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# Update Summary

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**PERSONAL PROPERTY SECURITIES LAW IN  
AUSTRALIA  
J O'Donovan**

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New and updated commentary has been provided by James O'Donovan:

## 10 keys to understanding PPSA 2009

### Updated:

- PPSA 2009 provides for a priority regime, not a title regime. Under s 273 of PPSA 2009, ownership or title to personal property is not determinative: *Lewis v LG Electronics Australia Pty Ltd* (2014) 291 FLR 407; [2014] VSC 644. See [1.110].
- A party can even have a security interest in cryptocurrency mining equipment: *Yimiao Australia Pty Ltd v Star Mining Pty Ltd* [2022] VSC 701. See [1.190].

## The PPS Regime

### Updated:

- The keywords for determining whether a security interest is in an instrument or in an intangible are “possession” and “delivery”. The assignment of two second mortgages as security for a loan was an interest in land and not an “intangible”. See [5.130].
- It appears that the protection provided by PPSA 2009 for debtors extends to guarantors who are under a secondary liability for the principal debt or obligation of the debtor: *Contrast Donnelly v International Harvester Credit Corp of Canada* 1983 CarswellOnt 133; 2 PPSAC 290; 22 BLR 66 (Ont Co Ct).. See [5.140].
- The term “security” means “anything that makes the money more assured in its payment or more readily recoverable. See [5.150].
- A security agreement can apply to both real and personal property, but a PPSA security interest is confined to personal property. See [5.160].
- Section 553C of *Corporations Act 2001*(Cth) operates automatically without the necessity to lodge proofs of debt: *Hastie Group Ltd (in liq) v Multiplex Constructions Pty Ltd (No 3)* [2022] FCA 1280. See [5.1630].

## The Scope of the Act

### Updated:

- A newly created trust, which is promised to be extinguished forth with upon receipt of surplus bond moneys by a builder, cannot be regarded as in substance securing the builder’s contractual obligation to indemnify the insurance company that provided the performance bond: *Allianz Australia Insurance Ltd v Probuild Constructions (Aust) Pty Ltd* [2023] NSWCA 56.

In determining whether a contract to build a vessel, in substance, creates a security interest, the principles of construction of commercial contracts continue to apply under PPSA 2009, by virtue of s 254: *Reel Action Sports Fishing Pty Ltd v Marine Engineering Consultants Pty Ltd (in liq)* [2022] QSC

271; and *Gold Valley Iron Pty Ltd v OPS Screening & Crushing Equipment Pty Ltd* [2022] WASCA 134. See [10.110].

- The matters listed in s 12(2) of PPSA 2009 do not in every case constitute a security interest: *Reel Action Sports Fishing Pty Ltd v Marine Engineering Consultants Pty Ltd (in liq)* [2022] QSC 271. See [10.530].
- A transfer of a monetary obligation of a broker to pay a bankrupt his commission (when received) is a transfer of an account, but it is not “chattel paper” because it did not relate to goods; it was not an instrument, and it was not a security. See [10.1010].
- If the trust operates upon receipt of the trust moneys by the trustee so as to impose propriety and personal obligations upon the trustee, then an obligation to pay the trust moneys immediately to the beneficiary is not a secret payment obligation separate from the constitution of the trust: *Allianz Australia Insurance Ltd v Probuild Constructions (Aust) Pty Ltd* [2023] NSWCA 56. See [10.1510].
- PPSA 2009 can also apply to interests in rights that may arise from the manner of selling the land in question, such as claims for breach of statutory duty in exercising the power of sale: *Mainland Property Holdings Pty Ltd (Recs & Mgrs Apptd) v Naplend Pty Ltd* [2022] FCA 1305. See [10.2030].

### The Personal Property Securities Register

#### Updated:

- A description of a vessel under construction in a financing statement in the “other goods” category is not “seriously misleading” within the meaning of s 164 if it correlates with the description of a vessel under construction in the ship building contract and with the description of the collateral on the invoices from the ship builder to the owner: *Reel Action Sports Fishing Pty Ltd v Marine Engineering Consultants Pty Ltd (In Liq)* [2022] QSC 271. See [15.2010].
- PPSA 2009 imposes an obligation upon a secured party who has notice of a change in the name of the debtor to take prompt steps to register a financing change statement in order to maintain priority. See [15.2510].

### Attachment and Enforceability

#### Updated:

- The purchase of an option to buy all of a trustee’s right, title and interest in certain assets was held not to constitute “proceeds”. The purchase money was obtained from the grant of time in essence, not with respect to any funds arising from doing a deal with the assets. See [20.700].

### Priorities between security interests

#### Updated:

- PPSA 2009 provides for a priority regime, not a title regime: *Warehouse Sales Pty Ltd (in liq) J Lewis and Templeton v LG Electronics Australia Pty Ltd* 291 FLR 407; [2014] VSC 644. See [35.110].
- A classic example of personal property other than inventory is plant and equipment. Equipment cannot be goods held for lease. It connotes non-circulating property that is used in carrying on a business. See [35.4560].

## Enforcement

### Updated:

- The measure of damages from conversion is the value of the goods, which is normally their market value, to be assessed at the time of conversion. Consequential loss may be awarded in appropriate circumstances. See *Reel Action Sports Fishing Pty Ltd v Marine Engineering Consultants Pty Ltd (In Liq)* [2022] QSC 271, at [45.510].
- Where a secured party is entitled to seize possession of an impounded motor vehicle under s 123 of PPSA 2009, the court can make a declaration that the police are justified in releasing the vehicle to the secured party: *Senworth Capital Pty Ltd v Galleria SUV Pty Ltd* [2023] NSWSC 171. See [45.4010].