

Passed by both Houses



New South Wales

Personal Property Securities (Commonwealth Powers) Amendment Bill 2009

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2009

Clerk of the Parliaments



New South Wales

Personal Property Securities (Commonwealth Powers) Amendment Bill 2009

Act No , 2009

An Act to amend the *Personal Property Securities (Commonwealth Powers) Act 2009* to make provision for matters of a savings or transitional nature consequent on the referral of matters by that Act to the Parliament of the Commonwealth; and to make related amendments to other legislation.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Personal Property Securities (Commonwealth Powers) Amendment Act 2009*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Sections 3 and 4 and Schedule 2.1–2.3 and 2.5 commence on a day or days to be appointed by proclamation.
- (3) A day may not be appointed under subsection (2) for the commencement of section 3 or 4 that is earlier than the day on which the registration commencement time (within the meaning of the *Personal Property Securities Act 2009* of the Commonwealth) occurs.

3 Repeal of Registration of Interests in Goods Act 1986 No 37 and associated regulations

The *Registration of Interests in Goods Act 1986* and any regulation made under that Act are repealed.

4 Repeal of Security Interests in Goods Act 2005 No 69

The *Security Interests in Goods Act 2005* is repealed.

Schedule 1 Amendment of Personal Property Securities (Commonwealth Powers) Act 2009 No 35

Schedule 1

Insert at the end of the Act:

Schedule 1 Savings, transitional and other provisions consequent on enactment of Personal Property Securities Act 2009 of the Commonwealth

Part 1 Preliminary

1 Definitions

(1) In this Schedule:

Director-General means the Director-General within the meaning of the *Registration of Interests in Goods Act 1986*.

exercise a function includes perform a duty.

function includes a power, authority or duty.

General Register of Deeds means the General Register of Deeds kept under Division 1 of Part 23 of the *Conveyancing Act 1919*.

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

migration time has the same meaning as in the PPS Act.

PPS Act means the *Personal Property Securities Act 2009* of the Commonwealth.

PPS Register means the Personal Property Securities Register established under the PPS Act.

PPS Registrar means the Registrar of Personal Property Securities under the PPS Act.

registration commencement time has the same meaning as in the PPS Act.

REVS means the Register maintained under the *Registration of Interests in Goods Act 1986*.

the 2009 amending Act means the *Personal Property Securities (Commonwealth Powers) Amendment Act 2009*.

transitional security interest has the same meaning as in the PPS Act.

- (2) A reference in this Schedule to an Act or statutory rule that is repealed by the 2009 amending Act is, on and from the day on which the Act or statutory rule is repealed, a reference to the Act or statutory rule as in force immediately before that day.
- (3) Notes included in this Schedule do not form part of this Act.

Part 2 Savings and transitional provisions relating to transfer of functions to Commonwealth

Division 1 General

2 Provision of information to the Commonwealth

- (1) The Director-General is specifically authorised to provide the Commonwealth, the PPS Registrar or any other officer of the Commonwealth with such information recorded in, or concerning the use of, REVS as the Director-General considers appropriate in order to assist the Commonwealth in establishing the PPS Register.
- (2) For the purposes of subclause (1), information recorded in REVS on behalf of another State or a Territory pursuant to an agreement under section 15A of the *Registration of Interests in Goods Act 1986* may be provided to the Commonwealth, the PPS Registrar or any other officer of the Commonwealth only if the Director-General has been requested to do so by or on behalf of the State or Territory concerned.
- (3) The Registrar-General is specifically authorised to provide the Commonwealth, the PPS Registrar or any other officer of the Commonwealth with such information recorded in, or concerning the use of, the General Register of Deeds for the purposes of the *Security Interests in Goods Act 2005* as the Registrar-General considers appropriate in order to assist the Commonwealth in establishing the PPS Register.
- (4) The Director-General and Registrar-General may provide the information that they are authorised to provide under this clause in whatever form (including by means of electronic data or in a form approved for the purposes of the PPS Act) as they consider appropriate.
- (5) Subject to subclause (6), the provisions of this clause prevail to the extent of any inconsistency with the provisions of any other Act or statutory rule.

- (6) The provisions of this clause are in addition to, and do not derogate from, the provisions of section 9A of the *Fair Trading Act 1987*.

Division 2 Interests to which Registration of Interests in Goods Act 1986 applies

3 Interpretation

In this Division:

existing Act means the *Registration of Interests in Goods Act 1986*.

post-PPS transitional period means the period of 7 years commencing at the registration commencement time.

pre-PPS transitional period means the period:

- (a) commencing at the migration time or such earlier time as may be prescribed by the regulations, and
- (b) ending at the registration commencement time.

prescribed goods has the same meaning as in the existing Act.

the Minister means the Minister administering the *Fair Trading Act 1987*.

4 Existing Act ceases to have effect at registration commencement time

- (1) The existing Act ceases to have effect in relation to prescribed goods 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:
 - (a) any other provision of the existing Act (a *related provision*) that is referred to in the primary provision is also continued in effect to the extent necessary for the purposes of the continued application of the primary provision, and
 - (b) any power to make regulations in respect of a matter that is conferred by the primary provision or a related provision is taken to include a power for the matter to be prescribed by regulations made under this Act after the registration commencement time.
- (3) The regulations under the existing Act as in force immediately before the registration commencement time continue to apply for the purposes of a primary provision or related provision that

confers a regulation-making power for a matter under the existing Act until regulations are made under this Act for that matter.

- (4) This Division has effect:
- (a) despite anything to the contrary in the existing Act, and
 - (b) in relation to provisions of the existing Act that this Division continues in effect after the registration commencement time even after the existing Act is repealed by the 2009 amending Act.

Note. Section 3 of the 2009 amending Act provides for the repeal of the existing Act on a day appointed by proclamation (being a day that is not earlier than the day on which the registration commencement time occurs).

5 Director-General may refuse to exercise registration functions

- (1) Subject to clause 6, the Director-General may refuse to exercise a registration function during the pre-PPS transitional period.
- (2) Without limiting subclause (1), the Director-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 clause:
registration function means any function conferred or imposed on the Director-General by or under:
 - (a) section 5, 6, 7 or 16A of the existing Act, or
 - (b) any other provision of the existing Act concerning registration or REVS as may be prescribed by the regulations.

6 Show cause proceedings under section 7 of existing Act

- (1) This clause applies to the following matters:
 - (a) a notice given to a person by the Director-General under section 7 (3) of the existing Act that is in force immediately before the registration commencement time if the period specified in the notice had not yet expired by that time (an *existing show cause notice*),
 - (b) the cancellation of the registration of an interest by the Director-General following the giving of a notice to a person under section 7 (3) of the existing Act if the person has a right to apply to the Administrative Decisions Tribunal for a review of the cancellation immediately before the registration commencement time (an *existing reviewable cancellation decision*),

- (c) an application to the Administrative Decisions Tribunal for the review of a decision of the Director-General following the giving of a notice under section 7 (3) of the existing Act to cancel the registration of an interest if the application is pending, but not finally determined, immediately before the registration commencement time (an *existing review application*).
- (2) An existing show cause notice may be dealt with under the existing Act as if the power of the Director-General under section 7 (4) of that Act to decide whether to cancel the registration of the interest were a power to decide whether the registration should have been cancelled had the Act continued in effect.
- (3) An existing reviewable cancellation decision may be the subject of an application for review to the Administrative Decisions Tribunal, and may be dealt with by the Tribunal, under the existing Act as if the right to seek the review of the decision of the Director-General to cancel the registration of the interest were a right to seek a review of a decision of the Director-General that the registration should have been cancelled had the Act continued in effect.
- (4) An existing review application may be determined by the Administrative Decisions Tribunal under the existing Act as if the jurisdiction of the Tribunal to review the decision of the Director-General to cancel the registration of the interest were jurisdiction to review a decision of the Director-General that the registration should have been cancelled had the Act continued in effect.
- (5) The Director-General may, if satisfied that a matter to which this clause applies has been finalised, provide the PPS Registrar with a written notice (based on the results of the finalisation of the matter) stating the following:
 - (a) the nature of the matter that has been finalised,
 - (b) whether or not the interest to which the matter related should have been registered in REVS,
 - (c) whether or not the interest should be treated as a migrated security interest for the purposes of the PPS Act.

Note. The PPS Registrar has power under the PPS Act to remove migrated data that has mistakenly been included in the PPS Register.

7 Search certificates and notices

- (1) The provisions of section 8 of the existing Act continue to apply after the registration commencement time in relation to any certificate issued under that section before that time.
- (2) The Director-General may continue to issue certificates under section 8 (5) of the existing Act during the post-PPS transitional period as to the state of REVS in relation to goods at any time in the 7 years before the registration commencement time.
- (3) The provisions of section 8 (6)–(9) of the existing Act, in their application to certificates under section 8 (5), continue to apply to certificates issued as provided by subclause (2).
- (4) The regulations may make provision for or with respect to the issue of certificates under section 8 (1) of the existing Act during the pre-PPS transitional period.
- (5) Regulations made for the purposes of subclause (4) prevail to the extent of any inconsistency with the provisions of the existing Act.

8 Enforcement of interests in prescribed goods

Subject to Chapter 9 (Transitional provisions) of the PPS Act:

- (a) sections 9 and 10 of the existing Act continue to apply to purchases that occurred before the registration commencement time, and
- (b) sections 3B, 10A and 11 of the existing Act continue to apply in relation to:
 - (i) transitional security interests in prescribed goods, and
 - (ii) any other interests in prescribed goods that arose before the registration commencement time.

Note. Chapter 9 of the PPS Act makes provision for matters of a transitional nature in relation to the commencement of the provisions of that Act. The PPS Act will start to apply to security interests in personal property (including transitional security interests) at the registration commencement time.

Section 308 of the PPS Act defines a **transitional security interest** to be 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—the PPS Act would have applied in relation to the security interest immediately before the registration commencement time, but for section 310 (which provides for the Act to start to apply at that time), 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) the PPS Act applies in relation to the security interest.

A **transitional security agreement** is an agreement or act by which a security interest of a kind to which the PPS Act applies is created, arises or is provided for and that was in force immediately before the registration commencement time.

9 Compensation provisions under existing Act

- (1) The provisions of sections 13 and 14 of the existing Act continue to apply after the registration commencement time in relation to the determination of compensation for loss sustained in connection with an application for registration of a registrable interest (within the meaning of that Act) that was made before that time.
- (2) The provisions of section 15 of the existing Act continue to apply in relation to decisions of the Director-General made before the registration commencement time.

10 Offences under existing Act

The provisions of the existing Act continue to apply after the registration commencement time in relation to offences committed, or alleged to have been committed, before that time.

11 Fees and charges payable under existing Act

- (1) The following fees and charges remain recoverable by the Director-General in a court of competent jurisdiction after the registration commencement time:
 - (a) any fees or charges that were payable under the existing Act immediately before that time,
 - (b) any fees or charges for which the Director-General may require payment under subclause (2).
- (2) After the registration commencement time, the Director-General may require payment by an account customer (within the meaning of section 16A of the existing Act) of any fees and charges that would have been payable under arrangements made under the existing Act for a matter arising before that time had the Act continued in effect.

12 Agreements under section 15A of existing Act

- (1) Any agreement in force under section 15A of the existing Act immediately before the registration commencement time continues to have effect after that time in respect of matters arising before that time.
- (2) Section 15A (2) of the existing Act continues to have effect for this purpose.

13 Funding arrangements

- (1) The Registration of Interests in Goods Account established under section 11 of the existing Act is abolished at the registration commencement time.
- (2) The Director-General may, by order in writing, direct that any money standing to the credit of that Account on the date of its abolition be applied for any of the purposes referred to in section 11 (5) of the existing Act.
- (3) For the purposes of subclause (2), a reference to the existing Act in section 11 (5) of that Act is taken to include a reference to this Division and the provisions of the existing Act that are continued in effect by this Division.

14 Delegations by Director-General

- (1) The Director-General may delegate the following functions of the Director-General to appropriate persons:
 - (a) a function under this Schedule (apart from this power of delegation),
 - (b) a function under any provision of the existing Act that continues to have effect after the registration commencement time by operation of this Division.
- (2) The following are *appropriate persons* for the purposes of subclause (1):
 - (a) a person engaged in the administration of the existing Act,
 - (b) a person engaged in the administration of any other Act administered by the Minister.
- (3) A delegation that is in force immediately before the registration commencement time in relation to a provision of the existing Act that continues to have effect after that time by operation of this Division has effect as a delegation under this clause until it is revoked by the Director-General.

Division 3 Interests to which Security Interests in Goods Act 2005 applies

15 Interpretation

In this Division:

agricultural goods mortgage, aquaculture fish mortgage, crop mortgage and *stock mortgage* have the same meanings as in the existing Act.

existing Act means the *Security Interests in Goods Act 2005*.

goods has the same meaning as in the existing Act.

pre-PPS transitional period means the period:

- (a) commencing at the migration time or such earlier time as may be prescribed by the regulations, and
- (b) ending at the registration commencement time.

16 Existing Act ceases to have effect at registration commencement time

- (1) The existing Act ceases to have effect in relation to goods 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:
 - (a) any other provision of the existing Act (a *related provision*) that is referred to in the primary provision is also continued in effect to the extent necessary for the purposes of the continued application of the primary provision, and
 - (b) any power to make regulations in respect of a matter that is conferred by the primary provision or a related provision is taken to include a power for the matter to be prescribed by regulations made under this Act after the registration commencement time.
- (3) This Division has effect:
 - (a) despite anything to the contrary in the existing Act, and
 - (b) in relation to provisions of the existing Act that this Division continues in effect after the registration commencement time even after the existing Act is repealed by the 2009 amending Act.

Note. Section 4 of the 2009 amending Act provides for the repeal of the existing Act on a day appointed by proclamation (being a day that is not

earlier than the day on which the registration commencement time occurs).

17 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 subclause (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 clause:
registration function means any function conferred or imposed on the Registrar-General by or under a provision of the existing Act relating to the registration of instruments for the purposes of the existing Act.

18 Agricultural goods mortgages

- (1) Nothing in this Division is intended to affect the continued validity and enforceability of any agricultural goods mortgage that is in effect immediately before the time when the existing Act ceases to apply to agricultural goods by operation of clause 16.
- (2) Any instrument executed before the registration commencement time that has not been (but could have been) registered under the existing Act as an agricultural goods mortgage immediately before the registration commencement time is taken to have had effect as an agricultural goods mortgage 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 agricultural goods mortgage immediately before the registration commencement time is taken to have effect as such immediately before that time.
- (4) This clause has effect subject to Chapter 9 (Transitional provisions) of the PPS Act.

19 Enforcement of interests in goods

- (1) Subject to Chapter 9 (Transitional provisions) of the PPS Act, the existing enforcement provisions continue to apply in relation to:
 - (a) transitional security interests in goods, and

- (b) any other security interests in goods (within the meaning of the existing Act) that arose before the registration commencement time.

Note. See the note to clause 8.

- (2) In this clause:
existing enforcement provisions means the following provisions of the existing Act:
 - (a) in relation to crop mortgages—sections 8–11,
 - (b) in relation to stock mortgages—section 14,
 - (c) in relation to aquaculture fish mortgages—section 16,
 - (d) in relation to agricultural goods mortgages—section 19,
 - (e) Division 4 of Part 3.

20 Offences under section 32 of the existing Act

The provisions of the existing Act continue to apply after the registration commencement time in relation to offences committed, or alleged to have been committed, under section 32 of that Act before that time.

21 Fees payable for registration

Any fee that was payable under the *Conveyancing Act 1919* for the registration of an instrument for the purposes of the existing Act immediately before the registration commencement time continues to be payable under that Act.

Part 3 Miscellaneous

22 Compensation not payable in respect of PPS transitional matters

- (1) Compensation is not payable by or on behalf of:
 - (a) the State or an authority of the State, or
 - (b) an officer, employee or agent of the State,for an act or omission that is a PPS transitional matter or that arises (directly or indirectly) from a PPS transitional matter.
- (2) Subclause (1):
 - (a) applies only in respect of acts done or omitted to be done in good faith, and
 - (b) does not apply to acts or omissions that cause personal injury to a person or the death of a person, and
 - (c) does not limit the operation of clause 9.

- (3) In this clause:
- compensation** includes damages and any other form of monetary compensation.
- PPS transitional matter** means any of the following:
- (a) the provision 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,
 - (b) a refusal by the Director-General or the Registrar-General to exercise a registration function as provided by clause 5 or 17 respectively,
 - (c) the administration of this Act or the regulations,
 - (d) the exercise of functions under this Act or the regulations.

23 Implied power to make declarations that licences etc not personal property

A power conferred by an Act on any person or body to make a statutory rule that grants or confers, or provides for the granting or conferral of, a licence or other State statutory right includes the power to declare that the licence or right is not personal property for the purposes of the PPS Act.

Note. The terms *licence* and *State statutory right* are defined by section 3 of this Act.

24 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subclause (1), the regulations may declare a matter to be an excluded matter for the purposes of section 259 of the PPS Act in relation to:
 - (a) the whole of the PPS Act (or an instrument made under that Act), or
 - (b) a specified provision of the PPS Act (or an instrument made under that Act), or
 - (c) the PPS Act (or an instrument made under the PPS Act), other than a specified provision, or
 - (d) the PPS Act (or an instrument made under the PPS Act), otherwise than to a specified extent.

- (3) Without limiting subclauses (1) and (2), the regulations may contain provisions of a savings or transitional nature consequent on the enactment or making of the following Acts and instruments:
 - (a) this Act,
 - (b) the 2009 amending Act,
 - (c) the PPS Act or any Act or instrument of the Commonwealth that amends the PPS Act.
- (4) If the regulations so provide, any provision referred to in subclause (3) may:
 - (a) have effect despite any specified provision of this Schedule, and
 - (b) take effect from the date of assent to the Act or the making of the instrument concerned or a later date.
- (5) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (6) Any matter for which a regulation made under this Act makes provision is taken to be a matter for which a regulatory impact statement is not required for the purposes of the *Subordinate Legislation Act 1989*.

25 Updating of references to Personal Property Securities Act 2009 of the Commonwealth

- (1) This clause applies to any reference to the *Personal Property Securities Act 2009* of the Commonwealth in this Act (other than this clause) or in the 2009 amending Act.
- (2) Any reference to which this clause applies is to be read as a reference to the *Personal Property Securities Act 2010* of the Commonwealth if the *Personal Property Securities Bill 2009* that was introduced in the House of Representatives of the Commonwealth Parliament on 24 June 2009 is enacted in the calendar year of 2010 rather than in the calendar year of 2009.

Personal Property Securities (Commonwealth Powers) Amendment
Bill 2009

Schedule 1 Amendment of Personal Property Securities (Commonwealth Powers) Act
2009 No 35

- (3) If subclause (2) operates to update references to which this clause applies, the regulations may amend this Act (other than this clause) and the 2009 amending Act to replace references to the *Personal Property Securities Act 2009* of the Commonwealth with references to the *Personal Property Securities Act 2010* of the Commonwealth.

Schedule 2 Amendment of other Acts

2.1 Conveyancers Licensing Act 2003 No 3

Section 11 Application to licences of Licensing and Registration (Uniform Procedures) Act 2002

Insert at the end of section 11 (3) (h):

- , and
- (i) a licence is not transferable.

2.2 Motor Vehicle Repairs Act 1980 No 71

Section 27A

Insert after section 27:

27A Transfer or loan of tradesperson's certificate

- (1) The holder of a tradesperson's certificate must not:
 - (a) transfer, attempt to transfer or lend the certificate to another person, or
 - (b) allow the use of the certificate by another person.
- (2) A person must not:
 - (a) attempt to obtain the transfer to the person of a tradesperson's certificate, or
 - (b) attempt to borrow, or borrow or use, a tradesperson's certificate of which the person is not the holder.

Maximum penalty: 20 penalty units.

2.3 Property, Stock and Business Agents Act 2002 No 66

Section 13 Transfer or lending of licence or certificate of registration prohibited

Insert "transfer," after "must not" in section 13 (1).

2.4 Registration of Interests in Goods Act 1986 No 37

Section 16A Account customers

Insert "(or such other period as may be prescribed by the regulations)" after "60 days" in section 16A (3) (a).

2.5 Valuers Act 2003 No 4

Section 10 Application to registration of Licensing and Registration (Uniform Procedures) Act 2002

Insert at the end of section 10 (3) (d):

, and

- (e) registration is not transferable.