

**Personal Property Securities Law Agreement**

**2008**

# Personal Property Securities Law Agreement

This agreement is entered into on 2 October 2008 by:

The Commonwealth of Australia  
The State of New South Wales  
The State of Victoria  
The State of Queensland  
The State of Western Australia  
The State of South Australia  
The State of Tasmania  
The Australian Capital Territory  
The Northern Territory of Australia

## Recitals

1. The parties agree to establish a national system for the registration of personal property securities to be implemented by Commonwealth legislation, supported by a State text-based referral of certain matters to the Commonwealth Parliament, in accordance with subsection 51 (xxxvii) of the Constitution.
2. The Legislative Assembly of the Australian Capital Territory and the Legislative Assembly of the Northern Territory have legislative power in relation to personal property securities and the registration of those securities under Commonwealth self-government legislation and therefore the Australian Capital Territory and the Northern Territory are parties to this agreement, although they will not make a referral in accordance with subsection 51(xxxvii) of the Constitution.
3. The Commonwealth will introduce legislation relating to personal property securities and to establish a national system for the registration of personal property securities.
4. The Commonwealth Parliament will have the power to amend the Commonwealth legislation following consultation with the States and Territories and in some cases with the approval of the States and Territories.

**The parties agree:**

## **Part 1—Preliminary**

### **1.1 Definitions**

1. In this Agreement:

**Act** means the Commonwealth Act relating to personal property securities and for related purposes the subject of referrals under this Agreement;

**Minister** means the Minister responsible for each party's involvement in the national system;

**national system** means the national system for the registration and regulation of security interests in personal property established in accordance with the legislative scheme enacted by the parties;

**party** means the Commonwealth, a referring State, or a Territory if it is a party to this Agreement;

**personal property** has the same meaning that it has in the Act;

**personal property securities** means security interests in personal property;

**Personal Property Securities Register** has the same meaning that it has in the Act;

**referring State** means a State which:-

- a) has referred matters to the Commonwealth Parliament sufficient to enable the following legislation to extend, of its own force, to the State:
  - i) the Act as first enacted by the Commonwealth Parliament, and
  - ii) later amendments to the Act that relate to personal property securities, the registration of those securities or other data relating to personal property on the Personal Property Securities Register, and
- b) has not withdrawn either or both of the referred matters covered by subparagraphs (a)(i) and (ii)

**Registrar** means the Registrar of Personal Property Securities under the Act;

**security interest** has the same meaning that it has in the Act;

**Territory** means the Australian Capital Territory or the Northern Territory; and

**water rights** has the same meaning that it has in the Act.

2. In this Agreement, a reference to an Act, whether of the Commonwealth, a State or a Territory, includes a reference to:

- a) that Act as amended and in force for the time being; and
- b) an Act passed in substitution for the Act.

## **Part 2—Effect and Operation of Agreement**

### **2.1 Commencement**

This Agreement comes into operation on the day that it is entered into.

### **2.2 Amendment of Agreement**

This Agreement may be amended only by the unanimous agreement of all the parties.

### **2.3 Obligations subject to further Agreement**

The obligations of a State or Territory party under this agreement are subject to:

- a) the Minister for that State or Territory party approving the text of the Act; and
- b) the satisfactory resolution of the financial arrangements for the establishment of the national system through the Council of Australian Governments.

## **Part 3—Legislation**

### **3.1 Legislative Scheme**

The legislative scheme agreed to by the parties involves:

- a) the enactment by State Parliaments of legislation referring certain matters to the Commonwealth Parliament in accordance with subsection 51 (xxxvii) of the Constitution;
- b) the enactment by the Commonwealth Parliament of the Act;
- c) the making of subordinate legislation under the Act;
- d) the possible amendment from time to time of the Act and subordinate legislation in accordance with this Agreement and State referral legislation;
- e) the enactment by State and Territory Parliaments of consequential amendments to, or repeal of, State and Territory legislation as required to establish and support the national system; and
- f) arrangements for the continued operation of certain State and Territory legislation relating to personal property securities.

### **3.2 Special Measures**

1. Security interests in fixtures will not be subject to the Act from its commencement. The Act will not be applied to fixtures in a State or Territory without the agreement of that State or Territory.
2. Security interests in water rights will not be subject to the Act from its commencement. The Act will not be applied to water rights in a State or Territory without the agreement of that State or Territory.

3. The States and Territories will continue to regulate any licence, right, entitlement or authority created by or pursuant to State or Territory legislation. Notwithstanding clause 3.2.5, State or Territory legislation that expressly excludes a licence, right, entitlement or authority created by or pursuant to State or Territory legislation from the application of the Act will prevail over the Act.
4. Where there is direct inconsistency between State or Territory legislation and the Act, or subordinate legislation made under the Act, that State or Territory legislation will prevail over the Act or subordinate legislation where:
  - a) subordinate legislation made under the Act provides that the State or Territory legislation prevails; or
  - b) subject to clause 3.2.5, the State or Territory legislation expressly derogates from the Act or subordinate legislation.
5. A State or Territory will not introduce legislation that expressly derogates from the Act unless at least six parties agree to the introduction of the legislation.
6. Subordinate legislation made under the Act may modify or abrogate the operation of State or Territory legislation of the kind mentioned in clause 3.2.4.
7. Nothing in this clause 3.2 affects the Commonwealth's power to legislate where to do so would be within the legislative power of the Commonwealth without the referrals referred to in this Part.

### **3.3 Alteration of the Act**

#### *Consultation*

1. The Commonwealth will provide, for the purposes of consultation, the State and Territory parties with a draft of any Bill to amend, repeal or replace the Act (**amending Bill**) or any subordinate legislation made under that Act (**subordinate legislation**) regardless of whether the approval of the State and Territory Parties is required under this Part.
2. If a party proposes any legislation that may alter the effect, scope or operation of the Act, that party will notify the other parties of that legislative proposal at the earliest opportunity to ensure that the other parties have the opportunity to comment on the proposed legislation.
3. If a Bill that either amends the Act or alters the effect, scope or operation of the national system is introduced into the Commonwealth Parliament other than by the Commonwealth, the Commonwealth will not support the legislation until it has consulted with and sought and obtained, where necessary, the approval of the parties in accordance with this Agreement.
4. If a Bill that purports to derogate from the Act or otherwise alters the effect, scope or operation of the national system is introduced into a State or Territory Parliament other than by the Government of the State or Territory, the State or Territory will not support the legislation until it has consulted with and sought and obtained, where necessary, the approval of the parties in accordance with this Agreement.

#### *Approval*

5. Subject to clause 3.3.9, the Commonwealth will not introduce an amending Bill into the Commonwealth Parliament or make any subordinate legislation (other than Bills or

subordinate legislation covered by clause 3.3 or determinations made by the Registrar) without the approval of the State and Territory parties in accordance with clause 3.3.6.

6. The State and Territory parties will be taken to have approved an amending Bill or proposed subordinate legislation (**the amendment**) on the earlier of:
  - a) the receipt by the Commonwealth of notification in writing from at least three State or Territory parties (including at least two referring States) that they approve the amendment; and
  - b) the expiry of eight weeks after the amendment is provided to the State and Territory parties under clause 3.3.1 unless, within that period, at least six State or Territory parties (including at least five referring States) have notified the Commonwealth that they do not approve the amendment.
7. The Commonwealth will notify the State and Territory parties of the status of the approval of the amendment immediately after the expiry of six weeks after the amendment is provided to the State and Territory parties if at that time notice of approval has not been forthcoming under clause 3.3.6(a).
8. The State and Territory parties will use their best endeavours to respond quickly to any Commonwealth request for urgent approval of an amendment.

#### *Approval not required*

9. The approval of the State and Territory parties is not required for an amendment so far as it relates to any of the following matters:
  - a) the administration and operation of the national personal property securities register including the setting of fees;
  - b) the establishment and operation of the office of the Registrar of Personal Property Securities;
  - c) the addition or removal of classes of personal property to which the scheme applies to the extent that the amendment would not rely on the referrals referred to in this Part;
  - d) conflict of laws matters in relation to the laws of Australia and the laws of other countries;
  - e) any subject matter in relation to which the Commonwealth Parliament could make laws without the referrals referred to in this Part; and
  - f) other subject matters agreed upon unanimously by the parties.

#### *Parliamentary Amendments*

10. If an amending Bill is before the Commonwealth Parliament:
  - a) the Commonwealth will use its best endeavours to consult the State and Territory parties and to obtain any necessary approval under this Part for any proposed amendment (**Parliamentary amendment**) to that Bill;
  - b) a Parliamentary amendment of a drafting nature will not require the approval of the State and Territory parties; and
  - c) the State and Territory parties will use their best endeavours to respond, within a reasonable period nominated by the Commonwealth, to any Commonwealth request for approval of a Parliamentary amendment.

## *Consideration of Amendments*

11. If:

- a) under clause 3.3.1, the Commonwealth provides the State and Territory parties with an amendment that the Commonwealth considers does not require the approval of the State and Territory Parties because of clause 3.3.9, and
- b) within 21 days of receipt of the amendment, at least four State parties notify the Commonwealth that they consider the amendment is for a purpose other than personal property securities or the registration of those securities and outside the legislative power of the Commonwealth,

the Commonwealth must convene a meeting of the parties to consider the amendment.

### **3.5 Approval of an amending Bill or Proposed Subordinate Legislation**

Approval of an amending Bill or subordinate legislation under clause 3.3.6 is to be given on behalf of a State or Territory by the Minister by reference to the proposed amendment.

## **Part 4—Administration**

### **4.1 Standing Committee of Attorneys-General**

Subject to this Agreement, any decision to be made by the Parties may be made through the Standing Committee of Attorneys-General in accordance with its procedures.

### **4.2 Levels of Service**

The Commonwealth will, through the Registrar, use its best endeavours to maintain general levels of service to the public that are no lower than the levels of service provided immediately before the establishment of the national system.

### **4.3 Access by State and Territory Ministers to Information**

1. State and Territory Ministers may request information regarding the national system from the Registrar.
2. The Registrar will provide the information requested by a State or Territory Minister unless the Registrar determines that it is not reasonable or practicable to provide such information.
3. Where the information requested is not provided by the Registrar the requesting State or Territory Minister may raise the matter with the Commonwealth Minister.

### **4.4 Cooperative Arrangements with relevant State and Territory Agencies**

1. The Registrar will maintain ongoing cooperative arrangements with relevant State and Territory agencies.

2. These arrangements may include:
  - a) providing State and Territory agencies with free access to the register for purposes (including law enforcement) as recognised in the Personal Property Securities Act or the subordinate legislation made pursuant to that Act;
  - b) agreements for the exchange of data and related services; and
  - c) such other arrangements as agreed in writing by the Commonwealth Minister.

## **Part 5—Ceasing to be a Party**

### **5.1 Ceasing to be a Party**

1. A referring State will not terminate a reference (and therefore cease to be a party to this Agreement) without providing 12 months notice to the other parties.
2. A Territory that is a party to this Agreement will not withdraw from the Agreement without providing 12 months notice to the other parties.

### **5.2 Agreement continues with remaining Parties**

1. If a State or Territory ceases to be a party, this Agreement will remain in force in relation to the remaining parties.
2. If a State or Territory ceases to be a party, the Commonwealth will, within three months, hold a meeting of the remaining parties for the purpose of negotiating such variations to this agreement as are necessary or convenient to take account of that fact.

## **Part 6—Review of National System**

In consultation with the State and Territory parties, the Commonwealth will review the operation of the national system no later than 5 years after the commencement of the national system.



**Signed for and on behalf of each of the Parties by:**

The Honourable Kevin Rudd MP )  
Prime Minister of the Commonwealth of Australia )

The Honourable Nathan Rees MP )  
Premier of New South Wales )

The Honourable John Brumby MP )  
Premier of Victoria )

The Honourable Anna Bligh MP )  
Premier of Queensland )

The Honourable Colin Barnett MLA )  
Premier of Western Australia )

The Honourable Michael Rann MP )  
Premier of South Australia )

The Honourable David Bartlett MP )  
Premier of Tasmania )

Chief Minister of the Australian Capital Territory )

The Honourable Paul Henderson MLA )  
Chief Minister of the Northern Territory )