



Personal Property Securities (Corporations and Other Amendments) Act 2011

No. 35, 2011

**An Act to amend the *Corporations Act 2001* as a
consequence of the enactment of the *Personal
Property Securities Act 2009*, to amend that Act, and
for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

1	Short title.....	2
2	Commencement.....	2
3	Schedule(s).....	2
Schedule 1—Corporations Act 2001		3
Schedule 2—Personal Property Securities Act 2009		6



Personal Property Securities (Corporations and Other Amendments) Act 2011

No. 35, 2011

**An Act to amend the *Corporations Act 2001* as a
consequence of the enactment of the *Personal
Property Securities Act 2009*, to amend that Act, and
for related purposes**

[Assented to 26 May 2011]

The Parliament of Australia enacts:

Personal Property Securities (Corporations and Other Amendments) Act 2011 No. 35, 2011

1

1 Short title

This Act may be cited as the *Personal Property Securities (Corporations and Other Amendments) Act 2011*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	26 May 2011
2. Schedule 1	Immediately after the commencement of items 1 to 185 of Schedule 1 to the <i>Personal Property Securities (Corporations and Other Amendments) Act 2010</i> .	30 January 2012
3. Schedule 2	The day this Act receives the Royal Assent.	26 May 2011

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Corporations Act 2001

1 Subsection 130(1)

Omit “(1)”.

2 Subsection 130(2)

Repeal the subsection.

Note: New section 1501B of the *Corporations Act 2001* (inserted by this Schedule) preserves the operation of the repealed subsection in relation to registrable charges created before the registration commencement time within the meaning of section 306 of the *Personal Property Securities Act 2009*.

3 Paragraph 419A(1)(b)

Omit “; and”.

4 Paragraph 419A(1)(c)

Repeal the paragraph.

5 After paragraph 441EA(1)(c)

Insert:

(ca) either:

- (i) there is no other security interest in the property; or
- (ii) there are one or more other security interests in the property, but none of the debts secured by those other security interests has a priority that is equal to or higher than the priority of the debt secured by the possessory security interest; and

6 Subsection 443B(3A)

Repeal the subsection.

7 Paragraph 588FL(1)(b)

Omit “or (3)”.

Note: The heading to subsection 588FL(2) is deleted.

8 Subsection 588FL(3)

Repeal the subsection.

9 Subsection 588FM(1)

Omit “or (3)(c)(iv)”.

10 Subsection 588FM(1) (note)

Repeal the note, substitute:

Note: If an insolvency-related event occurs in relation to a company, paragraph 588FL(2)(b) fixes a time by which a PPSA security interest granted by the company must be registered under the *Personal Property Securities Act 2009*, failing which the security interest may vest in the company.

11 Subsection 588FN(3)

Omit “covered by subsection 588FL(2) (Australian law governs security interest)”.

12 Subsections 1483(9) and (10) (notes)

Omit “1506”, substitute “1507”.

Note: The heading to section 1501 is replaced by the heading “**Charges, liens, pledges and third party property—application**”.

13 After section 1501

Insert:

1501A References to the whole or substantially the whole of a company’s property

- (1) This section applies to a transitional security interest within the meaning of the *Personal Property Securities Act 2009*.

Note: For the meaning of *transitional security interest*, see section 308 of the *Personal Property Securities Act 2009*.

- (2) In working out for the purposes of this Act whether the security interest covers the whole, or substantially the whole, of the company’s property at a time (the *later time*) that is at or after the commencement time, disregard any of the company’s property that is PPSA retention of title property of the company at the later time.

Note: This Act gives certain powers to secured parties who hold security interests over the whole, or substantially the whole, of a company’s property (for example, the power to appoint an administrator under section 436C).

1501B Constructive notice of registrable charges

Section 130 does not apply in relation to a document that has been lodged with ASIC to the extent that the document relates to a registrable charge.

Note: Section 130 provides that a person is not taken to have information about a company merely because the information is available to the public from ASIC.

Note: The heading to section 1510 is altered by omitting “**at or after**” and substituting “**before**”.

Schedule 2—Personal Property Securities Act 2009

1 Section 3

After “how the register can be searched”, insert “, and how certain non-registered data can be provided through the register (as a portal)”.

2 Section 10 (definition of *interest*)

Omit “in relation to personal property”, substitute “in personal property”.

3 Section 10

Insert:

registered data conditions has the meaning given by section 176B (access to registered data).

4 Section 10

Insert:

third party data has the meaning given by section 176C (access to third party data).

5 Section 10

Insert:

third party data conditions has the meaning given by section 176C (access to third party data).

6 Subsections 12(1) and (2)

Omit “interest in relation to personal property”, substitute “interest in personal property”.

7 Subsection 12(3)

Omit “in relation to personal property”.

8 Subsections 15(5) and (6)

After “*intermediary*”, insert “for the purposes of paragraph (2)(a) or (c)”.

9 Subsection 15(7) (definition of *securities account*)

Repeal the definition, substitute:

securities account means:

- (a) an account to which interests in financial products may be credited or debited; or
- (b) in the case of an intermediary mentioned in paragraph 15(2)(b)—a record of holdings and transfers of interests in financial products.

10 Subsection 20(4)

Omit “the term ‘consumer property’, ‘commercial property’ or ‘equipment’ in the writing”, substitute “the term ‘consumer property’ or ‘commercial property’ in the writing”.

11 Subparagraph 21(2)(c)(i)

Omit “in relation to which the ADI is the secured party”.

12 Section 25

Repeal the section, substitute:

25 Control of an ADI account

A secured party has *control* of an ADI account for the purposes of section 21 (perfection—main rule) if, and only if, the secured party is the ADI.

Note: *Control* has an extended meaning in relation to ADIs in sections 341 and 341A (control in relation to fixed and floating charges).

13 Subsection 26(1)

After “credited to”, insert “or recorded in”.

14 After subsection 26(3)

Insert:

- (3A) A secured party has *control* of an intermediated security if there is an agreement in force under which the secured party (or a person

who has agreed to act on the instructions of the secured party) is able to initiate or control the sending of some or all electronic messages or other electronic communications by which the intermediated security could be transferred or otherwise dealt with.

15 At the end of section 44

Add:

- (3) Within the period of 24 months after the registration commencement time, subsection (1) does not apply if the security interest is a transitional security interest, other than:
 - (a) a migrated security interest in a motor vehicle; or
 - (b) a migrated security interest in a watercraft within the meaning of the regulations.

16 Subsection 52(1)

Omit “(or perfected by force of section 322)”, substitute “(other than a transitional security interest perfected by force of section 322)”.

17 Section 75

Omit “A perfected”, substitute “To avoid doubt, a perfected”.

18 Section 75

Omit “, other than a security interest that is perfected by control in accordance with subparagraph 25(1)(a)(ii)”.

19 Section 75 (note 1)

Omit “(see subparagraph 25(1)(a)(i))”, substitute “(see paragraph 21(2)(c) and section 25)”.

20 Paragraph 112(2)(b)

Omit “an agreement (whether or not a security agreement)”, substitute “a security agreement”.

21 Paragraph 115(1)(b)

Omit “grantor”, substitute “person with an interest in the whole”.

22 At the end of section 115

Add:

Contracting out in relation to controllers (other than receivers etc.)

- (7) Subject to subsections (2), (3), (5) and (6), the parties to a security agreement may contract out of the application under subsection 116(2) of any provision of Part 4.3 (seizure and disposal or retention of collateral) in relation to property.

Note: Subsection 116(2) provides for the application of this Chapter while a person is a controller of the property other than a receiver, or a receiver and manager, of the property within the meaning of the *Corporations Act 2001*.

23 Section 116

Repeal the section, substitute:

116 Application while there is a receiver or another controller of property

- (1) This Chapter does not apply in relation to property while a person is a controller of the property in either of the following capacities:
- (a) receiver;
 - (b) receiver and manager.

Note: See Part 5.2 of the *Corporations Act 2001* for the powers, functions and duties of receivers, and other controllers, of the property of corporations.

- (2) This Chapter (except section 131) applies in relation to property while a person is a controller of the property in a capacity other than those mentioned in subsection (1) of this section.

Note 1: Section 131 requires a secured party disposing of collateral to obtain market value for the collateral. Section 420A of the *Corporations Act 2001* similarly requires a controller exercising a power of sale to obtain market value for the property sold.

Note 2: Subsection 115(7) enables the parties to a security agreement to contract out of the application of Part 4.3 under subsection (2) of this section.

- (3) Despite subsection (1), if a grantor of a security interest in property is an individual, this Chapter applies in relation to the security interest while a person is a receiver, or a receiver and manager, of the property.

(4) In this section, each of the following terms, in relation to property of a corporation, has the same meaning as in the *Corporations Act 2001*:

- (a) controller;
- (b) receiver;
- (c) receiver and manager.

24 Section 145

Omit:

Part 5.5 is about searching the register.

substitute:

Part 5.5 is about accessing the register to search for registered data and third party data.

Part 5.5A is about conditions on access to data through the register. In addition, the Part enables the provision, through the register (as a portal), of non-registered data about personal property from third parties.

25 Section 146

Omit:

The register contains the following:

- (a) data in registrations with respect to security interests and related data;
- (b) prescribed data in relation to personal property.

substitute:

The register contains the following data:

- (a) data with respect to security interests, and related data;

- (b) data with respect to personal property prescribed by the regulations.

26 Paragraph 148(a)

Repeal the paragraph, substitute:

- (a) data in registered financing statements (as amended by any registered financing change statements) with respect to security interests;

27 Paragraph 148(c)

Repeal the paragraph (not including the note), substitute:

- (c) data in registered financing statements (as amended by any registered financing change statements) with respect to personal property, being personal property that is prescribed by regulations made for the purposes of this paragraph.

28 Section 148 (note)

Omit “Note”, substitute “Note 1”.

29 At the end of section 148

Add:

Note 2: Access to non-registered data held by third parties may be provided to persons accessing the register (see Part 5.5A).

30 Subparagraph 150(3)(c)(ii)

Omit “(belief that collateral secures obligation)”, substitute “(belief about security interest)”.

31 Paragraphs 151(2)(a) and (b)

Repeal the paragraphs, substitute:

- (a) the person described in the statement as the secured party has never, since the statement was registered, been a secured party in relation to the collateral (other than by virtue of the registration itself); and
- (b) there are no reasonable grounds (or there are no longer any reasonable grounds) for the belief mentioned in subsection (1).

Note: The heading to section 151 is altered by omitting “**belief that collateral secures obligation**” and substituting “**belief about security interest**”.

32 Paragraph 151(3)(a)

Omit “believing that the collateral secures, or will secure, an obligation mentioned in paragraph (2)(a)”, substitute “the belief mentioned in subsection (1)”.

33 Subsection 151(4)

Omit “or paragraph (2)(b)”.

34 Section 155 (paragraph (b) of the definition of *verification statement*)

After “(if any)”, insert “, including third party data (see section 176C),”.

35 Paragraph 164(1)(a)

After “registration”, insert “, other than a defect of a kind prescribed by the regulations”.

36 Paragraph 165(c)

Omit “the security interest in relation to the collateral”, substitute “a security interest in the collateral”.

37 Paragraph 165(c)

Omit “in relation to the collateral” (last occurring), substitute “in the collateral”.

38 Part 5.5 (heading)

Repeal the heading, substitute:

Part 5.5—Accessing the register to search for data

39 Section 169

Omit “searching and accessing data on the register”, substitute “accessing the register to search for data about personal property”.

40 Section 169

Omit “Anyone may search”, substitute “Anyone may access the register to search”.

41 Subsection 170(1)

Repeal the subsection, substitute:

- (1) A person may apply to the Registrar for access to the register to search for data in relation to a security interest or personal property (or both).

42 Subsection 171(1)

Omit “A person may search the register”, substitute “A person may access the register to search for data”.

43 Paragraph 171(1)(e) (note)

Repeal the note, substitute:

Note: If a registration is no longer effective, details of the registration can still be found by searching the register by reference to an earlier time when the registration was still effective (see paragraph (d)). However, data removed from the register may not be available for search by reference to an earlier time (see Part 5.7).

44 Subsection 172(1)

Omit “search the register”, substitute “access the register to search for data”.

45 Subsection 172(2)

Omit “search the register” (first occurring), substitute “access the register to search for data”.

Note: The heading to subsection 172(2) is replaced by the heading “*Individual grantor details—permitted searches*”.

46 Subsection 172(2) (table heading)

Omit the heading, substitute “**Individual grantor details—permitted searches**”.

47 Paragraph 172(3)(a)

Omit “search the register”, substitute “access the register to search for data”.

48 Paragraph 172(3)(b)

Omit “searching the register”, substitute “accessing the register”.

49 Subsection 172(5)

Omit “The Registrar”, substitute “For the purposes of section 195A (Registrar—investigations), the Registrar”.

50 Paragraph 172(6)(a)

Repeal the paragraph, substitute:

- (a) compliance with subsection (3) is taken to be an obligation imposed on a person who accesses the register to search for data, or uses data obtained as a result of accessing the register to search for data; and

51 Subsection 174(4)

Omit “any data determined by the Registrar in relation to a secured party, a grantor, or collateral”, substitute “any data, including third party data (see section 176C), determined by the Registrar in relation to a secured party, a grantor or personal property”.

Note: The heading to section 175 is replaced by the heading “**Copies of financing statements and verification statements**”.

52 After Part 5.5

Insert:

Part 5.5A—Conditions on data access

176A Guide to this Part

Access to registered data and third party data through the register may be provided subject to conditions, including conditions about the subsequent use of the data. Damages may be available (under section 271) in respect of a contravention of conditions of access.

The Registrar may arrange with a third party (prescribed by the regulations) under this Part for the provision of access to non-registered data, held by the third party, through the register (as a portal).

For example, the Registrar may arrange with a prescribed third party to provide users of the register with data held by the third

party that relates to motor vehicles. As a result, third party data concerning a motor vehicle may be provided on a verification statement or search result that relates to that vehicle, whether or not the data is specifically requested.

176B Access to registered data—conditions

Scope

- (1) This section applies if a person applies for:
 - (a) the registration of a financing statement or a financing change statement (under section 150); or
 - (b) access to the register to search for data (under section 170); or
 - (c) a copy of a registered financing statement or verification statement (under section 175).

Registered data conditions

- (2) The person may be required to comply with conditions (**registered data conditions**) in relation to registered data received as a result of the application, as part of the approved form for the application.

Note: For approved forms, see section 302.

- (3) **Registered data conditions** includes, but is not limited to, conditions relating to the use of registered data.
- (4) The person's compliance with the registered data conditions may be required whether or not:
 - (a) the application relates to personal property that is the subject of registered data; or
 - (b) in the case of an application for access to the register to search for data—the person is applying for access to the register to search for registered data; or
 - (c) in the case of an application for a copy of a registered financing statement—the applicant also applies for a copy of a verification statement in relation to the financing statement.

Recovery of damages for contravention

- (5) For the purposes of section 271:

- (a) compliance with the registered data conditions as required under subsection (2) of this section is taken to be an obligation imposed on the person by this Act; and
- (b) the obligation is taken to be owed to the Commonwealth; and
- (c) a contravention of a registered data condition is taken to be a failure to discharge that obligation.

Note: Section 271 gives a right to recover damages for any loss or damage relating to such a failure.

- (6) If the person (the *applicant*) applies on behalf of another person (the *principal*):
 - (a) both the applicant and the principal may be required, by the approved form for the application, to comply with the registered data conditions; and
 - (b) an obligation is taken to be imposed under subsection (5) on both the applicant and the principal, in each of their personal capacities, to comply with the registered data conditions.

176C Access to third party data

Agreement with third parties

- (1) The Registrar may make an arrangement with a person (the *third party*) prescribed by regulations made for the purposes of this section to enable:
 - (a) data (*third party data*) held by the third party with respect to personal property to be included in verification statements; and
 - (b) access to the register to be given to applicants under section 170 (search—general) to search for third party data; and
 - (c) third party data to be included in search results under section 174; and
 - (d) applications for registration under section 150, for access to the register under section 170 or for copies of registered financing statements or verification statements under section 175 to be subject to conditions (*third party data conditions*) relating to third party data obtained as a result of such applications.

Example: An arrangement between the Registrar and a third party to enable third party data relating to motor vehicles to be included in verification statements and search results.

- (2) **Third party data** does not include personal information, within the meaning of the *Privacy Act 1988*, about an individual.
- (3) **Third party data conditions** includes, but is not limited to, conditions relating to the use of the third party data.

Use of third party data

- (4) A person may be required to comply with third party data conditions, as part of the approved form for application, if the person applies:
 - (a) for the registration of a financing statement or a financing change statement (under section 150); or
 - (b) for access to the register to search for data (under section 170); or
 - (c) for a copy of a registered financing statement or verification statement (under section 175).

Note: For approved forms, see section 302.

- (5) A person's compliance with third party data conditions may be required whether or not:
 - (a) the application relates to personal property that is the subject of the third party data; or
 - (b) in the case of an application for access to the register to search for data—the person is applying for access to the register to search for the third party data; or
 - (c) in the case of an application for a copy of a registered financing statement—the applicant also applies for a copy of a verification statement in relation to the financing statement.

Recovery of damages for contravention

- (6) For the purposes of section 271:
 - (a) compliance with the third party data conditions as required under subsection (4) of this section is taken to be an obligation imposed on the person by this Act; and
 - (b) the obligation is taken to be owed to the third party; and

- (c) a contravention of one of the third party data conditions is taken to be a failure to discharge that obligation.

Note: Section 271 gives a right to recover damages for any loss or damage relating to such a failure.

- (7) If a person (the *applicant*) makes an application mentioned in subsection (4) on behalf of another person (the *principal*):
 - (a) both the applicant and the principal may be required, by the approved form for the application, to comply with the third party data conditions; and
 - (b) an obligation is taken to be imposed under subsection (6) on both the applicant and the principal, in each of their personal capacities, to comply with the third party data conditions.

53 After section 195

Insert:

195A Registrar—investigations

- (1) The Registrar may conduct an investigation into any matter for the purpose of performing his or her functions.
- (2) If the Registrar believes on reasonable grounds that a person has information that is relevant to an investigation under subsection (1), the Registrar may, by written notice given to the person, require the person to give any such information to the Registrar, within the period and in the way specified in the notice.
- (3) The period specified in a notice under subsection (2) must be at least 14 days after the notice is given.
- (4) A person contravenes this subsection if:
 - (a) the person has been given a notice under subsection (2); and
 - (b) the person fails to comply with the notice.

Civil penalty:

- (a) for an individual—50 penalty units;
- (b) for a body corporate—250 penalty units.

Note: See Part 6.3 (Civil penalty proceedings).

- (5) A notice under subsection (2) of this section must set out the effect of the following provisions:
-

- (a) subsection (4) of this section;
 - (b) section 137.1 of the *Criminal Code* (giving false or misleading information).
- (6) Despite subsection (2), the Registrar cannot give a notice under that subsection to:
- (a) the Commonwealth, a State or a Territory; or
 - (b) an officer or agency of the Commonwealth, a State or a Territory.

54 Subsection 244(8) (paragraph (b) of the definition of *relevant version of this Act*)

Repeal the paragraph, substitute:

- (b) otherwise—this Act as originally enacted, and as amended:
 - (i) by the *Personal Property Securities (Consequential Amendments) Act 2009* and the *Personal Property Securities (Corporations and Other Amendments) Act 2010*; or
 - (ii) by the *Personal Property Securities (Consequential Amendments) Act 2009*, the *Personal Property Securities (Corporations and Other Amendments) Act 2010* and the *Personal Property Securities (Corporations and Other Amendments) Act 2011*; or
 - (iii) from time to time, until the earliest time that any provision of the State’s referral law commences.

55 Paragraph 293(1)(l)

Omit “(belief that collateral will secure obligation)”, substitute “(belief about security interest)”.

56 At the end of section 302

Add:

- (4) Without limiting subsection (2), a form approved under subsection (3) may specify a requirement that the applicant comply with registered data conditions (see section 176B) or third party data conditions (see section 176C), or both, for applications under any of the following sections:
 - (a) section 150 (registration);
 - (b) section 170 (search);

(c) section 175 (copies of financing statements and verification statements).

(5) A form approved under subsection (3) may provide for a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time, despite section 46AA of the *Acts Interpretation Act 1901*.

57 Subsection 320(1) (table item 2, column headed “because of ...”)

Omit “section 322”, substitute “sections 322 and 322A”.

58 After section 322

Insert:

322A Priority rule—priority between transitional security interest and security interest perfected by control

Despite subsection 57(1), a transitional security interest in collateral that has been continuously perfected since the registration commencement time has priority over a security interest in the same collateral (other than a transitional security interest) that is currently perfected by control.

Note 1: Only security interests in certain kinds of property can be perfected by control (see paragraph 21(2)(c) and Part 2.3).

Note 2: Subsection 57(1) provides generally for security interests currently perfected by control to have priority over other security interests.

59 After subsection 340(4)

Insert:

(4A) Despite subsection (1), if a grantor grants a security interest provided for by a transfer of an account or chattel paper, the account or chattel paper is not a *circulating asset* in relation to the security interest.

60 At the end of subsection 341(1A)

Add:

; or (d) in a case in which the personal property is an ADI account—the secured party has control of the account because of paragraph (a) of this subsection or section 341A.

61 Paragraph 341(3)(c)

After “account”, insert “within the meaning of paragraph (1A)(d)”.

62 At the end of Part 9.5

Add:

341A Control of an ADI account

- (1) For the purposes of subsection 340(2), a secured party has **control** of an ADI account if:
- (a) one or more of the following applies:
 - (i) the secured party is the ADI;
 - (ii) the secured party is able to direct disposition of the funds from the account without further consent by the grantor;
 - (iii) the secured party becomes the ADI’s customer with respect to the account; and
 - (b) if the secured party is not the ADI—depositing an amount in the ADI account does not result in any person coming under a present liability to pay:
 - (i) the debtor; or
 - (ii) if the debtor is a body corporate—a related body corporate (within the meaning of the *Corporations Act 2001*).
- Note: However, a security interest in an ADI account is only perfected by control if the secured party is the ADI (see sections 21 and 25).
- (2) A secured party has **control** under subsection (1) even if the grantor retains the right to direct the disposition of funds from the account.

*[Minister's second reading speech made in—
House of Representatives on 23 February 2011
Senate on 22 March 2011]*

(18/11)

22 *Personal Property Securities (Corporations and Other Amendments) Act 2011* No.
35, 2011