



Australian Government



**Personal Property
Securities Register**

Personal Property Securities (Approved Form) Instrument 2011

Explanatory Note

Background

The *Personal Property Securities Act 2009* (the Act) specifies that certain things may or must be in the 'approved form'. Subsection 302(2) of the Act sets out requirements in order for a thing to be in the approved form. The first requirement is that the thing be in writing in a form approved by the Registrar (paragraph 302(2)(a)); the *Personal Property Securities (Approved Form) Instrument 2011*, made under subsection 302(3), authorises the Registrar to approve a form for the purposes of that provision.

The Act and the Instrument when read together make clear that what constitutes the approved form is broad and is dependent on its subject matter.

However, notwithstanding the determination, the Act may indicate that an 'approved form' should be used but no actual form exists. In these cases, the requirements will instead be found in the relevant legislative provision.

Commencement

The instrument is expressed to commence on the day it is made. However, the effect of Part 9.3 of the Act is that, with the exception of sections 10 and 11, the forms approved by the Instrument will generally only have relevance from the registration commencement time.

Status

The instrument is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Registered and third party conditions

The approved form of an application to access the Register, for example to search or make a registration, will require a person using the form to comply with either or both of the registered data conditions within the meaning of section 176B of the Act; and third party data conditions within the meaning of section 176C of the Act. These conditions will be available at <http://www.ppsr.gov.au>. They are currently available at <http://www.govdex.gov.au>.

Section 4 - Approval of attached forms

Section 4 identifies forms that are approved for the purposes of the specified provision or provisions of the Act to which the form is expressed to apply. The forms will be available in hardcopy form and writable PDF form and are attached to the instrument approving them.

Note: At the date this instrument was made no forms had been approved under this section. However, forms will be approved under this section prior to the registration commencement time.

Section 5 and 8 - Other approved forms — application to register financing statement or financing change statement / access to register to search for data

Sections 5 and 8 set out the approved forms for applications to register and search on the Register respectively. Subsection (1) of each provision approves the interactive forms available at the internet address <https://transact.ppsr.gov.au> for an application to register a financing statement or financing change statement (subsection 150(3)), or an application to search the register (paragraph 170(3)(b)).

For example, an application to register a financing statement may be made via the 'create a registration' page at <https://transact.ppsr.gov.au>.

As the Register has been designed to facilitate registrations and searches other than through the user interface available at <https://transact.ppsr.gov.au>, subsection (2) of each section provides that an application to register a financing statement or financing change statement, or an application to search the register is in the approved form if it is an electronic communication in the format required by the Registrar made via a business to government interface that has been developed in accordance with specifications issued by the registrar.

For example, an application to register a financing statement will be made in the approved form if the requirements set out in Part 4.3.2 (Create Registrations) of the *B2G Interface Specification (Version 5.2)* are satisfied.

Section 6 - Other approved forms — verification statement

The Register is designed to generate a document titled 'verification statement' upon the registration of a financing statement, or a financing change statement with respect to a security interest except in circumstances excluded by the Act. The statement generated by the Register is the approved form of the written statement specified in section 155.

Section 7 - Other approved forms — notice of verification statement

The general requirement for a notice of a verification statement, under subsection 157(1), is that all data contained in a verification statement issued under section 155 is required to be contained in the notice. The notice may be a copy of the statement in its entirety, or it may be a replication of the information contained in the verification statement generated by the Register. That document must state that it is a Notice of Verification Statement and that it has been provided pursuant to s 157 of the *Personal Property Securities Act 2009*.

There are two instances when certain data may or must be excluded from the notice:

- in the case of motor vehicles, any information provided by the National Exchange of Vehicle and Driver Information System (NEVDIS) may be excluded, and
- in the case of an individual grantor, his or her birth details must be excluded when the notice is supplied to a grantor other than the individual grantor to whom the birth details apply.

The optional inclusion of NEVDIS data is due to the fact that NEVDIS data does not relate to the security interest, but rather the underlying property. It is a consumer protection measure most useful when conducting searches prior to the purchase of a vehicle.

The restriction on individual grantor birth details is to avoid the infringement of the privacy of individual grantors.

Section 9 - Other approved forms — search results

The Register is designed to return an initial search result and to issue a written search result, in PDF, titled a 'search certificate' upon request. The search certificate issued by the Registrar, not the initial search result, is the approved form of the written search result specified in section 174.

Section 10 - Other approved forms — data given to Registrar from transitional register

Section 330 of the Act provides that data held in a transitional register may be given to the Registrar at or after migration time and before the registration commencement time. The approved form of giving the data is by an electronic communication of the data to the Registrar in the format specified in the *Data Migration and Pre-load Technical User Guide* and the specific technical user guide for the relevant transitional register.

For example, the approved form for the giving of data held in the NSW Register of Encumbered Vehicles is specified in the *Data Migration and Pre-load Technical User Guide* and the *Data Migration Technical User Guide NSW Office of Fair Trading for Register of Encumbered Vehicles*.

Section 11 - Other approved forms — preparatory registration relating to transitional security interests

The approved form of applying to the Registrar under subsection 336 (1) of the Act is by an electronic communication to the Registrar in the format set out in the *Data Migration and Pre-load Technical User Guide*.