

**Key concepts in the *Personal Property Securities Act 2009* and *Regulations 2010* (Cth)**

Concept	Description
<p>Personal property</p>	<p>Property which is not land nor statutory rights, entitlements or authorities.</p> <p>Term defined in section 10 as follows:</p> <p style="text-align: center;"><i>Property (including a licence) other than:</i></p> <p style="padding-left: 40px;">(a) <i>land; or</i></p> <p style="padding-left: 40px;">(b) <i>a right, entitlement or authority that is:</i></p> <p style="padding-left: 80px;">(i) <i>granted by or under a law of the Commonwealth, a State or a Territory; and</i></p> <p style="padding-left: 80px;">(ii) <i>declared by that law not to be personal property for the purposes of this Act.</i></p> <p>Despite paragraph (a) of the definition, 'personal property' includes crops (Part 3.2) and mortgage-backed securities (reg 1.5(a)). Real property mortgage loans are also included where transferred to a person issuing a mortgage-backed security (reg 1.5(b)).</p>
<p>Security interest</p>	<p><i>'An interest in 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)'</i> (section 12(1)).</p> <p>Non-exhaustive list of security interest types in section 12(2):</p> <p style="text-align: center;"><i>For example, a security interest includes an interest in personal property provided by any of the following transactions, if the transaction, in substance, secures payment or performance of an obligation:</i></p> <p style="padding-left: 40px;">(a) <i>a fixed charge;</i></p> <p style="padding-left: 40px;">(b) <i>a floating charge;</i></p> <p style="padding-left: 40px;">(c) <i>a chattel mortgage;</i></p> <p style="padding-left: 40px;">(d) <i>a conditional sale agreement (including an agreement to sell subject to retention of title);</i></p> <p style="padding-left: 40px;">(e) <i>a hire purchase agreement;</i></p>

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	<p>(f) a pledge;</p> <p>(g) a trust receipt;</p> <p>(h) a consignment (whether or not a commercial consignment);</p> <p>(i) a lease of goods (whether or not a PPS lease);</p> <p>(j) an assignment;</p> <p>(k) a transfer of title;</p> <p>(l) a flawed asset arrangement.</p>
Debtor	<p>'A person who owes payment or performance of an obligation that is secured by a security interest in personal property (whether or not the person is also the grantor of the security interest)' (section 10).</p>
Grantor	<p>The person who grants the security interest.</p> <p>This might or might not be the same person as the debtor.</p> <p>Term defined in section 10 as follows:</p> <p>(a) a person who has the interest in the personal property to which a security interest is attached (whether or not the person owes payment or performance of an obligation secured by the security interest); or</p> <p>(b) a person who receives goods under a commercial consignment; or</p> <p>(c) a lessee under a PPS lease; or</p> <p>(d) a transferor of an account or chattel paper; or</p> <p>(e) a transferee of, or successor to, the interest of a person mentioned in paragraphs (a) to (d); or</p> <p>(f) in relation to a registration with respect to a security interest:</p> <p>(i) a person registered in the registration as a grantor; or</p> <p>(ii) a person mentioned in paragraphs (a) to (e).</p>

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Secured party	<p>The party who enjoys the benefit of the security interest.</p> <p>Term defined in section 10 as follows:</p> <ul style="list-style-type: none"> <li>(a) <i>means a person who holds a security interest for the person's own benefit or for the benefit of another person (or both); and</i></li> <li>(b) <i>if the holders of the obligations issued, guaranteed or provided for under a security agreement are represented by a trustee as the holder of the security interest – includes the trustee; and</i></li> <li>(c) <i>in relation to a registration with respect to a security interest – includes a person registered as a secured party in the registration.</i></li> </ul>
Security agreement	<p>An agreement creating a security interest, or the writing evidencing such an agreement.</p> <p>May refer to the agreement itself (i.e. as a legal concept) or the physical documents recording the agreement.</p> <p>Term defined in section 10 as follows:</p> <ul style="list-style-type: none"> <li>(a) <i>an agreement or act by which a security interest is created, arises or is provided for; or</i></li> <li>(b) <i>writing evidencing such an agreement or act.</i></li> </ul>
Collateral	<p>Personal property over which there exists a security interest.</p> <p>Term defined in section 10 as follows:</p> <ul style="list-style-type: none"> <li>(a) <i>means personal property to which a security interest is attached; and</i></li> <li>(b) <i>in relation to a registration with respect to a security interest – includes personal property described by the registration (whether or not a security interest is attached to the property).</i></li> </ul>

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Attachment	<p>A security interest being created and becoming enforceable against the grantor.</p> <p>Section 19(1): <i>'A security interest is enforceable against a grantor in respect of particular collateral only if the security interest has attached to the collateral'.</i></p> <p>'Attachment rule' in section 19(2):</p> <p style="text-align: center;"><i>A security interest attaches to collateral when:</i></p> <p style="margin-left: 40px;">(a) <i>the grantor has rights in the collateral, or the power to transfer rights in the collateral to the secured party; and</i></p> <p style="margin-left: 40px;">(b) <i>either:</i></p> <p style="margin-left: 80px;">(i) <i>value is given for the security interest; or</i></p> <p style="margin-left: 80px;">(ii) <i>the grantor does an act by which the security interest arises.</i></p>
Perfection	<p>The holder of security interest gaining the highest priority over other interest holders.</p> <p>The 'main perfection rule' appears in section 21.</p> <p>Section 21(1) provides that a security interest is perfected if attached to the collateral; enforceable against a third party; and subsection (2) applies.</p> <p>Subsection (2) applies if the security interest is registered with respect to the collateral; or the secured party has possession of the collateral; or, where the collateral consists of ADI accounts, etc., the secured party has control of the collateral.</p>
Continuous perfection	<p>A security interest remaining in a state of perfection (section 56).</p> <p>For example, assume a secured party gains possession of the collateral in January (perfection by possession), then registers the security interest in April (perfection by registration), then loses possession of the collateral in July. In these circumstances, the interest has been in a continuous state of perfection since January.</p>

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Purchase money security interest	<p>A special type of security interest which may have a 'super-priority' status as against other security interests.</p> <p>Term defined in section 14 as follows:</p> <p>(a) <i>a security interest taken in collateral, to the extent that it secures all or part of its purchase price;</i></p> <p>(b) <i>a security interest taken in collateral by a person who gives value for the purpose of enabling the grantor to acquire rights in the collateral, to the extent that the value is applied to acquire those rights;</i></p> <p>(c) <i>the interest of a lessor or bailor of goods under a PPS lease;</i></p> <p>(d) <i>the interest of a consignor who delivers goods to a consignee under a commercial consignment.</i></p>
Financing statement	<p>A statement relating to a security interest which is used to register the security interest on the PPS Register.</p> <p>A financing statement is required to contain information about the following persons or matters (section 153):</p> <p>1 the identity of the secured party;</p> <p>2 the identity of the grantor;</p> <p>3 an address for the giving of notices relating to the registration;</p> <p>4 the nature of the collateral;</p> <p>5 whether the registration is to lapse at a certain date;</p> <p>6 whether the security interest is subordinate to any other security interest; and</p> <p>7 whether the security interest is a purchase money security interest.</p>
Financing change statement	'Data amending a registered financing statement' (section 10).
Commercial property	'Personal property other than consumer property' (section 10).
Consumer property	'Personal property held by an individual, other than personal property held in the course or furtherance, to any degree, of carrying on an enterprise to which an ABN has been allocated' (section 10).

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Accession	<p>'Accession to other goods means goods that are installed in, or affixed to, the other goods, unless both the accession and the other goods are required or permitted by the regulations to be described by a serial number' (section 10).</p> <p>For example, copper pipes installed in a wall of a building would have been 'acceded' to the wall.</p> <p>The term 'goods' simply refers to tangible personal property and includes crops, livestock, wool, minerals which have been extracted and satellites (section 10).</p>
Commingled goods	<p>'Goods that are commingled include goods that are mixed with goods of the same kind' (section 10).</p> <p>For example, if wheat grain from one supplier is delivered to a flour mill and mixed with wheat grain from another supplier, the goods are 'commingled'.</p>
Priority	<p>One security interest in collateral taking precedence over another security interest in the same collateral.</p> <p>In the absence of any agreement as between two secured parties, the following rules apply (section 55):</p> <ol style="list-style-type: none"> <li>1 As between unperfected security interests, the first in time to have attached to the collateral takes priority.</li> <li>2 As between a perfected and an unperfected security interest, the perfected interest takes priority.</li> <li>3 As between two perfected security interests, the one with the earliest 'priority time' prevails. 'Priority time' means the earliest of: <ol style="list-style-type: none"> <li>(a) the registration time for the collateral;</li> <li>(b) the time when the secured party took possession or control of the collateral; and</li> <li>(c) the time when the security interest is temporarily or otherwise perfected by force of the PPS Act.</li> </ol> </li> </ol>
Extinguishment	The termination of a security interest.

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Circulating assets	<p>Personal property which is subject to a security interest, which the grantor may transfer free of any security interest.</p> <p>A security interest in circulating assets approximates what used to be known as a 'floating charge'.</p> <p>Term defined in section 340 as follows:</p> <ol style="list-style-type: none"> <li>1 personal property where the secured party has given the grantor express or implied authority for any transfer of the personal property to be made, in the ordinary course of business, free of the security interest;</li> <li>2 accounts receivable from granting a right or providing services in the ordinary course of business, including credit card receivables;</li> <li>3 accounts receivable arising as the proceeds of inventory;</li> <li>4 ADI accounts;</li> <li>5 currency;</li> <li>6 inventory;</li> <li>7 negotiable instruments.</li> </ol> <p>Section 340 sets out a number of exceptions to this definition.</p>
PPS lease	<p>A special type of lease or bailment of goods which creates, for the benefit of the lessor or bailor, a purchase money security interest.</p> <p>Term defined in section 13 as a lease or bailment of goods:</p> <ol style="list-style-type: none"> <li>1 for a term of more than one year;</li> <li>2 for an indefinite term;</li> <li>3 for a term of up to one year which is renewable (automatically or pursuant to the exercise of an option) for one or more terms if the total of the terms might exceed one year;</li> <li>4 for a term of up to one year where the lessee or bailee retains possession of the goods, with the consent of the lessor or bailor;</li> <li>5 for goods which may or must be described by a serial number, if the lease or bailment is in accordance with paragraphs 1, 3 and 4 above, but with '90 days or more' substituted for 'more than one year' and 'less than 90 days' for 'up to one year'.</li> </ol>

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PPS Register	Register of security interests in personal property, which replaces a number of existing registers, including the ASIC charges register and the REVS register.
Serial number	<p>A number assigned to collateral, which may be searched on the PPS Register.</p> <p>Under section 44, a buyer or lessee of personal property takes the personal property free of a security interest in the property if:</p> <ol style="list-style-type: none"> <li>1 the regulations provide that personal property of that kind may, or must, be described by a serial number in a registration; and</li> <li>2 searching the Register by reference only to the serial number of the property would not disclose a registration that perfected the security interest.</li> </ol> <p>Section 44 sets out a number of exceptions to this rule.</p> <p>For example, reg 1.7 requires most standard motor vehicles to be registered. Failure to register the security interest means that the buyer or lessee of the vehicle takes it free of the security interest.</p>