(4) If the Minister determines other times for both the migration time and the registration commencement time, the Minister may, after the migration time, make a further determination for the purposes of paragraph (2)(b) that has the effect of providing for a later registration commencement time.

Note: The registration commencement time determined by the further determination must be at least 28 days after the day on which the migration time occurs.

(5) The Minister may, by written instrument, determine a time for the purposes of paragraph (1)(b) or (2)(b) (including a determination mentioned in subsection (4)).

(6) A determination made under subsection (5) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the determination.

307 Meaning of *transitional security agreement*

In this Act:

transitional security agreement means a security agreement that is in force immediately before the registration commencement time, and that continues in force at and after that time.

308 Meaning of *transitional security interest*

In this Act:

transitional security interest means a security interest provided for by a transitional security agreement, if:

(a) in the case of a security interest arising before the registration commencement time—this Act would have applied in

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relation to the security interest immediately before the registration commencement time, but for section 310; or

(b) in the case of a security interest arising at or after the registration commencement time:

(i) the transitional security agreement as in force immediately before the registration commencement time provides for the granting of the security interest; and

(ii) this Act applies in relation to the security interest.

Note: Section 310 provides that this Act only starts to apply to security interests at the registration commencement time.

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Part 9.3—Initial application of this Act

309 Guide to this Part

This Act starts to apply to the following at the registration commencement time (26 months after the Act is given the Royal Assent, or another time determined by the Minister):

(a) new security agreements;

(b) security interests arising after commencement;

(c) transitional security agreements and interests;

(d) new interests in personal property;

(e) prescribed personal property;

(f) migrated personal property data from Commonwealth, State and Territory registers.

Special provision is made for the following:

(a) the enforceability of transitional security interests;

(b) certain declared statutory interests;

(c) intellectual property licences;

(d) the enforcement generally of security agreements;

(e) the starting time for registrations;

(f) governing laws (under Part 7.2);

(g) constitutional and non-constitutional interests;

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(h) charges, and fixed and floating charges.

310 When this Act starts to apply, and in relation to which matters

Subject to this Part and Part 9.4, this Act starts to apply at the registration commencement time in relation to the following matters:

(a) a security agreement made at or after the registration commencement time;

(b) a security interest (other than a transitional security interest) arising at or after the registration commencement time;

(c) a transitional security agreement;

(d) a transitional security interest (whether arising before, at or after the registration commencement time);

(e) an interest in personal property (other than a security interest) arising at or after the registration commencement time;

(f) personal property of a kind prescribed by regulations made for the purposes of paragraph 148(c);

(g) personal property, if data in relation to the property is given to the Registrar as mentioned in section 330 or 331 (data in transitional registers).

311 Enforceability of transitional security interests against third parties

Despite section 20, a transitional security interest is enforceable against a third party in respect of particular personal property if it would have been so enforceable under the law that applied to the enforceability of security interests immediately before the registration commencement time, and as if this Act had not been enacted (whether the security interest arises before, at or after the registration commencement time).

312 Declared statutory security interests

Section 73 (priority between security interests and declared statutory interests) applies in relation to an interest in collateral

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only if the interest is created, arises or is provided for under one of the following at or after the registration commencement time:

(a) a law of the Commonwealth, a State or a Territory;

(b) the general law.

313 Enforcement of security interests in intellectual property licences

Section 106 applies in relation to security interests in intellectual property licences only if the security interests are provided for by security agreements made at or after the registration commencement time.

314 Enforcement of security interests provided for by security agreements

Chapter 4 (enforcement of security interests) applies only in relation to security interests provided for by security agreements made at or after the registration commencement time.

315 Starting time for registrations

(1) A person may only apply to the Registrar for the registration of a financing statement or a financing change statement at or after the registration commencement time.

(2) The Registrar may only register a financing statement or a financing change statement (whether on application by a person or at the Registrar's initiative) at or after the registration commencement time.

Note: However, the Registrar may, before the registration commencement time, register a financing statement or a financing change statement under Division 6 (migrated security interests) or Division 7 (preparatory registration) of Part 9.4.

316 Governing laws

Part 7.2 (Australian laws and those of other jurisdictions) applies only in relation to security interests in collateral (other than

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transitional security interests) that arise at or after the registration commencement time.

317 Constitutional and non-constitutional interests

(1) Section 251 (personal property taken free of security interest when Act starts to operate) applies only in relation to security interests in collateral (other than transitional security interests) that arise at or after the registration commencement time.

(2) Section 252 (priority between non-constitutional security interests and constitutional security interests) applies only in relation to security interests in collateral, in relation to which this Act does not operate, that arise at or after the registration commencement time.

318 References to charges and fixed and floating charges

Part 9.5 (charges and fixed and floating charges) applies only:

(a) in the case of a reference to a charge, a fixed charge or a floating charge in a law of the Commonwealth (whether the law is made before, at or after the registration commencement time)—in relation to a security interest (other than a transitional security interest) arising at or after the registration commencement time; or

(b) in the case of a reference to a charge, a fixed charge or a floating charge in a security agreement—in relation to a security agreement made at or after the registration commencement time.

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Part 9.4—Transitional application of this Act

Division 1—Introduction

319 Guide to this Part

This Part deals with the transitional application of this Act.

This Part applies to transitional security interests, which are security interests provided for by security agreements (transitional security agreements) in force immediately before the registration commencement time. A transitional security interest may arise before, at or after the registration commencement time.

The registration commencement time is 1 February 2012 (the first day of the month that is 26 months after this Act was given the Royal Assent), or another time determined by the Minister.

Division 2 is about the attachment, perfection and priority of transitional security interests. Transitional security interests are declared to be perfected until the end of the month that is 24 months after the registration commencement time, or until they are earlier perfected by other means (for example, by registration).

Division 6 is about the migration of data about personal property from Commonwealth, State and Territory registers onto the Personal Property Securities Register. The Registrar may register migrated data about transitional security interests with effect from the registration commencement time. Such transitional security interests are known as migrated security interests.

Migrated security interests are perfected under Division 2 from immediately before the registration commencement time.

Division 7 provides for preparatory registration with respect to transitional security interests in anticipation of the commencement of the Personal Property Securities Register. Other data may also

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be registered under this Division before the registration commencement time.

Transitional security interests that are registered in this way are perfected under Division 2 from immediately before the registration commencement time.

Division 8 provides rules for dealing with defective registrations with respect to transitional security interests. For example, omissions arising from the migration of data onto the Personal Property Securities Register will not automatically render the registration of the data ineffective.

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Division 2—Attachment, perfection and priority of transitional security interests

320 Guide to priority rules for transitional security interests

(1) The following table is a guide to how this Act applies to the determination of priorities involving transitional security interests:

Priorities involving transitional security interests

Item	The following security interest:	has priority over …	because of …
1	a perfected transitional security interest	an unperfected security interest (whether transitional or not)	subsection 55(3).
2	a perfected transitional security interest	a perfected security interest that is not a transitional security interest	subsection 55(5) and sections 322 and 322A.
3	an unperfected transitional security interest	an unperfected security interest that is not a transitional security interest	subsection 55(2) and section 321.
4	a perfected security interest (whether transitional or not)	an unperfected transitional security interest	subsection 55(3).

(2) Other priorities involving transitional security interests are dealt with under this Division as follows:

(a) for the priority between 2 perfected transitional security interests, see section 323;

(b) for the priority between 2 unperfected transitional security interests, see section 323;

(c) for the priority between 2 security interests, one or both of which is a transitional security interest, if the priority comes to be determined after the end of the month that is 24 months after the registration commencement time in circumstances involving insolvency or bankruptcy, see section 324.

(3) In this section, a reference to a perfected transitional security interest is taken to be a reference to a transitional security interest

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that has been continuously perfected, at the time the priority comes to be determined, since immediately before the registration commencement time.

321 Attachment rule

For the purposes of subparagraph 21(1)(b)(i) and section 55, a transitional security interest in collateral is taken to have attached to the collateral immediately before the registration commencement time, whether the security interest arises before, at or after the registration commencement time.

Note 1: Subparagraph 21(1)(b)(i) provides that unless a security interest in collateral is perfected by force of this Act, the security interest must have attached to the collateral in order to be perfected.

Note 2: Section 55 provides for the default rules for determining priority between security interests in the same collateral. In some cases, these rules depend on when a security interest attaches. For example, the priority between 2 unperfected security interests is generally determined by their order of attachment (see subsection 55(2)).

However, 2 unperfected transitional security interests have the priority they would have had between themselves if this Act had not been enacted (see section 323).

Note 3: See section 320 for a general summary of priority rules as they affect transitional security interests.

322 Perfection rule

Main rule

(1) A transitional security interest in collateral is perfected from immediately before the registration commencement time, whether the security interest arises before, at or after the registration commencement time (including a transitional security interest that arises after the end of the month that is 24 months after the registration commencement time).

Note 1: As a result of this subsection, the priority time for a transitional security interest under subsection 55(4) will be immediately before the registration commencement time, as long as the security interest remains continuously perfected.

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Note 2: See section 320 for a general summary of priority rules as they affect transitional security interests.

(2) However, the transitional security interest stops being perfected under subsection (1) at the earliest of the following times:

(a) when the security interest is perfected by registration under Division 6 (migration of personal property interests);

(b) when the security interest is perfected by preparatory registration under Division 7;

(c) when a registration under Division 6 or 7 is amended so that the registration perfects the security interest;

(d) when the security interest is otherwise perfected by registration, or is perfected by possession or control;

(e) when the security interest is otherwise perfected (but not temporarily perfected) by this Act, other than under this section;

(f) the end of the month that is 24 months after the registration commencement time.

Note: In the case of a transitional security interest in collateral that does not arise until after the end of the month that is 24 months after the registration commencement time, this section has the same effect as for other transitional security interests. In particular:

(a) if a financing statement describing the collateral is registered before the end of that month, by the operation of sections 21, 55, 321 and this section, the security interest is continuously perfected from the registration time for the collateral until the registration stops being effective; and

(b) if the security interest is not perfected (otherwise than under this section) at the end of the month that is 24 months after the registration commencement time, the security interest will become unperfected at that time.

Exception

(3) Subsections (1) and (2) do not apply to a transitional security interest in collateral if the interest is of a class prescribed by regulations made for the purposes of this subsection.

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322A Priority rule—priority between transitional security interest and security interest perfected by control

Despite subsection 57(1), a transitional security interest in collateral that has been continuously perfected since the registration commencement time has priority over a security interest in the same collateral (other than a transitional security interest) that is currently perfected by control.

Note 1: Only security interests in certain kinds of property can be perfected by control (see paragraph 21(2)(c) and Part 2.3).

Note 2: Subsection 57(1) provides generally for security interests currently perfected by control to have priority over other security interests.

323 Priority rule—priority otherwise undetermined

If the priority between 2 transitional security interests is not otherwise able to be determined under this Act, they have the priority between themselves that they would have had under the law that applied to such priority immediately before the registration commencement time, and as if this Act had not been enacted.

Note: The priority between the following transitional security interests is not otherwise able to be determined under this Act:

(a) 2 unperfected transitional security interests (because of section 321, the order of attachment between these interests cannot be determined for the purposes of subsection 55(2));

(b) 2 transitional security interests that have been continuously perfected since immediately before the registration commencement time (because of sections 321 and 322, the order of the priority times for these interests cannot be determined for the purposes of subsection 55(4)).

324 Priority rule—certain security interests upon insolvency or bankruptcy

(1) The priority between 2 security interests in the same collateral is to be determined under this Act, as if section 322 had not been enacted, if:

(a) the priority between the security interests comes to be determined after the end of the month that is 24 months after the registration commencement time; and

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(b) either (or each) of the interests is a transitional security interest that has not been perfected, apart from under section 322; and

(c) the grantor or secured party in relation to either (or each) of the security interests is insolvent or bankrupt.

(2) Subsection (1) is in addition to, and does not derogate from, any other provision of this Division.

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Division 6—Migration of personal property interests

330 Scope of Division

This Division applies if, at or after the migration time, and before the registration commencement time:

(a) an officer or agency of the Commonwealth, a State or a Territory gives the Registrar data, in relation to personal property, that is held by the officer or agency in a register (a ***transitional register***) maintained under a law of the Commonwealth, a State or a Territory; and

(b) the data is given in the approved form; and

(c) the Registrar accepts the data.

331 Requirement for Commonwealth officers etc. to provide data

Upon a written request by the Registrar at or after the migration time, and before the registration commencement time, an officer of the Commonwealth, or the person in charge of an agency of the Commonwealth, must give the Registrar, in the approved form, data held by the officer or the agency in a transitional register.

332 Meaning of *migrated security interest*

An interest in personal property is a ***migrated security interest*** in the personal property if all the following conditions are met in relation to the interest:

(a) it is a transitional security interest in the personal property;

Note: Transitional security interests are security interests that arise under security agreements made before the registration commencement time, to which this Act will apply at the registration commencement time (see sections 307, 308 and 310).

(b) data in a transitional register in relation to the property is:

(i) given to the Registrar as mentioned in section 330 or 331; and

(ii) accepted by the Registrar;

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(c) a registration in that transitional register in relation to the property was effective immediately before the time the data was given to the Registrar;

(d) the registration in a transitional register was duly authorised by the law under which the register was maintained.

333 Registration with respect to migrated data

Determination of registrable personal property

(1) At or after the migration time, and before the registration commencement time, the Registrar may, by legislative instrument, determine a class of personal property to be registrable if:

(a) data in a transitional register in relation to personal property of that class is given to the Registrar as mentioned in section 330 or 331; and

(b) registrations in that transitional register with respect to personal property of that class were effective immediately before the time the data was given to the Registrar.

Registration of determined personal property

(2) If, in the opinion of the Registrar, personal property is in a determined class, the Registrar may register a financing statement with respect to the property at or after the migration time, and before the registration commencement time.

Note: The Registrar must give a verification statement to each secured party after the registration of a financing statement (see section 156).

Matters to be included in registered data

(3) If, in the opinion of the Registrar, a financing statement under subsection (2) describes personal property that is the subject of a transitional security agreement, without limiting any other matters that may be included, the Registrar must, in the statement:

(a) either:

(i) if subsection (4) applies—state the transitional registration end time as the end time for the effective registration in respect of the personal property; or

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(ii) if subsection (4) does not apply—not state an end time for the effective registration in respect of the personal property; and

(b) disclose that:

(i) the personal property is covered by a transitional security agreement; and

(ii) the transitional security agreement provides for a security interest that is a migrated security interest.

(4) This subsection applies if, in the Registrar's opinion, the registration of the interest in the personal property in the transitional register would have ended at a particular time (the ***transitional registration end time***) in accordance with the law under which the transitional register was maintained (as in force immediately before the migration time).

Registration time

(5) The ***registration time*** for the personal property is the registration commencement time.

Note: However, the migrated security interest in the personal property is perfected from immediately before the registration commencement time (see section 322).

334 Incorrectly registered migrated data

Incorrectly registered data taken never to have been registered

(1) If data is registered with respect to personal property in a financing statement under subsection 333(2) on the basis that the property is in a class determined under subsection 333(1), but the personal property is not, in fact, in the determined class, this Act applies as if the data is not, and never has been, included in the register.

Removal of data

(2) Before a time determined under subsection (3), the Registrar may (at his or her initiative) register a financing change statement to remove data from the register, if the Registrar becomes satisfied that subsection (1) applies to the data.

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(3) The Registrar may, by legislative instrument, determine a time for the purposes of subsection (2).

Note 1: Incorrectly removed data may be restored under section 186.

Note 2: Application may be made to the Administrative Appeals Tribunal for review of the Registrar's decision under subsection (2) (see section 191).

335 No requirement for notice of verification statement

Section 157 does not apply in relation to a verification statement that relates to a registration event consisting of the registration of a financing statement under section 333 or a financing change statement under section 334.

Note: Section 157 requires the holder of a verification statement to ensure that notice of the verification statement is given to certain persons.

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Division 7—Preparatory registration relating to transitional security interests

336 Preparatory registration—transitional security interests

Application for preparatory registration

(1) At or after the migration time, and before the registration commencement time, a person may apply to the Registrar, in the approved form, for the registration of any of the following:
  (a) a financing statement that describes collateral with respect to a transitional security interest;
  (b) a financing statement with respect to personal property prescribed by regulations made for the purposes of paragraph 148(c);
  (c) a financing change statement to amend a financing statement mentioned in paragraph (a) or (b) that is registered under this section.

(2) The Registrar may accept an application made under subsection (1), but only if:
  (a) in the case of a financing statement, or a financing change statement, with respect to a transitional security interest—the Registrar is satisfied on reasonable grounds that a transitional security interest will (whether before, at or after the registration commencement time) be:
    (i) attached to the collateral; and
    (ii) held by the applicant; and
  (b) in any case—in the Registrar's opinion, it is operationally practicable for the Registrar to register the financing statement, or financing change statement, before the registration commencement time.

Registration

(3) If the Registrar accepts the application for registration, the Registrar may register the financing statement (or financing change

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statement), in accordance with the application, before the registration commencement time.

Note: The Registrar must give a verification statement to a secured party affected by the registration.

(4) A registration under this section with respect to a transitional security interest must disclose that the collateral is covered by a transitional security agreement.

(5) In the case of a registration with respect to a transitional security interest, the ***registration time*** for the collateral is the registration commencement time.

Note: However, a transitional security interest in the personal property arising under the agreement is perfected from immediately before the registration commencement time, no matter whether the security interest arises before, at or after that time (see section 322).

(6) Chapter 5 (registration) applies in relation to an application for registration under this section, and to such a registration, subject to this section.

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Division 8—Transitional security interests: registration defects

337 Registration effective despite certain defects

Scope

(1) This section applies if:

(a) a registration describes collateral covered by a transitional security agreement; and

(b) the transitional security agreement has given rise to a transitional security interest; and

(c) the registration would not, apart from this section, be effective in respect of the collateral because of a defect in the registered data (including the omission of data); and

(d) the Registrar has made a determination under subsection (2) in relation to defects of that type; and

(e) the determination applies to the registration.

Note: Sections 164 and 165 provide that serious or misleading defects in a registration, and certain particular types of defect, make a registration ineffective.

(2) For the purposes of paragraph (1)(d), the Registrar may, by legislative instrument, determine that registrations in a stated class are effective despite stated types of defect.

(3) A determination under subsection (2) may provide that the determination does not apply in relation to a stated type of defect unless the registration includes particular data in relation to the defect (or in substitution for omitted data).

Registration temporarily unaffected by the defect

(4) Despite sections 164 and 165, the defect does not make the registration ineffective for the period starting at the registration time for the collateral and ending at the following time:

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(a) if the financing statement, as initially registered, states an end time—that end time (or an earlier end time, if the registration is amended to state an earlier end time);

(b) if the financing statement, as initially registered, does not state an end time—the end of the month that is 60 months after the registration commencement time (or an earlier end time, if the registration is amended to state an end time).

Registration becomes ineffective

(5) However, the registration becomes ineffective under section 164 because of the defect immediately after the end of the period mentioned in subsection (4), unless, at or before that time, the registration is amended to correct the defect.

337A Registration defective if collateral is not covered by transitional security agreement

Without limiting section 164 (defects in registration), a registration that discloses that collateral is covered by a transitional security agreement is ineffective to the extent that it describes collateral that is not covered by a transitional security agreement.

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Part 9.5—Charges and fixed and floating charges

338 Guide to this Part

This Part contains special rules dealing with references to charges and fixed and floating charges in laws of the Commonwealth and in security agreements.

These rules are expected to have less relevance over time, as the scheme provided for by this Act provides an alternative to reliance on those techniques for security interest transactions.

339 References to charges and fixed and floating charges

(1) This section applies in relation to a reference to a charge, a fixed charge, or a floating charge, over property in a law of the Commonwealth, or in a security agreement, but only to the extent that:

(a) the charge referred to has attached to personal property; and

(b) title to the personal property to which the charge has attached is in the grantor; and

(c) the charge is a security interest to which this Act applies.

(2) This section does not apply in relation to:

(a) paragraphs 12(2)(a) and (b), or subsection 19(4); or

(b) a reference to a charge, a fixed charge, or a floating charge, if the charge referred to is a perfected security interest that is provided for by a transfer of an account or chattel paper.

(3) A reference to a charge over property is taken to be a reference to a security interest that has attached to:

(a) a circulating asset; or

(b) personal property that is not a circulating asset.

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(4) A reference to a fixed charge over property is taken to be a reference to a security interest that has attached to personal property that is not a circulating asset.

(5) A reference to a floating charge over property is taken to be a reference to a security interest that has attached to a circulating asset.

340 Meaning of *circulating asset*

General definition

(1) For the purposes of this Act, if a grantor grants a security interest in personal property to a secured party, the personal property is a ***circulating asset*** if:

(a) the personal property is covered by subsection (5) (unless subsection (2) or (3) applies); or

(b) in any other case—the secured party has given the grantor express or implied authority for any transfer of the personal property to be made, in the ordinary course of the grantor's business, free of the security interest.

Exceptions

(2) Despite paragraph (1)(a), personal property covered by subsection (5) is not a ***circulating asset*** if:

(a) an effective registration with respect to the property, in relation to the grantor, discloses, in accordance with the regulations, that the secured party has control of the personal property; and

(b) the secured party has control of the personal property.

Note: For the meaning of ***control*** in this subsection, see section 341.

(3) Despite subsection (1), personal property covered by subsection (5) is not a ***circulating asset*** if:

(a) the personal property is goods; and

(b) the security interest is perfected by possession.

(4) For the purposes of paragraph (1)(b), personal property is not a ***circulating asset*** merely because the secured party has given

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express authority to transfer specific personal property, or a specific class of personal property, free of a security interest.

(4A) Despite subsection (1), if a grantor grants a security interest provided for by a transfer of an account or chattel paper, the account or chattel paper is not a ***circulating asset*** in relation to the security interest.

Current assets

(5) This subsection covers the following personal property:

(a) an account that arises from granting a right, or providing services, in the ordinary course of a business of granting rights or providing services of that kind (whether or not the account debtor is the person to whom the right is granted or the services are provided);

(b) an account that is the proceeds of inventory;

(c) an ADI account (other than a term deposit);

(d) currency;

(e) inventory;

(f) a negotiable instrument.

Example: An example of an account mentioned in paragraph (a) is an account that is a credit card receivable.

Note: For the meaning of ***inventory*** in this subsection, see section 341.

341 Meaning of *control* and *inventory*

General rules

(1A) For the purposes of subsection 340(2), a secured party has ***control*** of personal property if:

(a) the secured party has control of the property within the ordinary meaning of the term "control"; or

(b) the secured party has control of the property within the meaning of Part 2.3 (possession and control of personal property); or

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(c) in a case in which the personal property is inventory or an account—the secured party has control of the inventory or account because of:
(i) paragraph (a) or (b); or
(ii) subsection (1), (2), (3) or (4); or
(d) in a case in which the personal property is an ADI account—the secured party has control of the account because of paragraph (a) of this subsection or section 341A.

(1B) For the purposes of subsection 340(5) and this section:
(a) ***inventory*** has its ordinary meaning; and
(b) the definition of ***inventory*** in section 10 does not apply.

Control of inventory

(1) For the purposes of subsection 340(2), a secured party has ***control*** of inventory if:
(a) the secured party and the grantor have agreed in writing that the grantor:
(i) will specifically appropriate the inventory to the security interest; and
(ii) will not remove any specifically appropriated inventory without previously obtaining the specific and express authority of the secured party to do so; and
(b) the grantor's usual practice is to comply with the agreement.

Control of accounts

(2) For the purposes of subsection 340(2), a secured party has ***control*** of the following kinds of accounts (the ***relevant account***) in the circumstances set out in subsections (3) and (4) of this section:
(a) an account mentioned in paragraph 340(5)(a);
(b) an account that is the proceeds of inventory.

(3) The secured party has ***control*** of the relevant account if:
(a) the secured party, and the person to whom the relevant account is owed, have agreed in writing that amounts paid in discharge of the relevant account must be deposited into a specified ADI account; and

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(b) the usual practice is for such amounts to be so deposited; and

(c) the secured party controls the ADI account within the meaning of paragraph (1A)(d); and

(d) depositing any such amounts into the specified ADI account does not result in any person coming under a present liability to pay:

(i) the person to whom the relevant account is owed; or

(ii) if the person to whom the relevant account is owed is a body corporate—a related body corporate (within the meaning of the *Corporations Act 2001*).

(4) If the secured party is a transferee of the relevant account, the secured party has ***control*** of the relevant account if payment by the account debtor to the secured party would discharge the obligation of the account debtor under subsection 80(8) to the extent of the payment.

341A Control of an ADI account

(1) For the purposes of subsection 340(2), a secured party has ***control*** of an ADI account if:

(a) one or more of the following applies:

(i) the secured party is the ADI;

(ii) the secured party is able to direct disposition of the funds from the account without further consent by the grantor;

(iii) the secured party becomes the ADI's customer with respect to the account; and

(b) if the secured party is not the ADI—depositing an amount in the ADI account does not result in any person coming under a present liability to pay:

(i) the debtor; or

(ii) if the debtor is a body corporate—a related body corporate (within the meaning of the *Corporations Act 2001*).

Note: However, a security interest in an ADI account is only perfected by control if the secured party is the ADI (see sections 21 and 25).

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(2) A secured party has ***control*** under subsection (1) even if the grantor retains the right to direct the disposition of funds from the account.

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Part 9.6—Review of operation of Act

342 Guide to this Part

This Part provides for the review of the operation of the Act within 3 years after it starts to apply.

The Act starts to apply under Part 9.3 at the registration commencement time (26 months after the Act is given the Royal Assent, or another time determined by the Minister).

343 Review of operation of Act

(1) The Minister must cause a review of the operation of this Act to be undertaken and completed within 3 years after the registration commencement time.

Note: For ***registration commencement time***, see section 306.

(2) The persons who undertake the review under subsection (1) must give the Minister a written report of the review.

(3) The Minister must cause a copy of the report of the review under subsection (1) to be tabled in each House of the Parliament within 15 sitting days of the day on which the report is given to the Minister.

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Endnotes

Endnote 1—About the endnotes

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history
Endnote 5—Uncommenced amendments
Endnote 6—Modifications
Endnote 7—Misdescribed amendments
Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word "none" will appear in square brackets after the endnote heading.

Abbreviation key—Endnote 2
The abbreviation key in this endnote sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended the compiled law. The information includes commencement information for amending laws and details of application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

Uncommenced amendments—Endnote 5
The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in endnote 5.

Modifications—Endnote 6
If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

Misdescribed amendments—Endnote 7
An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

Miscellaneous—Endnote 8
Endnote 8 includes any additional information that may be helpful for a reader of the compilation.

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Endnote 2—Abbreviation key

ad = added or inserted
am = amended
c = clause(s)
Ch = Chapter(s)
def = definition(s)
Dict = Dictionary
disallowed = disallowed by Parliament
Div = Division(s)
exp = expired or ceased to have effect
hdg = heading(s)
LI = Legislative Instrument
LIA = *Legislative Instruments Act 2003*
mod = modified/modification
No = Number(s)
o = order(s)
Ord = Ordinance
orig = original
par = paragraph(s)/subparagraph(s)
/sub-subparagraph(s)
pres = present
prev = previous
(prev) = previously
Pt = Part(s)
r = regulation(s)/rule(s)
Reg = Regulation/Regulations
reloc = relocated
renum = renumbered
rep = repealed
rs = repealed and substituted
s = section(s)
Sch = Schedule(s)
Sdiv = Subdivision(s)
SLI = Select Legislative Instrument
SR = Statutory Rules
Sub-Ch = Sub-Chapter(s)
SubPt = Subpart(s)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Personal Property Securities Act 2009	130, 2009	14 Dec 2009	15 Dec 2009	
Personal Property Securities (Consequential Amendments) Act 2009	131, 2009	14 Dec 2009	Schedule 4 (items 1–7, 9–35, 37–64): *(a)* Schedule 4 (items 8, 36): 1 Apr 2010 (*see* s. 2(1))	—
Personal Property Securities (Corporations and Other Amendments) Act 2010	96, 2010	6 July 2010	Schedule 2 (items 1–107, 109–153): Royal Assent Schedule 2 (item 108): 30 Jan 2012 (*see* F2011L02397)	—
Personal Property Securities (Corporations and Other Amendments) Act 2011	35, 2011	26 May 2011	Schedule 2: Royal Assent	—
Personal Property Securities Amendment (Registration Commencement) Act 2011	138, 2011	29 Nov 2011	Schedule 1 (items 1–6): Royal Assent	—
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Schedule 1 (items 466, 467): 12 Apr 2013 (*see* s. 2(1)) Schedule 2 (item 1): *(b)*	—
International Interests in Mobile Equipment (Cape Town Convention) (Consequential Amendments) Act 2013	92, 2013	28 June 2013	Sch 1 (item 4): [*see* Endnote 5]	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law Revision Act 2013	103, 2013	29 June 2013	Sch 1 (item 55): Royal Assent Sch 1 (item 73): *(c)*	—
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 1 (items 55, 56): 24 June 2014	—

(a) Subsection 2(1) (items 2, 4 and 6) of the *Personal Property Securities (Consequential Amendments) Act 2009* provides as follows:

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

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
2. Schedule 4, items 1 to 7	The later of: (a) the start of the day this Act receives the Royal Assent; and (b) immediately after the commencement of the *Personal Property Securities Act 2009*. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	15 December 2009 (paragraph (b) applies)
4. Schedule 4, items 9 to 35	The later of: (a) the start of the day this Act receives the Royal Assent; and (b) immediately after the commencement of the *Personal Property Securities Act 2009*. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	15 December 2009 (paragraph (b) applies)
6. Schedule 4, items 37 to 64	The later of: (a) the start of the day this Act receives the Royal Assent; and (b) immediately after the commencement of the	15 December 2009 (paragraph (b) applies)

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Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
	Personal Property Securities Act 2009. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	

(b) Subsection 2(1) (items 2 and 3) of the *Federal Circuit Court of Australia (Consequential Amendments) Act 2013* provides as follows:

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

Provision(s)	Commencement	Date/Details
2. Schedule 1	At the same time as item 1 of Schedule 1 to the *Federal Circuit Court of Australia Legislation Amendment Act 2012* commences.	12 April 2013
3. Schedule 2	Immediately after the commencement of the provision(s) covered by table item 2.	12 April 2013

(c) Subsection 2(1) (item 3) of the *Statute Law Revision Act 2013* provides as follows:

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

Provision(s)	Commencement	Date/Details
3. Schedule 1, Part 2	Immediately after the commencement of item 4 of Schedule 1 to the *Commonwealth Government Securities Legislation Amendment (Retail Trading) Act 2012*.	18 November 2012

Endnote 4—Amendment history

Provision affected	How affected
Chapter 1	
Part 1.1	
s. 3	am. No. 96, 2010; Nos. 35 and 138, 2011
Part 1.2	
s. 6	am. No. 131, 2009; No. 96, 2010
Subhead. to s. 8(4)	am. No. 96, 2010
s. 8	am. No. 131, 2009; No. 96, 2010; No 103, 2013
Note to s. 8(1)(i)	ad. No. 96, 2010
Part 1.3	
Division 2	
s. 10	am. No. 131, 2009; No. 96, 2010; No. 35, 2011; No. 13, 2013
Division 3	
s. 12	am. No. 131, 2009; No. 96, 2010; No. 35, 2011
s. 13	am. No. 96, 2010
s. 14	am. No. 131, 2009; No. 96, 2010
s. 15	rs. No. 96, 2010
	am. No. 35, 2011
Chapter 2	
Part 2.2	
Subhead. to s. 19(5)	am. No. 96, 2010
s. 19	am. No. 96, 2010
Note to s. 19	ad. No. 96, 2010
ss. 20, 21	am. No. 96, 2010; No. 35, 2011
Part 2.3	
s. 23	am. No. 131, 2009; No. 96, 2010
s. 24	am. No. 96, 2010
s. 25	rs. No. 35, 2011
s. 26	am. No. 131, 2009
	rs. No. 96, 2010
	am. No. 35, 2011

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Provision affected	How affected
Part 2.4	
Division 1	
s. 30	am. No. 96, 2010
Division 2	
s. 31	am. No. 96, 2010
s. 32	am. No. 131, 2009; No. 96, 2010
Div 3	
s 36	am No 31, 2014
Division 4	
ss. 39, 40	am. No. 131, 2009
Part 2.5	
s. 41	am. No. 131, 2009; No. 96, 2010
s. 42	am. No. 96, 2010
s. 43	am. No. 131, 2009
s. 44	am. No. 131, 2009; No. 96, 2010; No. 35, 2011
Heading to s. 49	am. No. 131, 2009; No. 96, 2010
s. 49	am. No. 96, 2010
Heading to s. 51	am. No. 96, 2010
s. 51	am. No. 131, 2009; No. 96, 2010
s. 52	am. No. 96, 2010; No. 35, 2011
Note to s. 52(1)	rs. No. 96, 2010
Part 2.6	
Division 1	
s. 54	am. No. 96, 2010
Division 2	
s. 55	am. No. 131, 2009
Note to s. 55	am. No. 131, 2009
s. 57	am. No. 96, 2010
s. 61	am. No. 131, 2009
Division 3	
ss. 62, 63	am. No. 96, 2010
s. 64	am. No. 131, 2009; No. 96, 2010

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Endnote 4—Amendment history

Provision affected	How affected
Division 4	
s. 68	am. No. 96, 2010
Division 5	
Note to s. 71(1)	am. No. 96, 2010
s. 72	am. No. 96, 2010
Division 6	
s. 73	am. No. 131, 2009
s. 75	am. No. 35, 2011
Note 1 to s. 75	am. No. 35, 2011
Subhead. to s. 77(3)	am. No. 131, 2009
	rs. No. 96, 2010
s. 77	am. No. 131, 2009; No. 96, 2010
Part 2.7	
Heading to Part 2.7	rs. No. 96, 2010
s. 78	am. No. 96, 2010
ss. 79, 80	am. No. 131, 2009
Chapter 3	
Part 3.2	
s. 83	rs. No. 96, 2010
s. 84A	ad. No. 96, 2010
ss. 85, 86	am. No. 96, 2010
Chapter 4	
Part 4.2	
s. 108	am. No. 96, 2010
Subhead. to s. 109(3)	am. No. 96, 2010
s. 109	am. No. 96, 2010
s. 112	am. No. 35, 2011
s. 115	am. No. 96, 2010; No. 35, 2011
s. 116	am. No. 96, 2010
	rs. No. 35, 2011
s. 119	am. No. 131, 2009

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Provision affected	How affected
Part 4.3	
Division 1	
s. 122	am. No. 96, 2010
Division 2	
Note to s. 126(1)	ad. No. 96, 2010
Division 3	
ss. 128, 129	am. No. 131, 2009
Division 4	
ss. 135, 136	am. No. 96, 2010
Division 6	
Div. 6 of Part 4.3	ad. No. 96, 2010
ss. 138A–138C	ad. No. 96, 2010
Part 4.4	
ss. 139–141	am. No. 96, 2010
Chapter 5	
Part 5.1	
s. 145	am. No. 35, 2011
Part 5.2	
s. 146	am. No. 35, 2011
s. 148	am. No. 35, 2011
Note to s. 148	
Renumbered Note 1	No. 35, 2011
Note 2 to s. 148	ad. No. 35, 2011
Part 5.3	
s. 150	am. No. 35, 2011
Heading to s. 151	am. No. 35, 2011
s. 151	am. No. 131, 2009; No. 96, 2010; No. 35, 2011
s. 155	am. No. 35, 2011
s. 157	am. No. 131, 2009
Part 5.4	
ss. 164, 165	am. No. 35, 2011
Part 5.5	
Heading to Part 5.5	rs. No. 35, 2011

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Endnote 4—Amendment history

Provision affected	How affected
ss. 169, 170	am. No. 35, 2011
s. 171	am. No. 131, 2009; No. 35, 2011
Note to s. 171(1)(e)	rs. No. 35, 2011
Subhead. to s. 172(2)	rs. No. 35, 2011
s. 172	am. No. 35, 2011
s. 174	am. No. 96, 2010; No. 35, 2011
Heading to s. 175	rs. No. 35, 2011
Part 5.5A	
Part 5.5A	ad. No. 35, 2011
ss. 176A–176C	ad. No. 35, 2011
Part 5.6	
Division 1	
s. 178	am. No. 96, 2010
Note to s 178(1)	am No 103, 2013
Part 5.9	
s. 195A	ad. No. 35, 2011
Chapter 6	
Part 6.2	
Division 1	
s. 205	am. No. 13, 2013
s. 206	am. No. 13, 2013
Division 2	
s. 207	am. No. 13, 2013
s. 208	am. No 13, 2013
Division 3	
s. 210	am. No. 13, 2013
Note 1 to s. 210(2)	am. No. 13, 2013
Note 2 to s. 210(2)	am. No. 13, 2013
s. 211	am. No. 13, 2013
Chapter 7	
Part 7.2	
s. 235	am. No. 131, 2009

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Provision affected	How affected
s. 237	am. No. 96, 2010
Subhead. to s. 238(1)	rs. No. 131, 2009
s. 238	am. No. 131, 2009
s. 239	am. No. 131, 2009; No. 96, 2010
s. 241	am. No. 96, 2010
Part 7.3	
Division 1	
Heading to Div. 1 of Part 7.3	ad. No. 96, 2010
s. 242	am. No. 96, 2010
Division 2	
Heading to Div. 2 of Part 7.3	ad. No. 96, 2010
s. 243	am. No. 96, 2010
Note 1 to s. 243(1)	rep. No. 96, 2010
Note 2 to s. 243(1) Renumbered Note	No. 96, 2010
Subhead. to s. 244(3)	rs. No. 96, 2010
s. 244	am. No. 96, 2010; No. 35, 2011
Division 3	
Div. 3 of Part 7.3	ad. No. 96, 2010
ss. 252A, 252B	ad. No. 96, 2010
Part 7.4	
Division 2	
Note to s. 254(2)(h)	am. No. 96, 2010
Division 3	
s. 260	rep. No. 96, 2010
Chapter 8	
Part 8.1	
s. 265	am. No. 131, 2009
Part 8.2	
s. 267	am. No. 131, 2009
Note 2 to s. 267(1)	am. No. 96, 2010

Endnote 4—Amendment history

Provision affected	How affected
Note to s. 267(2)	ad. No. 131, 2009
Note to s. 267(3)	am. No. 96, 2010
s. 267A	ad. No. 96, 2010
s. 268	am. No. 131, 2009; No. 96, 2010
s. 269	am. No. 96, 2010
Part 8.5	
s. 293	am. No. 35, 2011
Part 8.7	
s. 302	am. No. 35, 2011
Chapter 9	
Part 9.1	
s. 304	am. No. 96, 2010; No. 138, 2011
Part 9.2	
s. 306	am. No. 138, 2011
Note to s. 306(4)	am. No. 138, 2011
s. 307	am. No. 96, 2010
Part 9.3	
s. 309	am. No. 138, 2011
s. 311	rs. No. 96, 2010
s. 313	rs. No. 96, 2010
s. 317	am. No. 131, 2009
Part 9.4	
Division 1	
Div. 1 of Part 9.4	rs. No. 96, 2010
s. 319	rs. No. 96, 2010
	am. No. 138, 2011
Division 2	
Div. 2 of Part 9.4	rs. No. 96, 2010
s. 320	rs. No. 96, 2010
	am. No. 35, 2011
ss. 321, 322	rs. No. 96, 2010
s. 322A	ad. No. 35, 2011

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Provision affected	How affected
ss. 323, 324	rs. No. 96, 2010
s. 325	rep. No. 96, 2010
Div. 3 of Part 9.4	rep. No. 96, 2010
s. 326	rep. No. 96, 2010
Div. 4 of Part 9.4	rep. No. 96, 2010
s. 327	am. No. 131, 2009
	rep. No. 96, 2010
s. 328	rep. No. 96, 2010
Div. 5 of Part 9.4	rep. No. 96, 2010
s. 329	rep. No. 96, 2010
Division 6	
s. 333	am. No. 96, 2010
Division 7	
s. 336	rs. No. 96, 2010
Division 8	
s. 337	rs. No. 96, 2010
s. 337A	ad. No. 96, 2010
Part 9.5	
ss. 338, 339	am. No. 131, 2009
Subhead. to s. 340(5)	rs. No. 131, 2009
s. 340	am. No. 131, 2009; No. 35, 2011
Note to s. 340(2)	rs. No. 96, 2010
Note to s. 340(5)	ad. No. 96, 2010
Heading to s. 341	rs. No. 96, 2010
s. 341	am. No. 96, 2010; No. 35, 2011
s. 341A	ad. No. 35, 2011
Part 9.6	
s. 342	rs. No. 131, 2009
	am. No. 138, 2011

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Endnote 5—Uncommenced amendments

International Interests in Mobile Equipment (Cape Town Convention) (Consequential Amendments) Act 2013 (No. 92, 2013)

Schedule 1

4 At the end of section 256

Add:

; (d) the *International Interests in Mobile Equipment (Cape Town Convention) Act 2013*.

Endnote 6—Modifications [none]

Endnote 7—Misdescribed amendments [none]

Endnote 8—Miscellaneous [none]

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