

Western Australia

**Personal Property Securities (Commonwealth
Laws) Act 2011**

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No. 41 of 2011

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(No. 41 of 2011)

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Defined Terms



Western Australia

Personal Property Securities (Commonwealth Laws) Act 2011

No. 41 of 2011

An Act to adopt the *Personal Property Securities Act 2009* (Commonwealth) as amended by the *Personal Property Securities (Consequential Amendments) Act 2009* (Commonwealth), the *Personal Property Securities (Corporations and Other Amendments) Act 2010* (Commonwealth) and the *Personal Property Securities (Corporations and Other Amendments) Act 2011*, to refer certain matters relating to security interests in personal property to the Parliament of the Commonwealth, for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth, and to enact consequential provisions.

[Assented to 4 October 2011]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Personal Property Securities (Commonwealth Laws) Act 2011*.

2. Commencement

(1) This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act other than sections 8(2) and (3) and 16 — on the day after that day;
- (c) section 16 — on the registration commencement time as defined in the *Personal Property Securities Act 2009* (Commonwealth) section 306(2);
- (d) section 8(2) and (3) — on a day fixed by proclamation, and different days may be fixed for different provisions.

(2) A proclamation cannot be made under subsection (1)(d) unless a draft of the proclamation has first been approved by each House of Parliament.

Part 2 — Adoption and referral

3. Terms used

In this Part —

adoption means the adoption under section 6(1);

amendment reference means a reference under section 8(1), (2) or (3);

Commonwealth PPS Act means the *Personal Property Securities Act 2009* (Commonwealth) as amended by the *Personal Property Securities (Consequential Amendments) Act 2009* (Commonwealth), the *Personal Property Securities (Corporations and Other Amendments) Act 2010* (Commonwealth) and the *Personal Property Securities (Corporations and Other Amendments) Act 2011*, and as in force from time to time;

Commonwealth PPS instrument means any instrument (whether or not of a legislative character) that is made or issued under the Commonwealth PPS Act;

crops includes (but is not limited to) the kinds of things that are included in the definition of ***crops*** for the purposes of the relevant version of the Commonwealth PPS Act;

excluded State statutory right means a State statutory right that is declared by the law of the State by or under which it is granted not to be personal property for the purposes of the Commonwealth PPS Act;

express amendment of the Commonwealth PPS Act means the direct amendment of the text of that Act (whether by the insertion, omission, repeal, substitution or relocation of words or matter) by another Commonwealth 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 the Commonwealth PPS Act;

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

general law means the principles and rules of the common law and equity to the extent to which they have effect in the State from time to time;

goods means personal property that is tangible property, and includes (but is not limited to) the kinds of things that are included in the definition of **goods** for the purposes of the relevant version of the Commonwealth PPS Act;

interest, in relation to property, includes a right in the property;

land includes all estates and interests in land, whether freehold, leasehold or chattel, but does not include goods that are affixed to land;

law of the State means any Act of the State or any instrument made under such an Act, whenever enacted or made and as in force from time to time;

licence means either of the following —

- (a) a transferable 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) a transferable authority to exercise rights comprising intellectual property,

but does not include an excluded State statutory right;

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

- (a) land; or
- (b) an excluded State statutory right;

referred PPS matters, in relation to personal property, has the meaning given in section 4;

register means any system for recording interests or information (whether in written or electronic form);

relevant version of the Commonwealth PPS Act means the *Personal Property Securities Act 2009* (Commonwealth) as originally enacted, and as later amended by the *Personal Property Securities (Consequential Amendments) Act 2009* (Commonwealth), the *Personal Property Securities (Corporations and Other Amendments) Act 2010* (Commonwealth) and the *Personal Property Securities (Corporations and Other Amendments) Act 2011*;

security interest in personal property has the meaning given in section 5;

State statutory right means a right, entitlement or authority that is granted by or under a law of the State;

transferable, in relation to a right, entitlement or authority, means transferable under the general law or a law of the State by the holder of the right, entitlement or authority (whether or not the right, entitlement or authority is exclusive, and whether or not a transfer is restricted or requires consent);

water right means a right, entitlement or authority, whether or not exclusive, that is 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 an excluded State statutory right.

4. Term used: referred PPS matters

(1) In this Act —

referred PPS matters, in relation to personal property, 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;

- (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 the State to the extent that the law makes provision with respect to —
 - (a) the creation, holding, transfer, assignment, disposal or forfeiture of a State statutory right; 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 State statutory right; 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.

5. Term used: security interest

(1) In this Act —

security interest in personal property means an interest in relation to 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).

(2) A security interest in personal property also includes the following interests in relation to personal property, 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 a monetary obligation or chattel paper;
- (b) the interest of a consignor who delivers goods to a consignee under a consignment;
- (c) the interest of a lessor or bailor under a lease or bailment of goods.

(3) A security interest in personal property does not include a licence.

(4) In this section —

chattel paper means one or more writings that evidence both a monetary obligation and a security interest in, or a lease of, specific personal property;

writing includes (but is not limited to) the kinds of things that are included in the definition of *writing* for the purposes of the relevant version of the Commonwealth PPS Act.

6. Adoption of Commonwealth PPS Act

(1) The relevant version of the Commonwealth PPS Act is adopted within the meaning of section 51(xxxvii) of the Constitution of the Commonwealth.

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- (2) The adoption has effect for a period —
- (a) beginning when this section commences; and
 - (b) ending at the end of the day fixed under section 7 as the day on which the adoption is to terminate,
- but no longer.

7. Termination of adoption

- (1) The Governor may, at any time, by proclamation published in the *Gazette*, fix a day as the day on which the adoption is to terminate.
- (2) A day fixed under subsection (1) must be no earlier than the first day after the end of the period of 12 months beginning with the day on which the proclamation is published under that subsection.
- (3) The Governor may, by proclamation published in the *Gazette*, revoke a proclamation published under subsection (1), in which case the revoked proclamation is taken (for the purposes of section 6) never to have been published.
- (4) A revoking proclamation has effect only if published before the day fixed under subsection (1).
- (5) The revocation of a proclamation published under subsection (1) does not prevent publication of a further proclamation under that subsection.
- (6) A proclamation cannot be made under subsection (1) unless a draft of the proclamation has first been approved by each House of Parliament.

8. References of matters

- (1) The referred PPS matters in relation to personal property (other than fixtures and water rights) are referred to the Parliament of the Commonwealth on the day on which this subsection commences, but only to the extent of the making of laws with

respect to those matters in relation to property of that kind by making express amendments of the Commonwealth PPS Act.

- (2) The referred PPS matters in relation to fixtures are referred to the Parliament of the Commonwealth on the day on which this subsection commences, but only to the extent of the making of laws with respect to those matters in relation to fixtures by making express amendments of the Commonwealth PPS Act.
- (3) The referred PPS matters in relation to transferable water rights are referred to the Parliament of the Commonwealth on the day on which this subsection commences, but only to the extent of the making of laws with respect to those matters in relation to such water rights by making express amendments of the Commonwealth PPS Act.
- (4) Except as provided by subsection (1), the operation of each of subsections (1), (2) and (3) is not affected by the other subsections.
- (5) The reference of any matter under subsection (1), (2) or (3) has effect only —
 - (a) if and to the extent that the matter is not included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth); and
 - (b) if and to the extent that the matter is included in the legislative powers of the Parliament of the State.
- (6) Despite any other provision of this section, a reference under subsection (1), (2) or (3) has effect for a period —
 - (a) beginning when the subsection under which the reference is made commences; and
 - (b) ending at the end of the day fixed under section 9 as the day on which the reference is to terminate,

but no longer.

9. Termination of references

- (1) The Governor may, at any time, by proclamation published in the *Gazette*, fix a day as the day on which any or all of the amendment references that have effect are to terminate.
- (2) A day fixed under subsection (1) must be no earlier than the first day after the end of the period of 12 months beginning with the day on which the proclamation is published under that subsection.
- (3) The Governor may, by proclamation published in the *Gazette*, revoke a proclamation published under subsection (1), in which case the revoked proclamation is taken (for the purposes of section 8) never to have been published.
- (4) A revoking proclamation has effect only if published before the day fixed under subsection (1).
- (5) The revocation of a proclamation published under subsection (1) does not prevent publication of a further proclamation under that subsection.
- (6) A proclamation cannot be made under subsection (1) unless a draft of the proclamation has first been approved by each House of Parliament.

10. Amendment of Commonwealth law

For the avoidance of doubt, it is the intention of the Parliament of the State that —

- (a) the Commonwealth PPS Act may be expressly amended, or have its operation otherwise affected, at any time after the commencement of section 6(1) by provisions of Commonwealth Acts the operation of which is based on legislative powers that the Parliament of the Commonwealth has on account of a reference of any matters, or the adoption of the relevant version of the Commonwealth PPS Act, under section 51(xxxvii) of the Constitution of the Commonwealth; and

- (b) the Commonwealth PPS Act may be expressly amended, or have its operation otherwise affected, at any time after the commencement of section 6(1) by provisions of Commonwealth Acts the operation of which is based on legislative powers that the Parliament of the Commonwealth has apart from a reference of any matters, or the adoption of the relevant version of the Commonwealth PPS Act, under section 51(xxxvii) of the Constitution of the Commonwealth; and
- (c) the Commonwealth PPS Act may have its operation affected, otherwise than by express amendment, at any time by provisions of Commonwealth PPS instruments.

11. Effect of termination of amendment references before termination of adoption of Commonwealth PPS Act

- (1) If an amendment reference is terminated but the adoption of the relevant version of the Commonwealth PPS Act is not terminated, the termination of the amendment reference does not affect —
 - (a) laws that were made under the amendment reference (but not repealed) before that termination (whether or not they have come into operation before that termination); or
 - (b) the continued operation in the State of the Commonwealth PPS Act as in operation immediately before that termination or as subsequently amended or affected by —
 - (i) laws referred to in paragraph (a) that come into operation after that termination; or
 - (ii) provisions referred to in section 10(b) or (c).
- (2) Accordingly, an amendment reference continues to have effect for the purposes of subsection (1) unless the adoption is terminated.

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- (3) Subsection (1) does not apply to or in relation to an amendment of the Commonwealth PPS Act that is excluded from the operation of this section by the proclamation that terminates the amendment reference.
- (4) For the purposes of subsection (1) —
 - (a) the laws referred to in subsection (1)(a) include Commonwealth PPS instruments; and
 - (b) the reference in subsection (1)(b) to the Commonwealth PPS Act as in operation immediately before the termination of the amendment reference includes that legislation as affected by Commonwealth PPS instruments that have come into operation before that time.

Part 3 — Consequential provisions

12. Terms used

(1) In this Part —

Commissioner has the meaning given in the *Chattel Securities Act 1987* section 3(1);

Commonwealth PPS Act has the meaning given in section 3;

compensation includes damages and any other form of monetary compensation;

PPS Register means the register as defined in the *Personal Property Securities Act 2009* (Commonwealth) section 10;

PPS Registrar means the Registrar as defined in the *Personal Property Securities Act 2009* (Commonwealth) section 10;

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 to exercise a registration function under the *Bills of Sale Act 1899* section 6A, the *Chattel Securities Act 1987* section 3D or the *Co-operatives Act 2009* Schedule 3 clause 4C;
- (c) the administration of this Part;
- (d) the exercise of functions under this Part;

Register Book means the Register Book referred to in the *Bills of Sale Act 1899* section 11(1);

Registrar has the meaning given in the *Bills of Sale Act 1899* section 5;

Registrar of Co-operatives means the Registrar as defined in the *Co-operatives Act 2009* section 4(1).

(2) If a term is given a meaning in the *Personal Property Securities Act 2009* (Commonwealth), it has the same meaning in this Part.

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13. Provision of information to the Commonwealth

- (1) The Registrar 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 Register Book as the Registrar considers appropriate in order to assist the Commonwealth in establishing the PPS Register.
- (2) The Commissioner 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 register kept under the *Chattel Securities Act 1987* section 14 as the Commissioner considers appropriate in order to assist the Commonwealth in establishing the PPS Register.
- (3) The Registrar of Co-operatives 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 register kept under the *Co-operatives Act 2009* Schedule 3 clause 18 as that Registrar considers appropriate in order to assist the Commonwealth in establishing the PPS Register.
- (4) The Commissioner, Registrar and the Registrar of Co-operatives may provide the information that they are authorised to provide under this section in whatever form (including by means of electronic data or in a form approved for the purposes of the *Personal Property Securities Act 2009* (Commonwealth)) as they consider appropriate.
- (5) The provisions of this section prevail to the extent of any inconsistency with the provisions of any other Act.

14. 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) Subsection (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.

15. Implied power to make declaration that licence etc. not personal property

A power conferred by an Act on any person or body to make subsidiary legislation that grants or confers, or provides for the granting or conferral of, a licence or other State statutory right as defined in section 3 includes the power to declare that the licence or right is not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth).

16. 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 this State, or in a security agreement, but only to the extent that —

(a) the charge referred to has attached to personal property; and

(b) the title to the personal property to which the charge has attached is in the grantor.

(2) This section does not apply in relation to —

(a) the *Personal Property Securities Act 2009* (Commonwealth) section 12(2)(a) and (b) or 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.

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- (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.
- (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.

17. Enforcement of and other dealings with PPS security interests restricted in certain circumstances

- (1) In this section —

order includes a direction or notice;

PPS security interest means a security interest to which the Commonwealth PPS Act applies (including a transitional security interest);

relevant State property law means each of the following —

- (a) the *Criminal Property Confiscation Act 2000*;
- (b) the *Land Administration Act 1997*;
- (c) the *Local Government Act 1995*;
- (d) the *Rail Safety Act 2010*;
- (e) the *Residential Parks (Long-stay Tenants) Act 2006*;
- (f) the *Residential Tenancies Act 1987*;
- (g) the *Shipping and Pilotage Act 1967*;
- (h) the *Warehousemen's Liens Act 1952*;
- (i) the *Western Australian Marine Act 1982* section 62;
- (j) an Act or subsidiary legislation (or a provision of an Act or subsidiary legislation) that is prescribed by the regulations to be a relevant State property law.

- (2) On and from the registration commencement time (but subject to this section and the regulations), a person may not take action to enforce a PPS security interest in personal property or otherwise deal with the interest or property —
- (a) if the action or dealing is (or would be) inconsistent with a relevant State property law (or an order made under such a law) that —
 - (i) requires, authorises or permits the property to be dealt with in a particular manner (including by disposing of the property whether by sale, destruction or any other means); or
 - (ii) prohibits or prevents the property being dealt with in a particular manner or places other limitations or restrictions on how the property may be dealt with;
 - or
 - (b) if the action or dealing would operate to prevent, impede or defeat the making of an application to a court, tribunal or any other person or body under a relevant State property law with respect to how the property is to be dealt with; or
 - (c) in such other circumstances as may be prescribed by the regulations.
- (3) This section does not —
- (a) affect the meaning or operation of a relevant State property law in its application to interests other than PPS security interests; or
 - (b) affect the meaning or operation of a relevant State property law to the extent that the law would (even if subsection (2) had not been enacted) be capable of operating according to its tenor because it is —
 - (i) a law of the State capable of operating concurrently with the Commonwealth PPS Act; or

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- (ii) a law of the State that makes provision for a matter mentioned in the Commonwealth PPS Act section 245(2)(a), (b) or (c); or
 - (iii) a law of the State the effect of which is covered by the Commonwealth PPS Act section 258(2);
- or
- (c) prevent the enforcement of, or other dealings with, a PPS security interest —
 - (i) by the State or an instrumentality or other agency of the State; or
 - (ii) by any other person (or person belonging to a class of persons) prescribed by the regulations.

18. Bills of sale records

- (1) On and from the day on which the *Bills of Sale Act 1899* is repealed, the Register Book kept, bills of sale lodged and affidavits filed under that Act are taken to be a record (the **record**) kept by the Commissioner as defined in the *Consumer Affairs Act 1971* section 4(1).
- (2) A person is entitled to the following —
 - (a) a copy or extract of a bill of sale lodged or an affidavit filed under the *Bills of Sale Act 1899*;
 - (b) a copy or extract of a bill of sale or an affidavit certified by the Commissioner to be a true copy,on payment of the prescribed fee, if any.
- (3) The Governor may make regulations prescribing fees for the purposes of this section.
- (4) This section expires on the last day of the period of 7 years after registration commencement time as defined in the *Personal Property Securities Act 2009* (Commonwealth) section 306(2).

19. Regulations for transitional matters

- (1) In this section —

commencement day means the day on which this Act receives the Royal Assent;

Gazettal day means the day on which transitional regulations are published in the *Gazette*;

transitional matter means any matter of a transitional or savings nature arising from the enactment of the adoption of the relevant version of the Commonwealth PPS Act;

transitional regulations means regulations under subsection (2).

- (2) The Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed in relation to a transitional matter.
- (3) Transitional regulations can only be made before the end of the period of 12 months beginning on commencement day.
- (4) If transitional regulations provide that a state of affairs is to be taken to have existed, or not to have existed, on and from a day (the *operative day*) that is earlier than Gazettal day, the regulations have effect according to their terms as long as the operative day is not earlier than commencement day.
- (5) If transitional regulations contain a provision referred to in subsection (4), the provision does not operate so as to —
- (a) affect in a manner prejudicial to any person (other than the State), the rights of that person existing before Gazettal day; or
 - (b) 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 Gazettal day.

20. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are

necessary or convenient to be prescribed for giving effect to the purposes of this Act.

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Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

| Defined Term | Provision(s) |
|----------------------------------------------------|---------------------|
| adoption | 3 |
| amendment reference | 3 |
| chattel paper | 5(4) |
| commencement day | 19(1) |
| Commissioner | 12(1) |
| Commonwealth PPS Act | 3 |
| Commonwealth PPS instrument | 3 |
| compensation | 12(1) |
| crops | 3 |
| excluded State statutory right | 3 |
| express amendment | 3 |
| fixtures | 3 |
| forfeiture | 4(3) |
| Gazettal day | 19(1) |
| general law | 3 |
| goods | 3 |
| interest | 3 |
| land | 3 |
| law of the State | 3 |
| licence | 3 |
| modification | 17(1) |
| operative day | 19(4) |
| order | 17(1) |
| personal property | 3 |
| PPS Register | 12(1) |
| PPS Registrar | 12(1) |
| PPS security interest | 17(1) |
| PPS transitional matter | 12(1) |
| record | 18(1) |
| referred PPS matters | 3, 4(1) |
| register | 3 |
| Register Book | 12(1) |
| Registrar | 12(1) |
| Registrar of Co-operatives | 12(1) |
| relevant State property law | 17(1) |
| relevant version of the Commonwealth PPS Act | 3 |
| security interest | 3, 5(1) |
| State statutory right | 3 |
| transferable | 3 |

Defined Terms

| | |
|-------------------------------|-------|
| transitional matter | 19(1) |
| transitional regulations..... | 19(1) |
| water right | 3 |
| writing..... | 5(4) |