

EXPLANATORY STATEMENT

Personal Property Securities (Search Result Data) Determination 2011

Summary

The *Personal Property Securities (Search Result Data) Determination 2011* (the determination) is made under subsection 174(7) of the *Personal Property Securities Act 2009* (the Act) by the Personal Property Securities Registrar.

This determination sets out data in relation to a secured party, a grantor or personal property that may be included in a search result.

Background

The Personal Property Securities Register (PPSR) is required to be established and maintained by the Registrar under the subsection 147(1) of the Act. The PPSR will replace a significant number of existing registers of securities and related interests currently administered by Commonwealth, State and Territory agencies. The introduction of a single national framework and fee structure will replace the existing fragmented, complex and inconsistent law and registration arrangements providing greater legal and financial certainty to financiers.

Accessing the PPSR to search for data in relation to a security interest or personal property and obtaining accurate search results are essential to the successful operation of the regime. A search result is intended to provide prospective users of the PPSR with notice of any security interests in a grantor's personal property. A written search result (a search certificate) would be admissible as evidence in a court or tribunal and, in the absence of evidence to the contrary, proof of matters stated in the search result (subsection 174(1)). The written search result will generally state the data contained in any registered financing statement returned by the search; most importantly, the details required in subsection 153(1).

However, other data may be included by way of a determination by the Registrar (subsection 174(4)). This data may include third party data. The data set out in the determination is not an exhaustive list of the matters that may be stated in a search result. Search results will, of course, contain details described in any registered financing statements returned.

Notes on Sections

Section 1 – Name of Determination

Section 1 provides for the citation of the Determination as the *Personal Property Securities (Search Result Data) Determination 2011*.

Section 2 – Commencement

Section 2 provides that the Determination commences on the day after it is registered.

Section 3 – Interpretation

This section provides that the definition of *Act* is the *Personal Property Securities Act 2009*.

Section 4 – Search Result Data

The table in section 4 sets out data in relation to a secured party, a grantor and personal property. Data contained in the National Exchange of Vehicle and Driver Information System (NEVDIS) may be included in a search result only where a motor vehicle search is conducted. NEVDIS data is owned by Austroads Ltd and is not stored on the PPSR. The PPSR will request data via an interface from NEVDIS for a serial number and retrieve the relevant vehicle information if available. The data returned in a search result may include a number of details about a vehicle including any stolen or written off notifications against the vehicle.

An attachment file that has been included in the Register as part of a registration, or data relating to an attachment file may be included in a search result. An attachment file may be added as part of the registration of a financing statement or a financing change statement. Attachments may also be migrated from transitional registers, such as the ASIC Register of Company Charges. The data relating to an attachment may be derived from the free text description that may be included when an attachment is included in a registration. An example of what the free text description may contain would be the inclusion of a reference to a specific section in the attachment that is particularly relevant to the collateral.

The data in relation to an individual grantor that may be returned in a search result will be dependent on the collateral type. If the collateral is described as consumer property, a statement that the grantor exists, but no other information will be returned as the grantor details in the search result. When collateral is described as commercial property, a statement of the name of the grantor will be returned as the grantor details, but not the grantor's date of birth. The data to be included in respect of individual grantors is intended to take into account the privacy of the individual.

Generally, an organisation that is a body corporate will be registered, whether as a secured party or a grantor, by an identifier other than the organisation's name; for example, an Australian Company Number. However, a search result may also include an organisation's name if it is verified by the Australian Business Register or the Australian Securities and Investments Commission.

Consultation

Consultation in regard to PPS reform has been extensive with the Department working closely with key stakeholders including banks, equipment financiers and information brokers. However, no specific consultation was considered necessary in respect of this determination as consultations in relation to the *Personal Property Securities Act 2009* and *Personal Property Securities Regulations 2010* had raised issues regarding the data to be contained in a search result. This determination reflects the outcomes of those consultations.

Regulatory Impact Analysis

The Office of Best Practice Regulation has previously advised that the personal property securities reforms do not require a Regulatory Impact Statement because the reforms do not involve compulsion and it will be a commercial decision whether businesses register. It is not designed to impose any additional compliance costs on business or individuals or have any adverse impacts on competition.