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Update Summary

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UPDATE 51

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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:

The PPS Regime

Updated:

- Large scale manufacturing equipment (such as stills, fermenters and mash tuns) may not be PPSA assets if it is plumbed in by pipes or fixed to the premises: *De Bourbel Pty Ltd (in liq) v Distilleria Pty Ltd* [2023] SASC 88. See [5.130].

The Scope of the Act

Updated:

A person can have a security interest in personal property under s 12(1) even if it retains possession of the property: *Kirkalocka Gold SPV Pty Ltd (recs and mgrs apptd) v Zenith Pacific (KLK) Pty Ltd* [2024] FCA 428. See [10.110].

Perfection

Updated:

- A continuously perfected transitional security interest that was migrated to the PPS Register does not vest in the grantor upon insolvency under s 267: *Re Macdonald Contracting Australia Pty Ltd (in liq)* [2024] NSWSC 729.

PPSA 2009 does not contain any express power to order delivery up of goods, but the effect of vesting rule in s 267 is to give the grantor the right to possession of the PPSA assets.

See [25.1900].

- Section 269 does not operate as a set-off: *De Bourbel Pty Ltd (in liq) v Distilleria Pty Ltd* [2024] SASC 33. See [25.1910].

Enforcement

Updated:

- In some cases, the measure of damages for conversion of PPSA assets might be the forced liquidation value of these assets: *De Bourbel Pty Ltd (in liq) v Distilleria Pty Ltd* [2024] SASC 33. See [45.510].

Secured creditors and receivers

Updated:

- The definition of "account" in s 10 PPSA 2009 whereby a monetary obligation may arise "whether or not the account debtor is the person to whom the right is granted, or the services provided" evinces a clear intention that s 340(5) PPSA 2009 is to apply broadly. It is not to be construed narrowly in accordance with the purpose of Corps Act 2001, s 433.

Circulating assets can include the proceeds of sale of inventory paid to receivers and managers and an amount in settlement of arbitration award in satisfaction of a judgment.

See *Department of Employment and Workplace Relations v Howell* [2024] FCA 566, at [54.570].

