

## TASMANIA

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# **PERSONAL PROPERTY SECURITIES (COMMONWEALTH POWERS) BILL 2010**

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**PERSONAL PROPERTY SECURITIES  
(COMMONWEALTH POWERS) BILL 2010**

*(Brought in by the Minister for Justice, the Honourable  
Larissa Tahireh Giddings)*

**A BILL FOR**

**An Act to adopt the *Personal Property Securities Act 2009* of the Commonwealth as amended by the *Personal Property Securities (Consequential Amendments) Act 2009* of the Commonwealth and the *Personal Property Securities (Corporations and Other Amendments) Act 2010* of the Commonwealth, and 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**

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

**1. Short title**

This Act may be cited as the *Personal Property Securities (Commonwealth Powers) Act 2010*.

**2. Commencement**

- (1) Except as provided in subsection (2) this Act commences on a day to be proclaimed.

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- (2) Section 8(2) and (3) commence on a day to be proclaimed and different days may be proclaimed for different provisions.

### 3. Interpretation

In this Act, unless the contrary intention appears –

**“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* of the Commonwealth as amended by the *Personal Property Securities (Consequential Amendments) Act 2009* of the Commonwealth and the *Personal Property Securities (Corporations and Other Amendments) Act 2010* of the Commonwealth 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 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 or by an instrument under a 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

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the purposes 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;

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* of the Commonwealth as originally enacted, and as later amended by the *Personal Property Securities (Consequential Amendments) Act 2009* of the Commonwealth and the *Personal Property Securities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

**“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

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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. Meaning of “referred PPS matter”**

(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:

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- (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. Meaning of “security interest” in personal property**

(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.

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**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.
- (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 4) 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.

## **8. Reference 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

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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 not longer.

**9. Termination of reference**

- (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.

**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

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commencement of section 6(1) by provisions of Commonwealth Acts the operation of which is based on any 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 reference before termination of adoption of Commonwealth Act**

- (1) If the 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 this 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 the termination; or
    - (ii) provisions referred to in section 10(b) or (c).
- (2) Accordingly, the amendment reference continues to have effect for the purposes of subsection (1) unless the adoption is terminated.
- (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

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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.

**12. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.