



Australian Capital Territory

Personal Property Securities Act 2010

A2010-15

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Australian Capital Territory

Personal Property Securities Act 2010

A2010-15

An Act relating to personal property securities to make provision consequent on the enactment by the Parliament of the Commonwealth of the *Personal Property Securities Act 2009* (Cwlth)

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Personal Property Securities Act 2010*.

2 Commencement

- (1) Division 2.1 commences on the day after this Act's notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

- (2) The remaining provisions commence on—

- (a) a day fixed by the Minister by written notice; or
(b) if a day has not been fixed before the day of the registration commencement time—the day of the registration commencement time.

Note 1 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 2 For the meaning of **registration commencement time** see the *Personal Property Securities Act 2009* (Cwlth).

- (3) A day may not be fixed under subsection (2) (a) that is earlier than the day of the registration commencement time.
(4) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

4 Expiry—Act

This Act expires 2 years after division 2.1 commences.

Part 2 Savings and transitional provisions

Division 2.1 General

5 Definitions

In this Act:

existing Act means the *Instruments Act 1933*.

existing motor vehicle provisions means the *Sale of Motor Vehicles Act 1977*, part 4A (other than section 32F).

director-general means the director-general under the NSW Act.

migration time—see the PPS Act, section 306.

NSW Act means the *Registration of Interests in Goods Act 1986* (NSW).

PPS Act means the *Personal Property Securities Act 2009* (Cwlth).

PPS register—see the PPS Act, section 10, definition of *register*.

PPS registrar—see the PPS Act, section 10, definition of *Registrar*.

pre-PPS transitional period means the period—

- (a) commencing at the migration time or an earlier time prescribed by regulation; and
- (b) ending at the registration commencement time.

registration commencement time—see the PPS Act, section 306.

REVS means the register kept under the NSW Act, section 4.

transitional security interest—see the PPS Act, section 308.

6 Giving information to the Commonwealth

- (1) The registrar-general is authorised to give the Commonwealth, the PPS registrar or any other officer of the Commonwealth the information recorded in, or concerning the use of, any register, book or index kept under the existing Act that the registrar-general considers appropriate in order to assist the Commonwealth in establishing the PPS register.
- (2) The registrar-general may give the information in whatever form (including by means of electronic data or in a form approved for the PPS Act) that the registrar-general considers appropriate.
- (3) This section has effect despite anything in another territory law.

7 Territory not liable—PPS transitional matters

- (1) The Territory, or an officer, employee or agent of the Territory, does not incur liability for an act or omission done honestly and without recklessness if the act or omission is a PPS transitional matter or arises (directly or indirectly) from a PPS transitional matter.

- (2) In this section:

PPS transitional matter means—

- (a) the giving of information to the Commonwealth, the PPS registrar, any other officer of the Commonwealth or any other person for the purpose of assisting the Commonwealth in establishing the PPS register; or
- (b) a request to the director-general to give information to the Commonwealth, the PPS registrar, any other officer of the Commonwealth or any other person for the purpose of assisting the Commonwealth in establishing the PPS register; or
- (c) the exercise of a function under, or the administration of, this part.

8 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

9 Application of Legislation Act, s 88

This part is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

Division 2.2 Interests in motor vehicles

10 Existing motor vehicle provisions cease to have effect at registration commencement time

- (1) The existing motor vehicle provisions cease to have effect in relation to motor vehicles at the registration commencement time, except as otherwise provided by this division.
- (2) If an existing provision (the *primary provision*) is continued in effect by this division, any other provision of the existing motor vehicle provisions that is mentioned in the primary provision is also continued in effect to the extent necessary for the purposes of the continued application of the primary provision.

- (3) This division has effect—
- (a) despite anything in the existing motor vehicle provisions; and
 - (b) in relation to the existing motor vehicle provisions that this division continues in effect after the registration commencement time even after the existing motor vehicle provisions are repealed by this Act.

11 Search certificates and notices

Section 32D of the existing motor vehicle provisions continues to apply after the registration commencement time in relation to any certificate issued under that section before that time.

Note 1 The director-general may continue to issue certificates under the NSW Act, s 8 (5) during a post-PPS transitional period as to the state of REVS in relation to motor vehicles at any time in the 7 years before the registration commencement time. The provisions of that Act, s 8 will continue to apply to these certificates. A NSW regulation may make provision in relation to the issue of certificates during a pre-PPS transitional period.

Note 2 For the NSW provisions—

- *post-PPS transitional period* means the period of 7 years commencing at the registration commencement time; and
- *pre-PPS transitional period*—see s 5.

12 Enforcement of interests in motor vehicles

Subject to the PPS Act, chapter 9 (Transitional provisions), section 32E, section 32G and section 32H of the existing motor vehicle provisions continue to apply to an interest in a motor vehicle if the interest is created before the registration commencement time.

Division 2.3 Interests to which Instruments Act 1933 applies

13 Existing Act ceases to have effect at registration commencement time

- (1) The existing Act ceases to have effect at the registration commencement time, except as otherwise provided by this division.
- (2) If a provision of the existing Act (the *primary provision*) is continued in effect by this division, any other provision of the existing Act that is mentioned in the primary provision is also continued in effect to the extent necessary for the purposes of the continued application of the primary provision.
- (3) This division has effect—
 - (a) despite anything in the existing Act; and
 - (b) in relation to a provision of the existing Act that this division continues in effect after the registration commencement time even after the existing Act is repealed by this Act.

14 Registrar-general may refuse to exercise registration functions

- (1) The registrar-general may refuse to exercise a registration function during the pre-PPS transitional period.
- (2) Without limiting subsection (1), the registrar-general may refuse to exercise a registration function during the pre-PPS transitional period in relation to a matter that was not finally determined or concluded immediately before the commencement of that period.
- (3) In this section:
registration function means any of the registrar-general's functions under the existing Act relating to the registration of instruments for the existing Act.

15 Registrable instruments executed before commencement time

- (1) Nothing in this division is intended to affect the continued validity and enforceability of any registrable instrument that is in effect immediately before the time when the existing Act ceases to apply because of section 13.
- (2) Any instrument executed before the registration commencement time that has not been (but could have been) registered under the existing Act immediately before the registration commencement time is taken to have had effect in accordance with its terms immediately before that time.
- (3) Any instrument executed before the registration commencement time that has not been (but could have been) registered under the existing Act as a variation, renewal, assignment or discharge of an instrument immediately before the registration commencement time is taken to have effect in accordance with its terms immediately before that time.
- (4) This section has effect subject to the PPS Act, chapter 9 (Transitional provisions).

16 Enforcement of interests

- (1) Subject to the PPS Act, chapter 9 (Transitional provisions), any provision of the existing Act with respect to enforcement of an interest continues to apply in relation to—
 - (a) a transitional security interest; and
 - (b) any registrable instrument (within the meaning of the existing Act) executed before the registration commencement time.
- (2) In this section:
enforcement, of an interest, includes priority of an interest.

17 Fees payable

Any fee that is payable under the existing Act immediately before the registration commencement time continues to be payable and may be recovered by the registrar-general in a court of competent jurisdiction after the registration commencement time.

Part 3 Legislation amended and repealed

18 Legislation amended—schs 1-3

This Act amends the legislation mentioned in schedules 1 to 3.

19 Legislation repealed

- (1) The *Instruments Act 1933* (A1933-25) is repealed.
- (2) All legislative instruments under the *Instruments Act 1933* (A1933-25) are repealed.

Schedule 1 Amendments—interests not personal property for PPS Act

(see s 18)

Part 1.1 Liquor Act 1975

[1.1] New section 176

insert

176 Licences and permits not personal property—PPS Act

- (1) For the PPS Act, section 10, definition of *personal property*, a licence or permit is not personal property.
- (2) In this section:

PPS Act means the *Personal Property Securities Act 2009* (Cwlth).

Part 1.2 Planning and Development Act 2007

[1.2] New section 417 (3)

insert

- (3) For the *Personal Property Securities Act 2009* (Cwlth), section 10, definition of *personal property*, a right granted by licence under subsection (1) is not personal property.

Schedule 2 Amendments—statutory interests for PPS Act

(see s 18)

Part 2.1 Confiscation of Criminal Assets Act 2003

[2.1] New section 94 (4) (ba)

insert

(ba) is a statutory interest of a kind to which the *Personal Property Securities Act 2009* (Cwlth), section 73 (2) applies; and

Part 2.2 Criminal Code 2002

[2.2] New section 377 (6A)

insert

(6A) Any interest held by the public trustee in relation to property transferred under section 376 (2) is a statutory interest of a kind to which the *Personal Property Securities Act 2009* (Cwlth), section 73 (2) applies.

Part 2.3 Hemp Fibre Industry Facilitation Act 2004

[2.3] Section 42 (5)

substitute

- (5) Also, if the chief executive becomes aware that the harvested material is subject to a security interest under the *Personal Property Securities Act 2009* (Cwlth) that has not been satisfied, the chief executive must pay any balance—
 - (a) first, in satisfaction of the security interest; and
 - (b) then, to the former licensee.
- (6) Any interest held by the chief executive in relation to the proceeds of sale under section 40 or section 41 is a statutory interest of a kind to which the *Personal Property Securities Act 2009* (Cwlth), section 73 (2) applies.

Part 2.4 Public Trustee Act 1985

[2.4] New section 72 (2)

insert

- (2) The lien is a statutory interest to which the *Personal Property Securities Act 2009* (Cwlth), section 73 (2) applies.

Part 2.5

Road Transport (Safety and Traffic Management) Regulation 2000

[2.5] New section 112 (7)

insert

- (7) An interest mentioned in subsection (6), definition of *balance of proceeds of sale* paragraph (a) or (b) is a statutory interest of a kind to which the *Personal Property Securities Act 2009* (Cwlth), section 73 (2) applies.

Schedule 3 Other amendments

(see s 18)

Part 3.1 Cooperatives Regulation 2003

[3.1] Section 44

omit

Part 3.2 Mercantile Law Act 1962

[3.2] Section 20 (2) (b)

substitute

- (b) any person who has a security interest registered under the *Personal Property Securities Act 2009* (Cwlth) in relation to the goods; and

Part 3.3 Registration of Deeds Act 1957

[3.3] Section 4A (1), new note

insert

Note The *Personal Property and Securities Act 2009* (Cwlth) (*PPS Act*) regulates certain interests in personal property. This Act has no effect to the extent it is inconsistent with the PPS Act.

Part 3.4 Sale of Motor Vehicles Act 1977

[3.4] Sections 32A to 32F

substitute

32A Liability of dealer to creditor if security interest defeated

- (1) This section applies if—
 - (a) a motor vehicle is purchased from a dealer by a non-dealer; and
 - (b) at any time before payment of the purchase price, the dealer had notice that the vehicle was subject to a security interest within the meaning of the PPS Act; and
 - (c) immediately before payment of the purchase price, the security interest had not been discharged or cancelled.
- (2) The dealer is liable to the person who had the security interest for any loss of the person because of the operation of the PPS Act, part 2.5 (Taking personal property free of security interests) in relation to the interest.
- (3) However, the dealer is not liable to the person if the dealer purchased the motor vehicle free from the security interest of the person because of the operation of the PPS Act, part 2.5 in relation to the interest.
- (4) In this section:

non-dealer means a person who is not a dealer.

payment, of a purchase price, means—

 - (a) if the purchase is not by an exchange—giving valuable consideration for the purchase price; or
 - (b) if all of the purchase price is not paid at the same time—the first payment of part of the purchase price; or

(c) if the purchase is by an exchange—making the exchange.

PPS Act means the *Personal Property Securities Act 2009* (Cwlth)

purchase, of a motor vehicle, means acquiring the vehicle from a person selling or exchanging the vehicle who has, or appears to have, authority to dispose of the vehicle in that way.

[3.5] Dictionary

omit the definitions of

creditor

debtor

director-general

hirer

lease

non-dealer

notice

NSW Act

[3.6] Dictionary, definition of owner

substitute

owner, in relation to a motor vehicle—

- (a) includes a person—
- (i) who is the sole owner, joint owner or part owner of the motor vehicle; or
 - (ii) who has possession of the motor vehicle under a hire-purchase agreement, or bill of sale or similar instrument; or

- (iii) who has possession of the motor vehicle under a contract or hire; but
- (b) does not include a person—
 - (i) mentioned in paragraph (a) (i) who does not have possession of the motor vehicle; or
 - (ii) who is entitled under a contract of hire, hire-purchase agreement, or bill or sale of similar instrument, to possession of the motor vehicle but who does not have possession of it.

[3.7] Dictionary

omit the definitions of

participating state

payment

purchase

registered

register of interests

registrable interest

security interest

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 11 February 2010.

2 Notification

Notified under the Legislation Act on 1 April 2010.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Personal Property Securities Bill 2010, which was passed by the Legislative Assembly on 23 March 2010.

Acting Clerk of the Legislative Assembly

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