



Personal Property Securities (Corporations and Other Amendments) Bill 2011

Paula Pyburne
Law and Bills Digest Section

Contents

Purpose	3
Background	3
Amendments to the Personal Property Securities Act	5
Committee consideration	5
Policy position of non-government parties	6
Financial implications.....	6
Key provisions	6
Amendments to the Corporations Act.....	6
Registrable charges.....	6
Liability of receivers and voluntary administrators	7
Enforcement of liens and pledges	8
Registration under a foreign law	8
Amendments to the Personal Property Securities Act	9
Harmonising with New Zealand law	9
CHES and the definition of ‘intermediated security’	9
24 month transitional period.....	10
Simplification of security agreements	11
Belief that collateral secures obligation	12
Misleading registration.....	12
Conditions of data access	12
Registrar investigations	13

Personal Property Securities (Corporations and Other Amendments) Bill 2011

Date introduced: 23 February 2011

House: House of Representatives

Portfolio: Attorney-General

Commencement: Sections 1–3 and Schedule 2 on the day of the Royal Assent; Schedule 1 immediately after the commencement of items 1–185 of Schedule 1 to the *Personal Property Securities (Corporations and Other Amendments) Act 2010*.

Links: The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bills home page, or through <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at the ComLaw website, which is at <http://www.comlaw.gov.au/>.

Purpose

The Personal Property Securities (Corporations and Other Amendments) Bill 2011 (the Bill) amends the *Corporations Act 2001* (Corporations Act) and the *Personal Property Securities Act 2009* (the PPS Act) to make minor and technical amendments that will:

- clarify certain definitions
- correct drafting errors
- provide the Registrar with the power to conduct investigations into any matter for the purpose of performing his or her functions
- insert operational provisions about the access and use of the PPS Register, and
- clarify that the intention of the regime is not to interfere with existing rights under the Corporations Act.

Background

In Australia, registers of dealings in real estate—that is, land and buildings—are maintained by Land Titles offices in each of the states and territories. However, prior to the enactment of the PPS Act in 2009, there were no comparable systems in Australia to uniformly register dealings in **personal property**.¹

1. P Pyburne and D Spooner, *Personal Property Securities Bill 2009*, Bills Digest, no. 36, 2009–10, Parliamentary Library, Canberra, 15 October 2009, viewed 1 March 2011, <http://www.aph.gov.au/library/pubs/bd/2009-10/10bd036.pdf>. 'Personal property' is defined in section 8 of the PPS Act. Basically, personal property includes many different kinds of tangible and intangible property. It excludes real property (that is, land, fixtures) a right, entitlement or authority

The PPS Act arose, in part, out of consultation undertaken by the Standing Committee of Attorneys-General. The first part of that consultation was an options paper issued in April 2006 to gauge the level of support for personal property securities reform.² That paper identified the problems for business in relation to personal property securities as follows:

A business may finance its activities through equity capital provided by its owners, or by debt capital sourced from credit providers. Credit providers may seek to protect their loans by taking securities over collateral owned by debtors. A business operating in a competitive economy should be able efficiently to offer all of its property as collateral in raising debt capital. However, the existing arrangements provide differential levels of protection for security holders, depending on the nature of the collateral over which the security is taken, and the State or Territory in which the security is taken.

The existing arrangements therefore focus on the form of the security being offered as collateral. This can discourage credit providers from accepting some classes of property as security in loan transactions. The result is that some businesses may not be able to employ all of their property in raising debt capital.³

Similarly, the paper identified the problems for consumers (and to a lesser extent, small business) in relation to personal property securities, stating:

Consumers wish to assure themselves that they will receive good title on the purchase of significant assets, such as motor vehicles and boats. The existing arrangements also impose a range of compliance and transaction costs on the parties to a securities transaction, and on everyone who deals in personal property. Some of these costs stem from the fragmented nature of the existing arrangements. Credit providers must comply with the different arrangements that apply in each State and Territory, and manage their business through the relevant State or Territory securities registry.

These costs can provide a disincentive to offering personal property as collateral, particularly in relation to small business and consumer financing where transaction costs can have a significant effect on profit margins.⁴

The purpose of the PPS Act was to establish a single register of personal property securities in place of separate registers tracking whether there is any mortgage or loan or other financial encumbrance over personal (rather than real) property.

granted under a law of the Commonwealth, a state or a territory and declared by that law not to be personal property for the purposes of the PPS Act. Examples include motor vehicles, household goods, machinery, business inventory, intellectual property and company shares.

2. Standing Committee of Attorneys-General, *Review of the Law of Personal Property Securities*, Options Paper, Canberra, April, 2006, viewed 1 March 2011, [http://www.ag.gov.au/agd/WWW/rwpattach.nsf/VAP/\(B60171F51F850FBEA2A49F8C5FEC137E\)~Review+of+the+Law+on+Personal+Property+Securities.pdf/\\$file/Review+of+the+Law+on+Personal+Property+Securities.pdf](http://www.ag.gov.au/agd/WWW/rwpattach.nsf/VAP/(B60171F51F850FBEA2A49F8C5FEC137E)~Review+of+the+Law+on+Personal+Property+Securities.pdf/$file/Review+of+the+Law+on+Personal+Property+Securities.pdf)
3. *Ibid.*, p. 2.
4. *Ibid.*

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.

Amendments to the Personal Property Securities Act

Since the enactment of the PPS Act, there have been two amending acts (not including this Bill):

- *Personal Property Securities (Consequential Amendments) Act 2009* (2009 Amendments)⁵ and
- *Personal Property Securities (Corporations and Other Amendments) Act 2010* (2010 Amendments).⁶

This Bill contains further technical amendments to the PPS Act and consequential amendments to the Corporations Act prior to the commencement of the personal property securities regime. Importantly, whilst the amending Acts have been enacted, not all of their provisions have commenced. As a result, some of the amendments in this Bill relate to provisions of those earlier amending Acts which may not yet have commenced.

Committee consideration

At its meeting of 3 March 2011, the Senate's Selection of Bills Committee resolved that the Bill not be referred to committee.⁷

However, the Senate's Legal and Constitutional Affairs Committee has conducted inquiries into the following related legislation:

- Personal Property Securities Bill 2009⁸
- 2009 Amendments⁹ and
- 2010 Amendments.¹⁰

-
5. P Pyburne, *Personal Property Securities (Consequential Amendments) Bill 2009*, Bills Digest, no. 60, 2009–10, Parliamentary Library, Canberra, 12 November 2009, viewed 1 March 2011, <http://www.aph.gov.au/library/pubs/bd/2009-10/10bd060.pdf>
 6. The provisions of the relevant Bill were referred to the Senate Legal and Constitutional Affairs Legislation Committee for inquiry and report. The relevant report contains information about the purpose and provisions of the Bill: http://www.aph.gov.au/Senate/committee/legcon_ctte/PPS_corps_and_other_amends_2010/report/index.htm
 7. Selection of Bills Committee, *Report No. 2 of 2011*, 3 March 2011, viewed 11 April 2011, http://www.aph.gov.au/Senate/committee/selectionbills_ctte/reports/2011/rep0211.pdf
 8. Details of the inquiry, the submissions made and the final report can be viewed at: http://www.aph.gov.au/Senate/committee/legcon_ctte/pps_2009/index.htm
 9. Details of the inquiry, the submissions made and the final report can be viewed at: http://www.aph.gov.au/Senate/committee/legcon_ctte/pps_consequential/index.htm
 10. Details of the inquiry, the submissions made and the final report can be viewed at: http://www.aph.gov.au/senate/committee/legcon_ctte/PPS_corps_and_other_amends_2010/index.htm

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.

Policy position of non-government parties

The position of the Liberal Party is best gleaned from the additional comments from Liberal Senators in the report by the Senate Legal and Constitutional Affairs Legislation Committee which inquired into the 2010 Amendments as follows:

Liberal Senators agree with the majority report's consideration of the evidence, and largely support the majority report's conclusions and recommendation. Liberal Senators understand the benefits and importance of establishing a simplified, national personal property securities (PPS) regime. Liberal Senators have made a significant contribution to the three previous inquiries into the development of the PPS legislation. As noted in our comments to the previous report, we do not intend to obstruct this worthwhile reform, but merely wish to ensure that the Government 'gets it right'.¹¹

Senator Ludlam of the Australian Greens was a member of the Legal and Constitutional Affairs Legislation Committee for both of its inquiries into the Personal Property Securities Bill 2009 and the 2009 Amendments. The Australian Greens did not make any additional comments in either of the Committee's resulting reports.

Financial implications

According to the Explanatory Memorandum, the Bill has no direct financial impact on Government revenue.¹²

Key provisions

Amendments to the Corporations Act

Registrable charges

Prior to the enactment of the PPS Act, the Corporations Act required the Australian Securities and Investments Commission (ASIC) to maintain the Australian Register of Company Charges. When a company borrowed money, it could grant a charge over its assets as security for the debt. In that case, the company was required to lodge documents relating to the 'charge' with ASIC for registration. The Australian Register of Company Charges served two important purposes. First, it enabled a potential creditor which proposed to lend money on security of particular assets, to

11. Legal and Constitutional Affairs Legislation Committee, *Personal Property Securities (Corporations and Other Amendments) Bill 2010 [Provisions]*, Senate Committee Report, Commonwealth of Australia, Canberra, May 2010, viewed 1 March 2011,

http://www.aph.gov.au/Senate/committee/legcon_ctte/PPS_corps_and_other_amends_2010/report/report.pdf

12. Explanatory Memorandum, Personal Property Securities (Corporations and Other Amendments) Bill 2011, p. 2.

ascertain whether a charge had already been given over the same assets. Secondly, in the event of insolvency, it was used to determine which creditors should be given priority over the company's assets.

The PPS Act established the PPS Register, which will replace, amongst other things, the Australian Register of Company Charges. The 2010 amendments closed the Australian Register of Company Charges¹³ and changed references in the Corporations Act to a 'floating charge' to references to a 'circulating security interest'¹⁴—consistent with the terms of the PPS Act.

In their current form, subsections 130(1) and (2) provide that a person has constructive knowledge of a charge that is registered on the Australian Register of Company Charges. **Items 1 and 2 of Schedule 1** to the Bill delete subsection 130(2) of the Corporations Act, and consequently renumber subsection 130(1) as section 130. The rationale for the amendment is that the Australian Register of Company Charges has closed.

Item 13 of Schedule 1 inserts **proposed sections 1501A and 1501B** into Note 2 of the Corporations Act. **Proposed section 1501B** moves the constructive knowledge provision into the Notes of the Corporations Act to clarify transitional arrangements. The effect of the proposed provision is to preserve the constructive knowledge provision for all charges registered before the '**registration commencement time**'—that is, October 2011, when the PPS Register commences.¹⁵

Liability of receivers and voluntary administrators

Before the enactment of the PPS Act, it was commercial practice to insert a 'retention of title' clause (known as a '*Romalpa*' clause) into a contract for sale of goods, stating that title in the goods does not pass from the seller to the buyer until the purchase price is paid. If, for example, a company which had received goods on consignment became insolvent before the goods were paid for, the seller of the goods relied on the 'retention of title' clause for the return of his or her goods or to give it a priority interest, rather than merely having the same rights as any other unsecured creditor.¹⁶ In the event that a company came under the control of a receiver (or entered into voluntary

13. Item 18 of Schedule 1 to the *Personal Property Securities (Corporations and Other Amendments) Act 2010* repealed Chapter 2K of the Corporations Act.

14. Section 51C, Corporations Act.

15. The commencement time has been amended from May 2011 to October 2011. R McClelland (Attorney-General) *More time for industry to prepare for property security reform*, media release, 17 February 2011, viewed 19 April 2011, http://www.attorneygeneral.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases_2011_FirstQuarter_17February2011-MoretimeforindustrytoprepareforPropertySecurityReform

16. Currently, section 12 of the PPS Act 2009 defines the property which passes from buyer to seller under a 'retention of title' clause under the omnibus concept of 'security interest'.

administration), the controller (or voluntary administrator), was personally liable for payments due under certain transactions unless he or she specifically disclaimed the transactions.¹⁷

In this regard, the 2010 amendments did two things:

- removed a receiver's liability for these transactions in respect of retention of title property,¹⁸ and
- removed the voluntary administrator's capacity to avoid liability for transactions in respect of retention of title property.¹⁹

Items 3, 4 and 6 of Schedule 1 to the Bill repeal the relevant 2010 amendments to make it clear that parties retain the rights they had under the Corporations Act prior to the 2010 Amendments.

Enforcement of liens and pledges

Relevant to this Bill, the 2010 Amendments did the following:

- introduced the new concept of '**possessory security interest**', which includes a lien or pledge²⁰
- repealed section 441JA of the Corporations Act which provided for the sale of property which was subject to a lien or pledge in the event that a company was under administration²¹ and
- replaced that section with new section 441EA which provided for the sale of property which is subject to a '**possessory security interest**'.²²

Item 5 of Schedule 1 to the Bill corrects a drafting error by inserting **proposed paragraph 441EA(1)(ca)** into the Corporations Act. The paragraph is in the same terms as former paragraph 441JA(1)(d), which was inadvertently repealed by the 2010 Amendments. The effect of **proposed paragraph 441EA(1)(ca)** is that the possessory security interest (including a lien or pledge) can only be enforced if it is not subordinate to another security interest.

Registration under a foreign law

Prior to the 2010 Amendments, section 266 of the Corporations Act operated so that a registrable charge may be void as a security unless it is registered within a specified period. However, the 2010

17. Sections 419A and 443B, Corporations Act.

18. Item 152 of Schedule 1 to the *Personal Property Securities (Corporations and Other Amendments) Act 2010*.

19. Item 165 of Schedule 1 to the *Personal Property Securities (Corporations and Other Amendments) Act 2010*.

20. A '**lien**' is the right to hold the property of another as security for the performance of an obligation or the payment of a debt. A '**pledge**' is a form of security over a chattel constituted by delivery by the pledgor of the chattel or documents of title to the chattel to the security holder with a right to retransfer of possession and discharge of the security on performance of the obligation secured and an authority in the security holder to sell the property on default by the pledgor.

21. Item 41 of Schedule 1 to the *Personal Property Securities (Corporations and Other Amendments) Act 2010*.

22. Item 40 of Schedule 1 to the *Personal Property Securities (Corporations and Other Amendments) Act 2010*.

Amendments repealed that section and replaced it with section 588FL.²³ Section 588FL provides in similar terms to former section 266, that a **‘PPSA security interest’** will not be enforceable if it has not been registered within specified time limits. Specifically, subsection 588FL(3) applies where the security interest is enforceable against third parties under the law of a foreign jurisdiction.

Items 7–11 of Schedule 1 to the Bill repeal subsection 588FL(3) and references to it on the grounds that the consequences of failure to register on a foreign register should be determined by the law that established that foreign registration requirement.

Amendments to the Personal Property Securities Act

Harmonising with New Zealand law

Section 12 of the PPS Act provides that a **‘security interest’** means ‘an interest in relation to personal property’. Other sections in the PPS Act refer to **‘security interest’** in the same way.

However, the term **‘security interest’** is defined slightly differently in the equivalent New Zealand statute—*Personal Property Securities Act 1999*.²⁴ Paragraph 17(1)(a) of the New Zealand Act states that the term **‘security interest’** means an interest in personal property created or provided for by a transaction that in substance secures payment or performance of an obligation, without regard to the form of the transaction, and the identity of the person who has title to the collateral.

In the interests of harmonising Australian and New Zealand law, **items 2, 6, 7, 25, 36 and 37 of Schedule 1** to the Bill slightly amend the Australian definition by removing the words ‘in relation to’ from various sections of the PPS Act. The effect of the amendments is that the term **‘security interest’** is framed in equivalent terms to those in the New Zealand statute.

CHESS and the definition of ‘intermediated security’

The 2010 Amendments repealed and replaced section 15 of the PPS Act which details what is an **‘intermediated security’** for the purposes of the PPS Act.²⁵ Notably subsection 15(1) defines the term **‘intermediated security’** as the rights of a person in whose name an intermediary maintains a securities account. The section further defines the term **‘intermediary’**. Broadly, an **‘intermediary’** is:

- a person (including a central securities depository) who holds an Australian financial services licence permitting the person, in the course of business or other regular activity, to maintain securities accounts on behalf of others or on their own behalf

23. Item 183 of Schedule 1 to the *Personal Property Securities (Corporations and Other Amendments) Act 2010*.

24. The term **‘security interest’** is defined in section 17 of the New Zealand statute. The text of the *Personal Property Securities Act 1999* (NZ) can be viewed at:
<http://www.legislation.govt.nz/act/public/1999/0126/latest/DLM45900.html>

25. Item 34 of Schedule 2 to the *Personal Property Securities (Corporations and Other Amendments) Act 2010*.

- a person who operates a clearing and settlement facility under an **'Australian CS facility licence'**,²⁶ or
- a person (including a central securities depository) who holds a licence issued under the law of a foreign jurisdiction permitting the person, in the course of business or other regular activity, to maintain securities accounts, on behalf of others or on their own behalf.

The Clearing House Electronic Subregister System (CHES) is operated by the ASX Settlement and Transfer Corporation (ASTC), a wholly owned subsidiary of the Australian Securities Exchange (ASX). ASTC authorises participants such as brokers, custodians, institutional investors and settlement agents to access CHES and settle trades in shares in listed companies made by themselves or on behalf of their clients.²⁷ CHES electronically registers the title (ownership) of shares on its subregister. This registration is secure and is an efficient means for holders to register title to their shares if they intend to trade them. The amendment to subsections 15(5) and (6) in **item 8 of Schedule 2** to the Bill is to clarify that ASTC is an **'intermediary'**. Similarly, the amendment to the definition of **'securities account'** in **item 9 of Schedule 2** to the Bill will clarify that section 15 of the PPS Act captures the securities accounts held by ASTC.

Registration in the subregister is by electronic means. To register shares on the CHES subregister, a person arranges with an authorised participant—generally a stockbroker or their settlement agent—to become his or her **'CHES Sponsor'**. The CHES Sponsor controls the transfer or movement of shares to or from the person's CHES Sponsored holdings once the person has given specific instructions to that effect.²⁸

Existing section 26 of the PPS Act (about control of intermediated securities) does not recognise the type of control which is exercised under sponsorship agreements such as those used by CHES. **Item 14** inserts **proposed subsection 26(3A)** to remedy this situation.

24 month transitional period

Sections 307 and 308 of the PPS Act define the terms **'transitional security agreement'** and **'transitional security interest'** respectively. A **'transitional security agreement'** is a security agreement that is in force immediately before the registration commencement time, and continues after that time. The term refers to a security agreement which would have been captured by the provisions of the PPS Act, had the Act been in force at the time that the security agreement was created. The security interest created by a transitional security agreement is a **'transitional security interest'**, which continues after the registration commencement time and so must be migrated to the PPS register.

26. The term **'Australian CS facility licence'** is defined in the Corporations Act as being a licence under section 824B of that Act which authorises a person to operate a clearing and settlement facility.

27. Information about CHES is contained in Australian Securities Exchange, *CHES: Clearing House Electronic Subregister System*, viewed 2 March 2011, <http://www.nsga.com.au/documents/ches/ASX%20CHES%20Booklet.pdf>

28. Ibid.

Usually section 44 of the PPS Act applies so that a buyer or lessee of personal property will take that personal property **free** of a security interest in the property if:

- the regulations provide that the personal property may or must be described by serial number in a registration on the PPS register, and
- a search of the register, immediately before the time of the sale or lease, by reference only to the serial number would not disclose a registration that perfected²⁹ the security interest—this will happen if the serial number is incorrect or missing altogether.

Item 15 of Schedule 2 to the Bill inserts **proposed subsection 44(3)**. It gives a grace period of 24 months for those holders of a **'transitional security interest'** in serial numbered property, that is not currently registered by serial number, to register the serial number. During that 24 month period after the registration commencement time (October 2011), their security interest will be protected. Once the grace period expires, the provisions of subsection 44(1) will apply. The grace period does not extend to holders of a transitional security interest in a motor vehicle, or in a watercraft which is defined in the regulations.³⁰

Similarly, **item 16 of Schedule 2** amends subsection 52(1) of the PPS Act to ensure that the section is consistent with the transitional provisions in the PPS Act. This means that a buyer or lessee, for new value, of the proceeds of personal property, or of goods or a negotiable document of title, cannot take the proceeds, goods or document free of a security interest that is temporarily perfected by force of this Act.

Simplification of security agreements

Item 23 of Schedule 2 to the Bill repeals and replaces section 116 to ensure that the PPS Act does not apply to a controller of property in the position of a 'receiver', or 'receiver and manager'.

Item 22 of Schedule 2 inserts **proposed subsection 115(7)** as a consequential amendment. The effect of these items is that a person who is the controller of property as a receiver, or receiver and manager, will be subject to Part 5.2 of the Corporations Act.³¹ Any controller of property who is not a receiver, or receiver and manager, will be subject to the provisions of Part 4.3 of the PPS Act.³²

29. 'Perfection' occurs when a security interest has attached to collateral and any further steps needed to make the security interest effective against third parties have been taken.

30. Regulation 1.6 of the Personal Property Securities Regulation 2010 defines **'watercraft'** as a boat or vessel, other than a seaplane that: (a) is used, or intended to be used, in navigation by water or for any other purpose on water; and (b) that has a hull identification number of an official number within the meaning of the Shipping Registration Regulations 1981, issued by the Registrar of Ships (within the meaning of the *Shipping Registration Act 1981*).

31. Part 5.2 of the Corporations Act deals with receivers and other controllers of property of corporations.

32. Part 4.3 of the PPS Act deals with the seizure and disposal, or retention, of collateral.

Belief that collateral secures obligation

A person may apply to the Registrar of Personal Property Securities to register a financing statement, or a financing change statement, with respect to a security interest or certain personal property. The term *'financing statement'* merely refers to the data on the PPS Register.

Because registration may perfect a security interest, and thus give the secured party an advantage under the PPS Act in enforcing the interest, a person cannot register a security interest unless the person believes on reasonable grounds that the security interest is, or will be, held by a person stated in the application for registration to be a secured party.

Item 30 of Schedule 2 amends subparagraph 150(3)(c)(ii) of the PPS Act. **Items 31–33** amend section 151. Together, these amendments require that a person registering a financial statement has the belief that the person described as the secured party is, or will become, the secured party in relation to the collateral. Where a person registers without such a belief, existing subsection 151(5) provides that he or she would be taken to have contravened an obligation owed to any person with an interest in the personal property. Section 271 of the PPS Act then gives a right to recover damages for any loss or damage in relation to such a failure.

Misleading registration

It is the secured party's responsibility to ensure that the information registered on the PPS Register is accurate and complete. Section 164 of the PPS Act contains the general rule that a registration with respect to a security interest will be **ineffective** if there is a seriously misleading defect in any data relating to the registration. It has been stated that:

This rule would not necessarily make a registration defective on the basis of a simple mistake, such as a typographical error in a free text field. Nor would it be likely to capture errors of a more substantive kind that do not seriously mislead a person. For example, the omission of the name of one secured party in a consortium would not be seriously misleading whereas an incomplete or inaccurate collateral description would be likely to be misleading.³³

Item 35 amends paragraph 164(1)(a) to create a power to make regulations setting out circumstances in which a registration of a security interest will not be seriously misleading.

Conditions of data access

Item 52 inserts **proposed Part 5.5A** into the PPS Act, setting out the conditions of access to data on the PPS Register. According to the Guide to proposed Part 5.5A, '[a]ccess to registered data and third party data through the PPS Register may be provided subject to conditions'.³⁴ **Proposed**

33. Explanatory Memorandum, Personal Property Securities Bill 2009, p. 87.

34. **Proposed section 176A** of the PPS which is contained in item 52 of Schedule 2 to the Bill.

section 176B provides that a person may be required to comply with *registered data conditions* where the person makes an application:

- to register a financing statement or a financing change statement³⁵
- for access to the register to search for data,³⁶ or
- for a copy of a registered financing statement or verification statement.³⁷

Those registered data conditions will include, but not be limited, to the **use** of the registered data.³⁸ A person is obliged to comply with the registered data conditions under the PPS Act.³⁹ A failure to discharge that obligation, gives the Commonwealth a right to recover damages under section 271 of the PPS Act for any loss or damage relating to the failure.⁴⁰

Proposed section 176C deals with access to third party data—which does not include personal information about an individual within the meaning of the *Privacy Act 1988*. Under the proposed section, the Registrar may make arrangements, prescribed by regulations, to enable third party data (in particular, data about stolen and written-off motor vehicles to be provided by the National Exchange of Vehicle and Driver Information System) to be searched for on the PPS Register. As with proposed section 176B, a person may be required to comply with *‘third party data conditions’* if the person makes an application to register a financing statement or a financing change statement, for access to the register to search for data, or to obtain a copy of a registered financing statement or verification statement. A failure to discharge the obligation to comply with the third party data conditions, gives the third party a right to recover damages under section 271 of the PPS Act for any loss or damage relating to the failure.

The amendments in **items 1, 3–5, 24, 34, 38–42, 44–48, 50–51 and 56 of Schedule 2** to the Bill are a consequence of the insertion of **proposed sections 176A–176C**.

Registrar investigations

Part 5.9 of the PPS Act establishes the position of the Registrar of Personal Property Securities (PPS Registrar) and the Deputy Registrar. Section 195 broadly provides that the Registrar has power to do all things necessary or convenient to be done for, or in connection with, the performance of his or her functions. **Item 53 of Schedule 2** inserts **proposed section 195A** which will provide the PPS Registrar with the power to conduct investigations into any matter for the purpose of performing his or her functions. These are general powers which operate when the PPS Registrar believes on reasonable grounds that a person has information that is relevant to an investigation. In that case, the PPS Registrar may issue a notice to the person requiring that the person give information to the

35. Section 150, PPS Act.

36. Section 170, PPS Act.

37. Section 175, PPS Act.

38. **Proposed subsection 176B(3)** of the PPS Act.

39. **Proposed subsection 176B(4)** of the PPS Act.

PPS Registrar, within the period and in the way specified in the notice. The period specified in the notice must be at least 14 days after the notice is given. Where the person fails to comply with the notice, a civil penalty may be imposed, being 50 penalty units for an individual or 250 penalty units for a body corporate.⁴¹ The amendment to subsection 172(5) at **item 49 of Schedule 2** to the Bill is a consequence of this proposed section.

40. **Proposed subsection 176B(5)** of the PPS Act.

41. Under section 4AA of the *Crimes Act 1914* a penalty unit is equivalent to \$110. This means that the maximum financial penalty for an individual is \$5500 and for a body corporate is \$27 500.

© Commonwealth of Australia 2011

This work is copyright. Except to the extent of uses permitted by the Copyright Act 1968, no person may reproduce or transmit any part of this work by any process without the prior written consent of the Parliamentary Librarian. This requirement does not apply to members of the Parliament of Australia acting in the course of their official duties.

Disclaimer: Bills Digests are prepared to support the work of the Australian Parliament. They are produced under time and resource constraints and aim to be available in time for debate in the Chambers. The views expressed in Bills Digests do not reflect an official position of the Australian Parliamentary Library, nor do they constitute professional legal opinion. Bills Digests reflect the relevant legislation as introduced and do not canvass subsequent amendments or developments. Other sources should be consulted to determine the official status of the Bill.

Feedback is welcome and may be provided to: web.library@aph.gov.au. Any concerns or complaints should be directed to the Parliamentary Librarian. Parliamentary Library staff are available to discuss the contents of publications with Senators and Members and their staff. To access this service, clients may contact the author or the Library's Central Enquiry Point for referral.

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2434.

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.