

# **Personal Property Securities Amendment Bill (No 2)**

Government Bill

As reported from the committee of the whole House

This bill was formerly part of the Business Law Reform Bill as reported from the Commerce Committee. The committee of the whole House has further amended the bill and has divided it into the following bills:

- The Companies Act 1955 Amendment Bill, comprising Part 1
- The Companies Act 1993 Amendment Bill, comprising Part 2
- The Companies (Registration of Charges) Amendment Bill, comprising Part 3
- The Fair Trading Amendment Bill (No 2), comprising Part 4
- The Financial Reporting Amendment Bill, comprising Part 5
- The Insolvency Amendment Bill, comprising Part 6
- This bill, comprising Part 6A and the Schedule
- The Receiverships Amendment Bill, comprising Part 6B
- The Securities Amendment Bill (No 2), comprising Part 7
- The Superannuation Schemes Amendment Bill, comprising Part 8
- The Unit Trusts Amendment Bill, comprising Part 9.

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## Key to symbols used in reprinted bill

### As reported from a select committee

#### **New (unanimous)**

Subject to this Act,	Text inserted unanimously
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### As reported from the committee of the whole House

#### **Struck out**

Subject to this Act,	Text struck out
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#### **New**

Subject to this Act,	Text inserted
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~~*(Subject to this Act,)*~~ Words struck out

Subject to this Act, Words inserted

Note: This bill has been reformatted in accordance with the resolution of the House of 22 December 1999.

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*Hon Paul Swain*

# Personal Property Securities Amendment Bill (No 2)

Government Bill

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### Schedule

**New Schedules 1 and 2 substituted**

**The Parliament of New Zealand enacts as follows:**

## 1 Title

- (1) This Act is the Personal Property Securities Amendment Act (No 2) **2001**.
- (2) In this Act, the Personal Property Securities Act 1999 is called "the principal Act". 5

## 2 Commencement

This Act comes into force on a date to be appointed by the Governor-General by Order in Council.

## New (unanimous)

- 40C New sections 9 and 9A substituted**  
The principal Act is amended by repealing section 9, and substituting the following sections:
- “9 **Part 5 (when buyers or lessees of goods take goods free of unperfected security interests)** 5  
Part 5 sets out when buyers of goods or lessees of goods get the goods without being subject to a prior security interest.
- “9A **Part 6 (additional provisions relating to when buyers or lessees of motor vehicles take motor vehicles free of security interest)** 10  
Part 6 sets out when buyers or lessees of motor vehicles get the motor vehicles without being subject to a prior security interest.”
- 40D Interpretation** 15  
Section 57 of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:  
“**finance company** has the same meaning as in section 2(1) of the Motor Vehicle Dealers Act 1975  
“**manufacturer** means a person who engages in the business of manufacturing or assembling motor vehicles 20  
“**wholesaler** means—  
“(a) a person who engages in the business of selling new motor vehicles to dealers, or to other persons who engage in that business; or  
“(b) a person who engages in the business of selling second-hand motor vehicles to dealers” 25
- 40E New section 59 substituted**  
The principal Act is amended by repealing section 59, and substituting the following section:  
“59 **Reimbursement of secured party by dealer** 30  
“(1) A dealer must pay to a secured party the relevant amount referred to in **subsection (2)** if—

**New (unanimous)**

- “(a) the dealer sold or leased a motor vehicle that, immediately before its sale or lease, was subject to the secured party’s security interest that was perfected by registration; and
- “(b) the buyer or lessee of the motor vehicle takes the motor vehicle free of the security interest under section 58; and 5
- “(c) the secured party has served a claim for payment on the dealer.
- “(2) The dealer must, within 7 working days of the date on which the secured party served a claim for payment on the dealer, pay to the secured party the lesser of the following amounts: 10
- “(a) the amount outstanding in respect of the debt or other obligation secured by the secured party’s security interest in the motor vehicle: 15
- “(b) the payment received or to be received by the dealer from the sale or the lease of the motor vehicle.”

**40F New section 61 substituted**

The principal Act is amended by repealing section 61, and substituting the following section: 20

**“61 Procedure for making claims for reimbursement**

Every claim for payment made by a secured party under section 59 or section 60 must be accompanied by—

- “(a) a printed search result issued by the register under section 175; and 25
- “(b) a statutory declaration by the secured party, or, if the secured party is a company, by any director or other officer authorised in writing for the purpose, declaring—
- “(i) the amount of the debt or other pecuniary obligation secured by the security interest; and 30
- “(ii) the amount received by the secured party in satisfaction of that debt or other obligation; and
- “(iii) the amount outstanding in respect of that debt or other obligation at the date when the declaration is made; and 35

## New (unanimous)

“(iv) the amount recoverable from the buyer or lessee of the vehicle under section 65, if applicable.”

**40G New section 71 substituted**

The principal Act is amended by repealing section 71, and substituting the following section:

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**“71 Security agreement may provide for future advances**

A security agreement may provide for future advances.”

**40H New section 106 substituted**

The principal Act is amended by repealing section 106, and substituting the following section:

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**“106 Part not to apply to receivers**

This Part does not apply to a receiver within the meaning of section 2(1) of the Receiverships Act 1993.”

**40I New section 107 substituted**

The principal Act is amended by repealing section 107, and substituting the following section:

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**“107 When contracting out of certain provisions in this Part permitted**

“(1) The parties to a security agreement may contract out of sections 108, 109, 111(1), 112, 114(1)(a), 117(1)(c), 120(1), 122, 133, and 134.

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“(2) The parties to a security agreement may contract out of the debtor’s right to—

“(a) receive a statement of account under section 116:

“(b) recover surplus under section 119:

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“(c) receive notice of a secured party’s proposal to retain collateral under section 120(2):

“(d) object to a secured party’s proposal to retain collateral under section 121:

“(e) not have goods damaged when a secured party removes an accession under section 125:

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“(f) not be reimbursed for damage caused when a secured party removes an accession under section 126:

**New (unanimous)**

“(g) refuse permission to remove an accession under section 127:	
“(h) receive notice of the removal of an accession under section 129:	
“(i) apply to the Court for an order concerning the removal of an accession under section 131:	5
“(j) redeem collateral under section 132.	
“(3) The parties to a security agreement may contract out of the secured party’s right to apply to a court for an order in respect of the removal of an accession under section 128.”	10
<b>40J Debtor may reinstate security agreement</b>	
Section 133 of the principal Act is amended by adding, as subsection (2), the following subsection:	
“(2) Subsection (1) does not apply to any security agreement made or entered into before the commencement of this Act.”	15
<b>40K Secured party may obtain court order in cases not involving security trust deed</b>	
Section 167(1) of the principal Act is amended by omitting the words “1 or more”, and substituting the word “none”.	
<b>40L New section 199 substituted</b>	20
The principal Act is amended by repealing section 199, and substituting the following section:	
<b>“199 Time of registration of certain prior security interests</b>	
For the purposes of this Act, the time of registration of a prior security interest that is deemed to be perfected by registration under this Act is—	25
“(a) the time that, under the relevant prior registration law, determined the priority of the security interest (where the prior security interest is deemed to be perfected by registration under section 195):	30
“(b) the time that the security interest was created (where the prior security interest is deemed to be perfected by registration under section 196).”	

**New (unanimous)**

**40M New Schedules 1 and 2 substituted**

The principal Act is amended by repealing Schedules 1 and 2, and substituting the schedules set out in the Schedule of this Act.

**40N Schedules 3 and 4 amended**

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- (1) Schedule 3 of the principal Act is amended by inserting in the item relating to the Statutes Amendment Act 1945, after the expression “1945”, the expression “: Section 5”.
- (2) Schedule 4 of the principal Act is amended by omitting the item relating to the Motor Vehicle Securities (Fees) Regulations 1990, and substituting the item “Motor Vehicle Securities (Fees) Regulations 1999 (SR 1999/148)”.

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New (unanimous)

**Schedule**  
**New Schedules 1 and 2 substituted**

s 40M

**Schedule 1**  
**Acts amended**

s 191(1)

- Administration Act 1969** (1969 No 52) 5  
Omit from the definition of **personal chattels** in section 2(1) the words “grantor under an instrument by way of security” and substitute the words “debtor under a security interest as defined in the Personal Property Securities Act 1999”.
- Building Societies Act 1965** (1965 No 22) 10  
Omit from the definition of **security** in section 2(1) the words “instrument by way of security,”.
- Child Support Act 1991** (1991 No 142) 15  
Omit from section 169(3)(b) the words “section 57 of the Chattels Transfer Act 1924” and substitute the words “the Personal Property Securities Act 1999”.
- Repeal section 169(5) and substitute:  
“(5) For the purposes of this section, the term **registration Act to which the property is subject**, in relation to any property, means— 20
- “(a) the Land Transfer Act 1952 or the Deeds Registration Act 1908, as the case may require, in every case where the property is land or an interest in land (including a mortgage):
- “(b) the Personal Property Securities Act 1999, in every case where the property is subject to a security interest within the meaning of that Act.” 25
- Companies Act 1993** (1993 No 105)  
Repeal section 319(1)(b) and substitute:  
“(b) give notice of the matters set out in subsection (3) to any person who is entitled to a security interest in respect of which a financing statement has been registered under the Personal Property Securities Act 1999; and” 30

## New (unanimous)

## Schedule 1—continued

## Companies Act 1993 (1993 No 105)—continued

Repeal section 320(3)(b) and substitute:

- “(b) a person who is entitled to a security interest in respect of which a financing statement has been registered under the Personal Property Securities Act 1999.”

Repeal clause 9 of the Seventh Schedule and substitute:

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“9 The claims listed in each of clauses 2, 3, 4, and 5—

- “(a) rank equally among themselves and must be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions; and

- “(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them,—

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## Struck out

- “(i) have priority over the claims of any person under a security interest, other than a purchase money security interest, to the extent that the security interest is over all or any part of the company’s accounts receivable and inventory or all or any part of either of them; and

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## New

- “(i) have priority over the claims of any person under a security interest to the extent that the security interest—

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- “(A) is over all or any part of the company’s accounts receivable and inventory or all or any part of either of them; and

- “(B) is not a purchase money security interest; and

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New (unanimous)

Schedule 1—continued

Companies Act 1993 (1993 No 105)—continued

New

“(C) does not arise from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation); and 5

“(ii) must be paid accordingly out of any accounts receivable or inventory subject to that security interest (or their proceeds). 10

For the purposes of this clause, the terms **account receivable**, **inventory**, **new value**, **proceeds**, **purchase money security interest**, and **security interest** have the same meanings as in the Personal Property Securities Act 1999.

“9A Clause 9, as in force immediately before the commencement of the Personal Property Securities Act 1999, continues to apply in respect of a company whose property was subject to a floating charge that, before the commencement of that Act, became a fixed or specific charge.” 15  
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**Corporations (Investigation and Management) Act 1989**  
(1989 No 11)

Repeal section 51(2) and substitute:

“(2) Where a statutory manager of a corporation sells or otherwise disposes of any property or assets of that corporation under section 50(1), being property or assets subject to a security interest, the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority to all other claims other than— 25

## New (unanimous)

## Schedule 1—continued

Corporations (Investigation and Management) Act 1989  
(1989 No 11)—continued

- “(a) the costs of the statutory manager in selling or disposing of the property or assets; and

## Struck out

- “(b) in the case of proceeds of accounts receivable or inventory that are subject to a non-purchase money security interest, claims in respect of preferential payments made under section 312 of the Companies Act 1993 (as applied by section 55).”

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## New

- “(b) claims in respect of preferential payments made under section 312 of the Companies Act 1993 (as applied by section 55), in the case of—
- “(i) proceeds of an account receivable that is subject to—
- “(A) a non-purchase money security interest; or
- “(B) a security interest that does not arise from the transfer of the account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation);
- or
- “(ii) proceeds of inventory that are subject to a non-purchase money security interest.”

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Repeal section 51(4) and (5) and substitute:

New (unanimous)

Schedule 1—continued

Corporations (Investigation and Management) Act 1989  
(1989 No 11)—continued

Struck out

- “(4) Where a statutory manager of a corporation sells or otherwise disposes of any shares in a body corporate formed and registered under section 50(2)(a), any property or assets of which are subject to a security interest, other than a non-purchase money security interest over all or any part of the corporation’s accounts receivable and inventory or all or any part of either of them, the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the shares. 5 10
- “(5) Where a statutory manager of a corporation sells or otherwise disposes of any property or assets of a body corporate formed and registered under section 50(2)(a), being property or assets subject to a security interest, other than a non-purchase money security interest over all or any part of the corporation’s accounts receivable and inventory or all or any part of either of them, the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the property or assets. 15 20
- “(6) In subsections (2), (4), and (5), the terms **account receivable, inventory, non-purchase money security interest, proceeds, and security interest** have the same meanings as in the Personal Property Securities Act 1999.”

New

- “(4) If a statutory manager of a corporation sells or otherwise disposes of any shares in a body corporate formed and registered under section 50(2)(a), any property or assets of which 25

## New (unanimous)

## Schedule 1—continued

**Corporations (Investigation and Management) Act 1989**  
(1989 No 11)—continued

## New

are subject to a security interest, other than a security interest of the kind described in **subsection (6)**, the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the shares. 5

“(5) If a statutory manager of a corporation sells or otherwise disposes of any property or assets of a body corporate formed and registered under section 50(2)(a), being property or assets subject to a security interest, other than a security interest of the kind described in **subsection (6)**, the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the property or assets. 10 15

“(6) The kind of security interest referred to in this section is a security interest that—

“(a) is over all or any part of the corporation’s accounts receivable and inventory or all or any part of either of them; and 20

“(b) is not a purchase money security interest; and

“(c) does not arise from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation). 25

“(7) In this section, **account receivable, inventory, new value, non-purchase money security interest, proceeds, purchase money security interest, and security interest** have the same meanings as in the Personal Property Securities Act 1999.” 30

**New (unanimous)**

**Schedule 1**—continued

**Criminal Justice Act 1985** (1985 No 120)

Omit from the definition of **encumbrance** in section 84(1) the words “an instrument by way of security,”.

Repeal the definition of **instrument by way of security** in section 84(1). 5

Omit from section 86(2A) the words “motor vehicle securities register maintained under the Motor Vehicle Securities Act 1989” and substitute the words “personal property securities register kept under the Personal Property Securities Act 1999”.

**Designs Act 1953** (1953 No 65) 10

Insert, after section 27:

“27A **Application of Personal Property Securities Act 1999**

Nothing in sections 25 to 27 affects the operation of the Personal Property Securities Act 1999.”

**Goods and Services Tax Act 1985** (1985 No 141) 15

Repeal section 42(2)(c) and substitute:

**Struck out**

“(c) where a person is a body (as defined in section 57(1)), upon the appointment of a receiver on behalf of any person under any order by the Court, the amount of any tax payable ranks immediately after any preferential claims for any wages or other sums payable to or on account of any servant, worker, apprentice, or articulated clerk, and in priority over any claims of any person under a security interest, other than a purchase money security interest, to the extent that the security interest is over all or any part of the body’s accounts receivable and inventory or all or any part of either of them, and be paid accordingly out of any accounts receivable or inventory subject to that security interest (or their proceeds).” 20  
25  
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## New (unanimous)

## Schedule 1—continued

## Goods and Services Tax Act 1985 (1985 No 141)—continued

## New

- “(c) if a person is an unincorporated body, on the appointment of a receiver on behalf of any person, the amount of tax payable—
- “(i) ranks immediately after any preferential claims for any wages or other sums payable to or on account of any servant, worker, apprentice, or articulated clerk; and 5
- “(ii) ranks in priority over any claims of any person under a security interest to the extent that the security interest— 10
- “(A) is over all or any part of the unincorporated body’s accounts receivable and inventory or all or any part of either of them; and
- “(B) is not a purchase money security interest; and 15
- “(C) does not arise from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation); and 20
- “(iii) must be paid accordingly out of any accounts receivable and inventory that are subject to the security interest (or their proceeds).” 25

Repeal section 42(4) and substitute:

- “(4) In subsection (2)(c), the terms **account receivable**, **inventory**, **new value**, **proceeds**, **purchase money security interest**, and **security interest** have the same meanings as in the Personal Property Securities Act 1999. 30
- “(5) The provisions of this section, as in force immediately before the commencement of the Personal Property Securities Act



**New (unanimous)**

**Schedule 1**—continued

**Goods and Services Tax Act 1985** (1985 No 141)—continued

1999, continue to apply in respect of a person that is a body or an unincorporated body whose property was subject to a floating charge that, before the commencement of that Act, became a fixed or specific charge.”

**Income Tax Act 1994** (1994 No 164)

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Omit from paragraph (a) of the definition of **commercial bill**, or **bill**, in section OB 1 the words “chattels (as defined in section 2 of the Chattels Transfer Act 1924)” and substitute the words “goods (as defined in section 16 of the Personal Property Securities Act 1999)”.

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**Industrial and Provident Societies Amendment Act 1952**

(1952 No 45)

Repeal section 13(1) and substitute:

“(1) The debts that in every liquidation are under the provisions of Part XVI and the Seventh Schedule of the Companies Act 1993 relating to preferential payments to be paid in priority to all other debts must, if a registered society is not in liquidation at the time, be paid in priority to any claim for principal or interest in respect of the security interest, out of—

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**Struck out**

“(a) any accounts receivable and inventory (or their proceeds) coming into the hands of the receiver who is appointed on behalf of the persons who have a security interest, other than a purchase money security interest, over those assets; or

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**New**

“(a) any accounts receivable and inventory (or their proceeds) coming into the hands of the receiver who is

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## New (unanimous)

## Schedule 1—continued

Industrial and Provident Societies Amendment Act 1952  
(1952 No 45)—continued

## New

appointed on behalf of persons who have, over those assets, a security interest that—

- “(i) is not a purchase money security interest; and
- “(ii) does not arise from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation); or

- “(b) any accounts receivable or inventory (or their proceeds) coming into the hands of any other person who has taken possession of all or any part of the society’s property by or on behalf of the persons who have that security interest.”

Repeal section 13(5) and substitute: 15

“(5) In this section, the terms **account receivable**, **inventory**, **new value**, **proceeds**, **purchase money security interest**, and **security interest** have the same meanings as in the Personal Property Securities Act 1999.

“(6) The provisions of this section, as in force immediately before the commencement of the Personal Property Securities Act 1999, continue to apply in respect of a registered society’s property that was subject to a floating charge that, before the commencement of that Act, became a fixed or specific charge.” 20  
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**New (unanimous)**

**Schedule 1**—continued

**Layby Sales Act 1971** (1971 No 80)

**Struck out**

Omit from section 11(1) the words “floating charge” and substitute the words “security interest, other than a purchase money security interest, over all or any part of the seller’s accounts receivable and inventory or all or any part of either of them”.

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**New**

Omit from section 11(1) the words “a floating charge” and substitute the words “the kind of security interest described in **subsection (1A)**”.

Insert, after section 11(1):

“(1A) The kind of security interest referred to in subsection (1) is a security interest that—

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“(a) is over all or any part of the seller’s accounts receivable and inventory or all or any part of either of them; and

“(b) is not a purchase money security interest; and

“(c) does not arise from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation).”

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Add to section 11:

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“(4) In subsection (1), the terms **account receivable**, **inventory**, **new value**, **purchase money security interest**, and **security interest** have the same meanings as in the Personal Property Securities Act 1999.

“(5) The provisions of this section, as in force immediately before the commencement of the Personal Property Securities Act 1999, continue to apply in respect of a seller’s property that

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**New (unanimous)**

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**Schedule 1**—continued

**Layby Sales Act 1971** (1971 No 80)—continued

was subject to a floating charge that, before the commencement of that Act, became a fixed or specific charge.”

**Struck out**

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**Legal Services Act 1991** (1991 No 71)

Repeal section 42(1) and substitute:

“(1) If— 5

“(a) a charge arising under section 40 relates to land, the charge may be registered against that land in accordance with the Statutory Land Charges Registration Act 1928:

“(b) a charge arising under section 40 relates to any other property, a financing statement may, in accordance with any regulations made under this Act, be registered under the Personal Property Securities Act 1999.” 10

Repeal section 93(k)(i) and substitute:

“(i) for the registration of a financing statement in respect of any such charge under the Personal Property Securities Act 1999:” 15

Repeal section 93(m) and substitute:

“(m) providing for the registration of legal aid charging agreements under the Land Transfer Act 1952, where appropriate: 20

“(ma) providing for the registration of financing statements in respect of legal aid charging agreements under the Personal Property Securities Act 1999, where appropriate:” 25

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**Mercantile Law Act 1908** (1908 No 117)

Repeal section 3(1A) and substitute:

“(1A) Where a mercantile agent is, with the consent of the owner, in possession of goods, or documents of title to the goods, that are subject to a perfected security interest under the Personal 30

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**New (unanimous)**

**Schedule 1**—continued

**Mercantile Law Act 1908** (1908 No 117)—continued

Property Securities Act 1999, the person taking under any disposition of the goods is deemed to have notice that the person making the disposition has no authority to make it, unless it is proved that the authority did exist.”

**Motor Vehicle Dealers Act 1975** (1975 No 127) 5

Omit from sections 30(3)(c) and 31(1)(f) the expression “Motor Vehicle Securities Act 1989” and substitute the expression “Personal Property Securities Act 1999”.

Repeal section 39(g) and substitute:

“(g) a claim under section 60 of the Personal Property Securities Act 1999.” 10

Omit from section 40(2)(b)(iv) the words “section 34 or section 38 of the Motor Vehicle Securities Act 1989” and substitute the words “section 59 of the Personal Property Securities Act 1999”.

Omit from the second proviso to section 40(3) the words “section 43 of the Motor Vehicle Securities Act 1989” and substitute the words “section 65 of the Personal Property Securities Act 1999”. 15

**Patents Act 1953** (1953 No 64)

Insert, after section 85:

“85A **Application of Personal Property Securities Act 1999** 20  
Nothing in sections 83 to 85 affects the operation of the Personal Property Securities Act 1999.”

**Privacy Act 1993** (1993 No 28)

Omit from Part I of the Second Schedule the items relating to the Industrial and Provident Societies Amendment Act 1952 and to the Motor Vehicle Securities Act 1989. 25

Add to Part I of the Second Schedule:

Personal Property Securities Act 1999      Sections 139 and 171 to 174.

**Property Law Act 1952** (1952 No 51)

Add to section 80A: 30

“(4) Nothing in this section applies to a security interest to which the Personal Property Securities Act 1999 applies.”

Repeal section 104PPA(1) and substitute:

## New (unanimous)

## Schedule 1—continued

## Property Law Act 1952 (1952 No 51)—continued

## Struck out

“(1) This section applies to a mortgagee, to which this Part applies, of the property of a company, other than a company in liquidation at the time the mortgagee became such a mortgagee, if the mortgagee became such a mortgagee under a security interest, other than a purchase money security interest, over all or any part of the company’s accounts receivable and inventory or all or any part of either of them.”

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## New

“(1) This section applies to a mortgagee, to which this Part applies, of the property of a company, other than a company in liquidation at the time the mortgagee became such a mortgagee, if the mortgagee became such a mortgagee under a security interest that—

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“(a) is over all or any part of the company’s accounts receivable and inventory or all or any part or either of them; and

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“(b) is not a purchase money security interest; and

“(c) does not arise from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation).”

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Omit from section 104PPA(2) the words “property that is subject to the charge” and substitute the words “accounts receivable and inventory that are subject to the security interest or their proceeds”. Insert in section 104PPA(2), before the words “any claim”, the words “from those assets”.

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Add to section 104PPA:

**New (unanimous)**

**Schedule 1**—continued

**Property Law Act 1952** (1952 No 51)—continued

“(5) In this section, the terms **account receivable**, **inventory**, **new value**, **proceeds**, **purchase money security interest**, and **security interest** have the same meanings as in the Personal Property Securities Act 1999.

“(6) The provisions of this section, as in force immediately before the commencement of the Personal Property Securities Act 1999, continue to apply in respect of a company’s property that was subject to a floating charge that, before the commencement of that Act, became a fixed or specific charge.”

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**Radiocommunications Act 1989** (1989 No 148)

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**Struck out**

Omit from section 183(4)(b) the words “debentures under any floating charge created by the company and be paid accordingly out of any property comprised in or subject to that charge” and substitute the words “security interest, other than a purchase money security interest, over all or any part of the company’s accounts receivable and inventory or all or any part of either of them, and be paid accordingly out of any accounts receivable or inventory comprised in or subject to that security interest (or their proceeds)”.

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**New**

Repeal section 183(4)(b) and substitute:

“(b) if the person is a company, on the liquidation of the company or on the appointment of a receiver on behalf of the holder of any debenture given by the company secured by a charge over any property of the company or on possession being taken on behalf of that debenture holder of that property, the amount of the payment, despite anything in any other enactment,—

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New (unanimous)

Schedule 1—continued

Radiocommunications Act 1989 (1989 No 148)—continued

New

- “(i) ranks immediately after amounts payable to the Commissioner of Inland Revenue in accordance with section 167(2) of the Tax Administration Act 1994; and
- “(ii) so far as the assets of the company available for payment of general creditors are insufficient to meet the amount of the payment required by section 149 or section 157 or section 164 or section 177(2)(c) or section 178(2)(c) of this Act, subject to section 167(2)(b) of the Tax Administration Act 1994, ranks in priority over any claims of any person under a security interest to the extent that the security interest—
  - “(A) is over all or any part of the company’s accounts receivable and inventory or all or any part of either of them; and
  - “(B) is not a purchase money security interest; and
  - “(C) does not arise from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation); and
- “(iii) must be paid accordingly out of any accounts receivable or inventory comprised in or subject to that security interest (or their proceeds).”

Add to section 183:



**New (unanimous)**

**Schedule 1**—continued

**Radiocommunications Act 1989** (1989 No 148)—continued

“(5) In subsection (4)(b), the terms **account receivable, inventory, new value, proceeds, purchase money security interest, and security interest** have the same meanings as in the Personal Property Securities Act 1999.

“(6) Subsection (4)(b), as in force immediately before the commencement of the Personal Property Securities Act 1999, continues to apply in respect of a company whose property was subject to a floating charge that, before the commencement of that Act, became a fixed or specific charge.”

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**Reserve Bank of New Zealand Act 1989** (1989 No 157)

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Repeal section 134(2) and substitute:

**Struck out**

“(2) Where the statutory manager of a registered bank sells or otherwise disposes of any property or assets of that bank under section 132(1), being property or assets subject to a security interest, other than a non-purchase money security interest over all or any part of the bank’s accounts receivable and inventory or all or any part of either of them, the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the property or assets.”

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**New**

“(2) If the statutory manager of a registered bank sells or otherwise disposes of any property or assets of that bank under section 132(1), being property or assets subject to a security interest, other than a security interest of the kind described in **subsection (6)**, the person entitled to the security interest must be paid out

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**New (unanimous)**

**Schedule 1**—continued

**Reserve Bank of New Zealand Act 1989** (1989 No 157)—  
continued

**New**

of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the property or assets.”

Repeal section 134(4) and (5) and substitute:

**Struck out**

- “(4) Where a statutory manager of a registered bank sells or otherwise disposes of any shares in a body corporate formed and registered under section 132(2)(a), any property or assets of which are subject to a security interest, other than a non-purchase money security interest over all or any part of the body corporate’s accounts receivable and inventory or all or any part of either of them, the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the shares. 5 10
- “(5) Where a statutory manager of a registered bank sells or otherwise disposes of any property or assets of a body corporate formed and registered under section 132(2)(a), being property or assets subject to a security interest, other than a non-purchase money security interest in all or any part of the body corporate’s accounts receivable and inventory or all or any part of either of them, the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the property or assets. 15 20 25

New (unanimous)

**Schedule 1**—continued

**Reserve Bank of New Zealand Act 1989** (1989 No 157)—  
continued

**Struck out**

“(6) In subsections (2), (4), and (5), the terms **account receivable, inventory, non-purchase money security interest, proceeds, and security interest** have the same meanings as in the Personal Property Securities Act 1999.”

**New**

- “(4) If a statutory manager of a registered bank sells or otherwise disposes of any shares in a body corporate formed and registered under section 132(2)(a), any property or assets of which are subject to a security interest, other than a security interest of the kind described in **subsection (6)**, the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the shares. 5 10
- “(5) If a statutory manager of a registered bank sells or otherwise disposes of any property or assets of a body corporate formed and registered under section 132(2)(a), being property or assets subject to security interest, other than a security interest of the kind described in **subsection (6)**, the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the property or assets. 15 20
- “(6) The kind of security interest referred to in this section is a security interest that— 25
- “(a) is over all or any part of the bank’s or body corporate’s (as the case may be) accounts receivable and inventory or all or any part of either of them; and

## New (unanimous)

## Schedule 1—continued

**Reserve Bank of New Zealand Act 1989** (1989 No 157)—  
continued

## New

- “(b) is not a purchase money security interest; and  
 “(c) does not arise from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation).”

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- “(7) In this section, **account receivable, inventory, new value, purchase money security interest, proceeds, and security interest** have the same meanings as in the Personal Property Securities Act 1999.”

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**Resource Management Act 1991** (1991 No 69)

Repeal section 122(4) and substitute:

- “(4) Subject to the provisions of this Act, and in particular to subsection (3), the Personal Property Securities Act 1999 applies in relation to a resource consent as if—  
 “(a) the resource consent were goods within the meaning of that Act; and  
 “(b) the resource consent were situated in the Provincial District in which the activity permitted by the consent may be carried out (or, where it may be carried out in more than 1 Provincial District, in those Provincial Districts).”

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**Rural Intermediate Credit Act 1927** (1927 No 45)

Repeal section 73 and substitute:

- “73 **When securities over chattels may take priority over existing securities**  
 Despite anything to the contrary in the Personal Property Securities Act 1999, any security interest within the meaning of that Act given for the purpose of securing a loan granted by the Corporation, or by any association under this Act, has

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New (unanimous)

Schedule 1—continued

Rural Intermediate Credit Act 1927 (1927 No 45)—continued

priority over any security interest that has previously been perfected by registration (as defined in that Act), comprising in whole or in part any of the same chattels, as regards the title to or right to the possession of those chattels, if the secured party under the previously perfected security interest agrees that the security interest given for the purposes of this Act has priority over the previously perfected security interest.” 5

Sale of Goods Act 1908 (1908 No 168)

Repeal section 23(2)(c) and substitute:

“(c) the provisions of the Personal Property Securities Act 1999 enabling a purchaser of goods to acquire good title to the goods.” 10

Insert, after section 27(1):

“(1A) Subsection (1) does not apply to a delivery or transfer of goods or documents of title to the goods by a person who is, with the consent of the holder of a security interest that has been perfected under the Personal Property Securities Act 1999, in possession of the goods or documents of title to the goods.” 15

Repeal both provisos to section 27(2). 20

Insert, after section 27(2):

“(2A) Subsection (2) does not apply to a delivery or transfer of goods or documents of title to the goods by a person who is, with the consent of the holder of a security interest that has been perfected under the Personal Property Securities Act 1999, in possession of the goods or documents of title to the goods.” 25

Repeal section 27(3) and substitute:

“(3) In this section,—  
“**mercantile agent** has the same meaning as in Part I of the Mercantile Law Act 1908  
“**security interest** has the same meaning as in section 17 of the Personal Property Securities Act 1999.” 30

## New (unanimous)

## Schedule 1—continued

**Summary Proceedings Act 1957** (1957 No 87)

Repeal section 94A and substitute:

**“94A Personal property securities register to be checked**

“(1) If a motor vehicle is seized under a warrant to seize property, the Registrar must, on the day after the vehicle is seized, check whether a financing statement has been registered in respect of the vehicle on the personal property securities register kept under the Personal Property Securities Act 1999. 5

“(2) If a financing statement has been registered, the Registrar must forthwith notify the person named as the secured party in the financing statement— 10

“(a) that the Registrar may, under section 95, sell the vehicle after the expiration of 7 days from the date of seizure, if the fine remains unpaid and no claim has been made by a person other than the defendant in respect of the property: 15

“(b) of that person’s rights under sections 96 and 97.”

Omit from Part II of the First Schedule the item relating to the Chattels Transfer Act 1924.

**Tax Administration Act 1994** (1994 No 166) 20

Repeal the definition of **floating charge** in section 3(1).

Repeal the definition of **floating charge** in section 167(4).

Repeal section 169(11) and substitute:

“(11) In this section, **registration Act to which the property is subject**, in relation to any property, means— 25

“(a) the Land Transfer Act 1952 or the Deeds Registration Act 1908, as the case may require, in every case where the property is land or an interest in land (including a mortgage):

“(b) the Personal Property Securities Act 1999, in every case where the property is subject to a security interest within the meaning of that Act.” 30

**Trustee Act 1956** (1956 No 61)

Repeal section 39A(3) and substitute:

**New (unanimous)**

**Schedule 1**—continued

**Trustee Act 1956** (1956 No 61)—continued

- “(3) A copy of any such inventory, signed by that person and by the trustee, is deemed to be a security interest within the meaning of the Personal Property Securities Act 1999, and a financing statement may be registered accordingly.”

**New (unanimous)**

s 191(2)

**Schedule 2  
Regulations amended**

**Domestic Violence (Public Registers) Regulations 1998**  
(SR 1998/342)

Omit from Schedule 1 the items relating to the Industrial and Provident Societies Amendment Act 1952 and the Motor Vehicle Securities Act 1989. 5

Add to Schedule 1:

Personal Property Securities Act 1999 Section 139.

**Struck out**

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**Legal Services Regulations 1991** (SR 1991/293) 10

Revoke regulation 42 and substitute:

**“42 Registration of charges**

If a charge arising under section 40 of the Act relates to personal property to which the Personal Property Securities Act 1999 applies, a financing statement may be registered under that Act as if the charge were a security interest within the meaning of that Act.” 15

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**Personal Property Securities  
Amendment (No 2)**

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**Legislative history**

4 April 2001

Divided from Business Law Reform Bill  
(No 319-3G)

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