

Schedule 5 – Perfection by registration

Personal Property Securities Act 2009

Item 1 – Section 10 (definition of *ABN*)

1. Item 1 repeals the definition of ‘ABN’ in section 10 of the *Personal Property Securities Act 2009* (the PPS Act) because it is no longer required. The term ‘ABN’ is used more frequently in the Personal Property Securities Regulations 2010 (the PPS Regulations) and will be included in the definitions in the Personal Property Securities Regulations 2023 (the Regulations).
2. ABN, short for Australian Business Number, has the meaning given by section 41 of the *A New Tax System (Australian Business Number Act) 1999*. For the purposes of the PPS Act the term ‘ABN’ is only used in the definitions of ‘consumer property’ and ‘inventory’ in section 10 (amended by Items 6, 8 and 9 of this Schedule).
3. The definition of ABN will only be relevant in the context of the definition of ‘inventory’. The definition of ‘inventory’ is amended by Items 8 and 9 of this Schedule to correct minor technical errors and to incorporate the definition of ‘ABN’ (by reference to the *A New Tax System (Australian Business Number) Act 1999*).

Item 2 – Section 10 (definition of *amendment demand*)

4. Item 2 repeals the definition of ‘amendment demand’ and substitutes it with a signpost to new section 178 of the PPS Act (which will be inserted by Item 43 of Schedule 5).

Item 3 – Section 10 (definition of *amendment notice*)

5. Item 3 repeals the definition of ‘amendment notice’ in section 10 of the PPS Act.
6. The current definition provides that ‘amendment notice’ has the meaning given by section 180. Item 43 of this Schedule repeals and replaces section 180 as part of comprehensive reform of the amendment demand process in Part 5.6 of the PPS Act. The definition of amendment notice is repealed because an amendment notice will no longer exist under the PPS Act.

Item 4 – Section 10 (definition of *amendment time*)

7. Item 4 substitutes the definition of ‘amendment time’ with a sign post to new section 160. New section 160 (which is inserted by Item 32 of this Schedule) provides the definition for ‘amendment time’.

Item 5 – Section 10 (paragraph (d) of the definition of *business day*)

8. Item 5 repeals and substitutes paragraph (d) of the definition of ‘business day’ in the PPS Act. This Item should be read in conjunction with Item 13 of this Schedule.
9. This amendment is required because of the way the PPS Act currently provides power for the Registrar to suspend the Personal Property Securities Register (the Register). The current paragraph (d) of the definition refers to the Registrar’s power under subsection 147(5) to refuse or suspend access to the Register. However, the Registrar is also able to suspend access to the Register under current paragraph 147(4)(b).
10. Paragraph 147(4)(b) allows for regulations to prescribe circumstances within which the Registrar may suspend access to the Register. If the Registrar suspends access to the

Register under this power (rather than subsection 147(5)) that day will continue to count as a business day because the exclusion of a business day only refers a suspension made under subsection 147(5). This is an undesirable anomaly.

11. This amendment, in addition to amendments to section 147 (made by Item 13 of this Schedule), will provide certainty about when the Registrar has ‘suspended operation of the Register’ under subsection 147(5) which will be captured by the exclusion in paragraph (d) of the definition of ‘business day.’

Item 6 – Section 10

12. Item 6 repeals the definitions of ‘commercial property’ and ‘consumer property’ in section 10 of the PPS Act.
13. Current Item 4 in the table contained within subsection 153(1) in the current PPS Act requires that collateral be identified in a financial statement as either consumer or commercial property. The definitions of ‘consumer property’ and ‘commercial property’ depend on how the property will be used by the grantor, different rules will apply to the registration.
14. The definitions of ‘consumer property’ and ‘commercial property’ are repealed because the requirement to identify the collateral based on its use is removed (see Item 23 of this Schedule). Registration rules will be determined by the identity of the grantor, rather than the use of the property.

Item 7 – Section 10 (definition of *financing change statement*)

15. Item 7 repeals and replaces the definition of ‘financing change statement’ in section 10 of the PPS Act.
16. To enter a security interest onto the Register, a person must register a financing statement. To amend an existing registration, a person must register a ‘financing change statement.’
17. Item 7 is amended to clarify that in addition to amending a registered financing statement, ‘a financing change statement’ can be registered to remove or end a registration. This clarification is made to support the new amendment demand process (Item 43 of this Schedule). Under the new amendment demand process an eligible person can request that the Registrar register a financing change statement amending or ending a registration in circumstances where the secured party has refused the persons request to do so.

Item 8 – Section 10 (definition of *inventory*)

18. Item 8 amends the reference to ABN’s in the definition of ‘inventory’ in section 10 of the PPS Act.
19. Currently, the definition refers to personal property of an enterprise to which an ABN has been allocated. Section 8 of *A New Tax System (Australian Business Number) Act 1999* provides that an ABN is allocated to an entity in relation to an enterprise, not to the enterprise itself. Item 8 corrects this technical error.
20. Item 8 also incorporates the definition of ABN in *A New Tax System (Australian Business Number) Act 1999* to because the definition of ‘ABN’ is repealed by Item 1 of this Schedule.

Item 9 – Section 10 (paragraphs (a) to (d) of the definition of *inventory*)

21. Item 9 amends paragraphs (a) to (d) of the definition of ‘inventory’ in section 10 of the PPS Act to replace the words ‘the person’ with ‘a person’ to provide greater clarity.

Item 10 – Section 10 (definition of *registration time*)

22. Item 10 amends the definition of ‘registration time’ in section 10 of the PPS Act.
23. The current definition of ‘registration time’ is unnecessarily complex because it refers to ‘the collateral described in a registration’.
24. The Register is a register of financing statements, not of collateral. The over emphasis of collateral can cause confusion, because the registration time ought to refer only to the registration of the financing statement. This amendment will simplify the definition of ‘registration time’.

Item 11 – Section 10 (paragraph (b) of the definition of *secured party*)

25. Item 11 repeals paragraph (b) of the definition of ‘secured party’ in section 10 of the PPS Act because it is redundant.
26. Paragraph (b) of the definition of secured party provides if the holders of the obligations issued, guaranteed or provided for under a security agreement are represented by a trustee as the holder of the security interest a secured party includes the trustee.
27. Paragraph (b) in effect provides that where a trustee of a security trust deed is also the holder of a security interest on behalf of the beneficiaries of the trust, the trustee is a secured party. A security trust deed is a document under which a trustee holds a security interest on behalf of multiple lenders. The underlying debt obligation is secured by a security interest.
28. For example, ‘Ivana Make Some Money’ (IMSM) is the name of a group of investors. IMSM invests money with a tech start up. The investment is secured by a registration against the start-up, the collateral is All Present and After Acquired Property. Under a security trust deed Ivana is the trustee. Ivana is therefore also the secured party.
29. The trustee referred to in paragraph (b) clearly holds the security interest either for itself or for the benefit of others, as described in paragraph (a) of the definition. Paragraph (b) is therefore redundant.

Item 12 – Paragraph 33(1)(a)

30. Item 12 removes the reference to paragraph (d) of item 4 of the table in section 153 from paragraph 33(1)(a) of the PPS Act.
31. Section 33 provides rules for when a security interest in proceeds is perfected. Paragraph 33(1)(a) provides that an interest in proceeds will be perfected if the registration complies with any regulations made for the purposes of paragraph (d) of item 4 of the table in subsection 153(1).
32. The amendment to paragraph 33(1)(a) is necessary because Item 4 of the table in subsection 153(1) will be amended by Item 22 of this Schedule to remove paragraph (d).

Item 13 – Subsections 147(4) to (6)

33. Item 13 repeals and replaces subsections 147(4) to (6) of the PPS Act (not including the note).
34. Section 147, amongst other things, provides rules in relation to the Register specific to its establishment and maintenance. This section provides that the Registrar must ensure that the Register is operational at all times, except for some specific circumstances.

Subsection 147(4)

35. Subsection 147(4) currently provides that the Registrar must ensure that the Register is operational at all times except while it is suspended under subsection (5).
36. The regulation making power in subsection 147(4) to suspend the Register in ‘other circumstances’ is problematic because of the current definition of ‘business day’ which provides that a business day is not a business day if the Registrar refuses or suspends access under subsection 147(5), as opposed to under regulations made for subsection 147(4).
37. Subsection 147(4) of the PPS Act is amended by this item to remove the regulation making power to suspend or refuse access to the Register. The regulation making power to suspend access to the Register for ‘other circumstances’ is moved to subsection 147(5). As a result, the new subsection 147(4) only provides that the Registrar must ensure that the Register is operational at all times except while it is suspended under subsection (5).

Subsection 147(5)

38. Subsection 147(5) of the PPS Act currently provides that the Registrar may suspend the operation of the Register or refuse access to the Register if it believes it is practical to do so. The new subsection 147(5) is amended to add a regulation making power at paragraph 147(5)(b) which allows the suspension of the Register ‘in any other circumstances’. This regulation making power is moved from subsection 147(4) to subsection 147(5).

Subsection 147(6) – Restoration of data

39. New subsection 147(6) allows the Registrar to restore the data in the Register after a period of suspension under subsection 147(5) as in effect at any day and time the Registrar considers appropriate.

Subsection 147(7) – Publish notice of suspension

40. Current subsection 147(6) of the PPS Act requires the Registrar to publish a notice giving details of the refusal of access to, or suspension of operation of, the Register in a way prescribed by the PPS Regulations or, if there are no regulations made, in the Gazette.
41. In turn, the PPS Regulations currently provide at section 5.2 that the Registrar must publish the notice on a website maintained by the Registrar on the Internet. This section will no longer be included in the Regulations and instead be included in this subsection. Current subsection 147(6) of the PPS Act is revised to refer directly to ‘a website maintained by the Registrar’ and is relocated to new subsection 147(7).
42. The current subsection 147(6) of the PPS Act is impractical because it is unlikely the Registrar will have another website to publish a notice on if access to the Register is suspended or refused.

Item 14 – Section 148 (note 1)

43. Item 14 repeals Note 1 under section 148. The note is no longer required as it referenced the previous subsection 8(2) which has been repealed.

Item 15 – Section 148 (note 2)

44. Item 15 substitutes the title ‘Note 2’ with ‘Note’, following the repeal of Note 1 in Item 14 of this Schedule.

Item 16 – At the end of subsection 150(2)

45. Item 16 inserts a note under subsection 150(2) to alert the reader that a person will be able to apply to register a financing change statement under new section 179 (inserted by Item 43 of this Schedule) to enforce an amendment demand.

46. Subsection 150(2) provides that a person who has made a registration can amend their registration by registering a financing change statement.

Item 17 – Paragraph 150(3)(b)

47. Item 17 amends paragraph 150(3)(b) to remove the word ‘and’ because the paragraphs following 150(3)(b) will be repealed by Item 18 of this Schedule. Paragraph 150(3)(b) will be the last paragraph under 150(3).

Item 18 – Paragraphs 150(3)(c) and (d)

48. Item 18 repeals subsections 150(3)(c) and (d) from the PPS Act.

49. Paragraphs 150(3)(c) and (d) provide that the Registrar must register a financing statement or financing change statement if, among other things:

‘(c) the Registrar is not satisfied that the application is:

(i) frivolous, vexatious or offensive, or contrary to the public interest; or

(ii) made in contravention of section 151 (belief about security interest); and

(d) the registration would not be prohibited by the regulations’

50. The Register is a publicly-accessible, real-time register. The manner in which registrants can register a financing statement online makes it impracticable for the Registrar to exercise its power to refuse a registration. A financing statement or financing change statement will be registered if the fee is paid, and the form is completed.

51. Item 18 repeals paragraphs 150(3)(c) and (d) from the PPS Act because it is impossible for the Registrar to assess every application to register a financing or financing change statement. This item is intended to simplify the PPS Act by removing provisions that are incompatible with the maintenance of an online register. The amendment also clarifies that the Registrar is not responsible for preventing registrations that are frivolous, vexatious or otherwise contrary to the public interest.

52. The effect of this amendment is that the Registrar no longer has discretion to refuse an application to register a financing statement or financing change statement if the application is in the approved form and the relevant fee is paid.

53. Repeal of paragraphs 150(3)(c) and (d) do not affect the Registrar’s powers to remove data from the register under paragraph 184(1)(a).

Item 19 – Section 150 (note 3)

54. Item 19 repeals note 3 of section 150, which provides that ‘Application may be made to the Administrative Appeals Tribunal for review of certain decisions of the Registrar about registration (see section 191).’
55. This note is no longer required because the Registrar no longer has discretion to refuse an application to register a financing statement or financing change statement if the application is in the approved form and the relevant fee is paid. The ability to apply to the Administrative Appeals Tribunal for review of a decision to register a financing statement under this section is repealed by Item 53 of Schedule 5. For this reason, it is not necessary to include a note that sign posts section 191 of the PPS Act.

Item 20 – Section 150 (note 4)

56. Item 20 substitutes ‘Note 4’ with ‘Note 3’ under section 150.
57. This amendment updates the numbering of the notes because note 3 will be repealed by Item 19 of this Schedule. Note 4 will be retained and is therefore renumbered to ‘Note 3’.

Item 21 – Subsection 151(1)

58. Item 21 amends subsection 151(1) of the PPS Act to omit ‘is, or will become, a secured party’ and substitute this with ‘is, may be, or may become, a secured party’.
59. Section 151 sets out when a person is permitted to register a financing statement or financing change statement. Subsection 151(1) states that a person should only apply to register a financing statement or a financing change statement if they believe on reasonable grounds that the nominated secured party is or will be a secured party in relation to the collateral.
60. This amendment eases the knowledge requirement to register a financing statement or financing change statement. The amendment will allow a secured party to register a financing or financing change statement in relation to a transaction if that transaction *may* result in them becoming a secured party. The amendment is intended to facilitate commercial dealings.

Item 22 – Paragraph 151(3)(a)

61. Item 22 amends paragraph 151(3)(a) to omit ‘the day of the registration time, or the amendment time, for the financing statement or financing change statement’ and substitute ‘the day the financing statement, or financing change statement, was registered.’
62. Subsection 151(3) provides a timing requirement to remove a registration made where there were no reasonable grounds of belief to make a registration (paragraph 151(3)(a)) or where those reasonable grounds no longer exist (paragraph 151(3)(b)).
63. This amendment to paragraph 153(3)(a) clarifies that a registration should be removed as soon as practicable or 5 business days after the day the financing statement or financing change statement was registered. The reference to the day of the ‘registration time’ is confusing because it introduces unnecessary complexity into what should be a simple test.

Item 23 – Section 153 – financing statements with respect to security interests

64. Item 23 repeals and substitutes section 153 of the PPS Act. Section 153 provides what information needs to be included in a financing statement and financing change statement.

Overview of section 153

65. ‘Perfection’ is a concept that requires a secured party to take some step to publicise the existence of its security interest, or run the risk that the security interest may not be fully effective. The most common method of perfecting a security interest in collateral under the PPS Act is by registering a financing statement in relation to the security interest on the online register.
66. To make a registration a person must register a ‘financing statement’, and to amend or discharge an existing registration a person must register a ‘financing change statement’. Section 153 of the PPS Act sets out the information that must be included in a financing statement, or financing change statement to identify the secured party, the grantor and the collateral (amongst other things).
67. The new section 153 contains considerable amendments in comparison to current section 153. Subsection 153(1) contains a table of what information must be included in a financing statement or a financing change statement. An explanation of each change is made by reference to its table number. Where current table items have been repealed, this will be indicated below.

Subsection 153(1)

68. The paragraph before the table contained in subsection 153(1) is amended by removing the words ‘of data that complies with the following table’ and replaces this with ‘of the data in the following table.’ This change is made in recognition that a registration can be made on the Register and will qualify as a financing statement or financing change statement for the purposes of the PPS Act even if the data does not strictly comply with the data required by the table contained at subsection 153(1).
69. A financing statement or financing change statement which contains incorrect data may result in the registration being ineffective (see sections 164-166 of the PPS Act and Items 36- 41 of this Schedule), however is still capable of being registered on the Register.
70. If a registration is ineffective this may result in a security interest remaining unperfected. Whether or not the error is fatal to the registration is determined by application of sections 164 and 165 (as amended by Items 36-41 of this Schedule).

Table in subsection 153(1)

Item 1- The secured party

71. Currently, table item 1 of subsection 153(1) requires a secured party be identified in a financing statement or financing change statement as prescribed by the PPS Regulations, and allows for a nominee to be entered as a secured party.
72. New table item 1 of subsection 153(1) will continue to require a secured party to be identified in a financing statement or financing change statement as prescribed by the Regulations and will clarify when a secured party can nominate a nominee secured party in the registration.

73. Under new item 1(b) of the table, a secured party will be able to nominate an alternate party to act on its behalf before the initial registration of the financing statement. The effect of this is that a secured party will no longer be able to amend an existing registration to nominate an alternative party to act on its behalf.
74. This prevents a secured party amending an existing registration to appoint a nominee retrospectively. This is intended to close a loophole that could artificially improve the secured party's position. For example, parties could benefit from a higher priority security interest by retrospectively appointing a nominee that is a subsidiary or otherwise affiliated with the secured party.
75. The amendment will avoid this situation by requiring that a secured party appoint the nominee before the registration is made. Item 23 also amends table item 1(b) to clarify that the authority required by the nominee is the authority to act on the secured party's behalf in matters affecting the registration.
76. Currently a secured party can nominate a 'party who has authority to act on behalf of the secured party'. This is a comprehensive level of authority. It is enough if the nominated person has powers to deal with matters of registration. The amendment will therefore reflect that any other powers given to the nominee are not of interest with regards to the Register and therefore not required.

Item 2 – The grantor

77. Currently, table item 2 of subsection 153(1) sets out the rules to identify the grantor based on the 'use' of the collateral as either 'consumer property' or 'commercial property'. If the collateral is 'consumer property' and is also required by the PPS Regulations to be described by serial number, no grantor details are permitted in the registration. If the collateral is 'consumer property' and not required to be described by serial number, the grantor is to be identified by their name and date of birth in accordance with the PPS Regulations. In all other cases (if the property is 'commercial property'), the grantor is to be identified by the details prescribed by the PPS Regulations.
78. This distinction is unique to the PPS Act. The inclusion of consumer distinction appears to have been for consumer protection considerations and privacy. The 'use' of the collateral may change over time. The uncertainty and confusion around identifying if collateral is 'consumer property' or 'commercial property' means that many secured parties take the view that the only clear way to ensure that the registration is valid (and their interest is protected) is to make two registrations – one against consumer property, and one against commercial property. This adds clutter to the Register and is inefficient for secured parties.
79. The definitions of commercial property and consumer property are repealed by Item 6 of this Schedule.
80. Item 23 amends table item 2 to require that the rules about identifying the grantor be based on if they are an individual, or an organisation. This item will reduce the complexity of making registrations by removing the requirement that secured parties differentiate between consumer property and commercial property when making a registration. Removing this requirement furthers the overall objective of reducing the complexity of making registrations.
81. The item will be amended to provide specific rules based on the identity of the grantor.

82. Table item 2(a) is amended to provide that if the grantor is an individual, and the collateral will need to be described by serial number, no grantor details are required (or permitted). This reflects the current requirement, but removes reference to the property being identified as consumer property.
83. Table item 2(b) is amended to provide specific details for grantors who are individuals and not partners in a partnership. The details required will be the grantor's surname, given names and date of birth in accordance with the Regulations made for this item number. Table item 2(d) will provide specific rules for grantors who are partners in a partnership.
84. Table item 2(c) is inserted to provide specific details required for a grantor that is a body corporate and not a partner in a partnership. The item provides that the details required are those prescribed by the Regulations for this item.
85. Table item 2(d) is inserted to provide a specific rule for a grantor that is a partner in a partnership. This item is split into two parts based on the proportion of the grantor's share in the security interest relating to a partnership.
86. Table item 2(d)(i) provides that if the security interest in the collateral is the grantor's net interest in the partnership, the registration should be made against the details required by table items 2(b) or 2(c) (dependent on whether the grantor is an individual or secured party). The provisions draw the distinction between a security interest granted (by the partners jointly) over the property of a partnership (2(d)(ii)) and a security interest granted by a specific partner over its net interest in the partnership (2(d)(i)). The Regulations will prescribe which details must be provided in the registration.
87. Table item 2(d)(ii) provides that in any other case (i.e. where the grantor is a partner in a partnership and the security interest is being granted over partnership property), the Regulations will prescribe the details which must be provided in the registration.
88. Table item 2(e) provides a specific rule for a grantor that is a body politic. Currently, the PPS Regulations provide rules for bodies politic under the regulation making powers contained within items 1 and 2 of the table in current subsection 153(1). This is inserted into the table to provide a specific regulation making power for bodies politic and is intended to aid users of the PPS Act who may otherwise not know where to look for requirements for grantors that are bodies politic.
89. A note is inserted into table item 2 to remind users of the PPS Act that details of multiple grantors can only be registered in the case of joint grantors (see below subheading 'Subsection 153(2)').

Item 3 – Giving of notices

90. Table item 3 of subsection 153(1) will continue to require a secured party to enter an address for the giving of notices under the PPS Act, and a secured party will continue to be permitted to enter an identifier for the giving of notices with respect to a particular registration.

Item 4 – The collateral and proceeds

91. Currently, table item 4 of subsection 153(1) provides the rules for describing the collateral in a financing statement. Current item 4(a) requires that the collateral be described as either 'consumer property' or 'commercial property.' Current table item 4(b) requires some goods to be described by their serial number. If the goods are serial numbered goods and consumer property, the registration must be against the serial

number of the goods with no grantor details included. If the goods are serial numbered goods and commercial property, the registration may be against the serial number.

92. Item 23 will remove the requirement to describe collateral based on its use. The definitions of commercial property and consumer property are repealed by Item 6 of this Schedule. This item will reduce the complexity of making registrations by removing the requirement that secured parties differentiate between consumer property and commercial property when making a registration. Removing this requirement furthers the overall objective of reducing the complexity of making registrations.
93. Table item 4(a) is replaced with a regulation making power allowing the Regulations to prescribe descriptions that must be included in a financing statement or financing change statement.
94. New table item 4(b), in addition to table item 4(a), is amended to allow the Regulations to prescribe that more than one item or kind of collateral may be included in the one registration.
95. Current table item 4(c) is removed from this Item because it limits a registration to a single collateral class. The effect of this removal, together with new table item 4(b), will allow a single registration to be made against more than one class of collateral. This will significantly improve the registration process.
96. Current table item 4(d) is removed for clarity because item 4(a) states that any description of proceeds must comply with the Regulations.
97. New table item 4 includes a note that explains that in some cases, the Regulations may require collateral or proceeds to be described by nominating a particular specified class. The Regulations may also require or allow the collateral or proceeds to be described further by item or kind in specified ways. For example for all present and after acquired property, no further description is required for registration, however for serial numbered property, the specified serial number outlined in section 21 of the Regulations is required.

Item 5 - The end time for registration

98. Current table item 5 of subsection 153(1) sets out the end time for a registration. If the collateral is 'consumer property' the maximum registration period is 7 years. If the collateral is property other than consumer property, or described by serial number, a registration can have 'no stated end date' or 25 years. Item 23 will remove the requirement to describe collateral based on its use. The definitions of 'commercial property' and 'consumer property' are repealed by Item 6 of this Schedule. This item will reduce the complexity of making registrations by removing the requirement that secured parties differentiate between consumer property and commercial property when making a registration. Removing this requirement furthers the overall objective of reducing the complexity of making registrations.
99. Item 23 amends table item 5 to introduce the following end times for registrations based on whether the grantor is an individual or any other case:
 - Table item 5(a) provides that a registration made against an individual grantor has a maximum limit of 7 years.
 - Table item 5(b) provides maximum times for registrations made where the grantor is not an individual. This item provides two maximum times based on

whether collateral is registered as an AllPAAP or AllPAAP Except, or not. Registrations that are made against AllPAAP or AllPAAP Except have a maximum duration of 25 years. All other registrations have a maximum duration of 7 years.

Repeal of Subordination

100. Item 23 removes the option to indicate in a registration if a security interest is (or is to be) subordinated to any other security interest provided for currently by table item 6 of subsection 153(1) primarily to make the Register easier to use by removing unnecessary data fields.
101. The field adds no value to a registration. Indicating if a security interest is subject to subordination of priorities, or may be subject to subordination of interests has minimal or no practical effect on the rights of secured parties involved in the subordination (or priority) arrangement, and no impact on third parties. Statistics indicate that data about subordination is rarely included in a registration. For example, in 2015, AFSA reported that 0.24% of active registrations contained data referring to subordination. Table item 6 will be removed to make the Register simpler and more certain.
102. Currently, table item 6 of subsection 153(1) says that a registration can include data about ‘subordination’. ‘Subordination’ has two potential meanings. Section 61 of the PPS Act allows a secured party to subordinate their interests in collateral to any other secured interest in the collateral. ‘Debt subordination’ is also a common term used in the finance industry. It describes the process at law or by agreement that a creditor’s priority to collect their debt has a reduced priority. Due to confusion and uncertainty caused by the dual meaning of ‘subordination’ section 61 of the PPS Act is amended by Item 61 of Schedule 3.
103. Current section 61 allows for a ‘subordination’ agreement between secured parties. The term is imported from the equivalent Canadian and New Zealand Acts, however it is more commonly understood in Australia as a ‘priority’ agreement where one secured party agrees that its prior-ranking security interest is to rank behind another security interest over the same property.
104. The concept of ‘subordination’ in section 61 and other relevant provisions is changed to refer to ‘priority’.

Removal of requirement to identify purchase money security interests

105. Item 23 removes current table item 7 from the table in subsection 153(1). This means that a financing statement or financing change statement no longer requires that a secured party to indicate if a security interest is, or is to be, a ‘purchase money security interest’ (PMSI), as required currently by table item 7. While the concept of a PMSI will continue to exist under the PPS Act, a secured party will no longer claim the interest via their registration. The PMSI ‘checkbox’ is a source of a high rate of user error.
106. Currently, in order to indicate that a security interest is a PMSI, a registrant must tick a PMSI ‘checkbox’ when making a registration. This is the source of much confusion and error because current paragraph 165(c) provides that if a security is indicated as a PMSI when it is not, the registration will not be effective. Paragraph 165(c) is repealed by Item 38 of this Schedule.

107. Alternatively, if a party fails to claim a PMSI interest in a registration, they lose the priority position and will rank behind an existing secured party (if any exist at the time). This is provided for at current paragraph 62(2)(c) which will be amended by Item 62 of Schedule 3.
108. The effect of removing this table item is that a secured party no longer needs to indicate whether a security interest is a PMSI in a registration.

Table item 6 - Any matter prescribed by the regulations

109. Item 23 will provide a general regulation making power with respect to required data in a financing statement or financing change statement. This replicates the current power under table item 8 which allows any matter prescribed by the PPS Regulations. The new table item 6 amends the regulation making power to provide greater flexibility by allowing the Regulations to prescribe details to 'matter required or permitted' to be prescribed.

Subsection 153(2)

110. Item 23 will clarify in subsection 153(2) that the details of multiple grantors can only be registered in the case of joint grantors of an interest in the collateral.

Item 24 – Section 154 (heading)

111. Item 24 substitutes the heading to section 154 of the PPS Act.
112. Section 154 sets out the rules for making a registration over 'prescribed personal property'. Item 24 substitutes the heading to section 154 to insert the word 'registration' which will make it consistent with the other headings in Part 5.3 that also deal with registration.

Item 25 – Section 154

113. Item 25 omits 'data that complies with the following table' and substitutes 'the data in the following table' in section 154 of the PPS Act.
114. Section 154 sets out the rules for making a registration over 'prescribed personal property'. The Regulations prescribe some types of personal property, including proceeds of crime or property that is subject to an order of the court.
115. The current section implies that data entered into a financing statement that does not comply with the table contained within section 154 will not be a financing statement. This is an incorrect implication because a financing statement will still be registrable on the Register where the data provided does not comply with the table.
116. The PPS Act provides rules as to whether a registration will be 'effective' in order to perfect the security interest (see sections 164 and 165 of the PPS Act). The fact that data does not comply with the table does not stop a financing statement from being registered, however, a financing statement containing incorrect or inaccurate information may not be effective. This amendment is consistent with changes to section 153(1) made by Item 23 of this Schedule to clarify that a registration can be made on the Register and will qualify as a financing statement or financing change statement for the purposes of the PPS Act even if the data does not strictly comply with the data required by the table contained at subsection 153(1).

117. Sections 164 and 165 will continue to determine if the data as so entered into a financing statement is ‘effective’ to perfect the security interest.

Item 26 – Section 154 (table item 2)

118. Item 26 repeals and substitutes table item 2 of section 154 of the PPS Act.

119. Currently, table item 2 requires that property belong to a single collateral class described in the registration, and include a description of why the property is registered.

120. Consistent with changes to subsection 153(1) made by Item 23 of this Schedule, registrants will be required to include a description of the property in the registration, in accordance with the Regulations made for this paragraph. However, the property will no longer need to be of a single class.

121. Table item 2 will continue to require a statement of reasons why the property is registered to be included in the financing statement.

Item 27 – Subsection 157(1)

122. Item 27 repeals and substitutes subsection 157(1) of the PPS Act.

Requirement to provide verification statement

123. Subsection 157(1) of the PPS Act currently gives the grantor the right to receive notification of a verification statement related to the registration of a financing statement or financing change statement in relation to their personal property. Section 156 of the PPS Act provides that the Registrar must give a verification statement to the secured party. A ‘verification statement’ is a computer-generated record of a registration made on the Register. Subsection 157(1) then provides that the person who is given the verification statement under section 156 is required to give the grantor a notice of the statement under subsection 157(1).

124. The subsection does not, however, provide a concrete notification rule where there is no grantor named in a registration (for example, where the grantor is an individual and the registration is made against serial numbered property). New subsection 157(1) is amended to provide for particular situations.

New subsection 157(1A)

125. Item 27 inserts new paragraph 157(1A)(a) (for registrations made where the grantor is identified) and paragraph 157(1A)(b) (registrations made against serial numbered property only where no grantor is identified).

126. New paragraph 157(1A)(a) will require a secured party to give notice of a verification statement to a person registered as a grantor unless paragraph (b) applies. This largely replicates the current requirement under subsection 157(1).

127. New paragraph 157(1A)(b) provides a requirement to provide notice of a verification statement where the grantor is an individual and the collateral is required to be described by serial number.

128. This new paragraph provides that the notice of a verification statement must be given to the grantor where a security agreement exists (new subparagraph 157(1A)(b)(i)); or to the anticipated grantor, where a secured party anticipates to enter into a security agreement (new subparagraph 157(1A)(b)(ii)).

New subsection 157(1B)

129. Item 27 also inserts new subsection 157(1B) of the PPS Act to deal with situations where a secured party anticipates entering into a security agreement with an anticipated grantor and makes a registration against the anticipated grantor, but the actual grantor of the security agreement ends up being different. The secured party is required by new subsection 157(1B) of the PPS Act to provide notice of the verification statement to the actual grantor.

Item 28 – Subsection 157(3)

130. Item 28 repeals and substitutes subsection 157(3) of the PPS Act which allows for the waiver of a right to receive a verification statement. New subsection 157(3) removes the reference to commercial property because the PPS Act will be amended to require different registration rules based on whether the grantor is an individual.

131. Subsection 157(3) of the PPS Act currently allows a person to waive their right to receive a notice of a verification statement in instances where the collateral described in the registration is commercial property and the person waives the right to receive the notice in writing. This is amended to replace the reference to commercial property with a reference to the identity of the grantor. The new subsection now provides that only a grantor who is not an individual may waive their right to receive a notice.

132. The concepts of ‘commercial property’ and ‘consumer property’ are removed from the PPS Act. The PPS Act will be amended by Item 23 of this Schedule to provide different registration rules based on whether the grantor is an individual.

133. The definitions of ‘consumer property’ and ‘commercial property’ are repealed because the requirement to identify the collateral based on its use is removed (see Item 23 of this Schedule). Registration rules will be determined by the identity of the grantor, rather than the use of the property.

Item 29 – Subsection 157(4)

134. Item 29 inserts ‘or (1B)’ after ‘subsection (1)’ in subsection 157(4) of the PPS Act.

135. 157(4) deems a contravention of the requirement to give notice as an act or practice involving interference with the privacy of the individual for the purposes of section 13 of the *Privacy Act 1988*. This amendment will extend the provision to cover new subsection 157(1B) of the PPS Act (inserted by Item 27 of this Schedule).

Item 30 – At the end of subsection 158(1)

136. Item 30 adds an example at the end of subsection 158(1) of the PPS Act.

137. Section 158 of the PPS Act allows the Registrar to publish a single verification statement in relation to a number of registration events. This note provides that an example of ‘registration events affecting a number of persons registered as secured parties is a number of transfers of security interests between persons registered as secured parties (whether registered before or after the transfer)’.

138. This amendment is intended to clarify that the provision can be used by the Registrar where there is a bulk transfer of registrations from one secured party to another secured party. For example, Bank A acquires Finance company B. Finance Company B is required to transfer all registered security interests to Bank A. There are 400,000 interests

that must be transferred. Rather than generating a verification statement for each transfer, the Registrar can publish a single verification statement under section 158 of the PPS Act.

Item 31 – Section 159

139. Item 31 amends section 159 to omit ‘This Part provides for the time at which a description of collateral is registered’ and substitutes ‘This Part deals with the timing of registration.’
140. Section 159 provides the guide to Part 5.4 of the PPS Act, which sets out when a registration is effective. This amendment is made to align the language of section 159 with the amendments made to the definition of registration time throughout the PPS Act.

Item 32 – Section 160

Section 160 – Meaning of *registration time* and *amendment time*

141. Item 32 substitutes section 160 of the PPS Act, which defines ‘registration time’ and ‘amendment time’.
142. The current definition in section 160 of the PPS Act places an emphasis on the description of the collateral. The Register, however, is a register of financing statements, not a register of collateral.

Definition of registration time

143. The current definition of registration time provides that the registration time is the moment at which the description of collateral becomes available for search in the Register. The financing statement, however, contains data other than the description of the collateral, and searches are made mostly against the details of the grantor, rather than against the collateral. The definition is revised by this item to provide that the registration time will be the time that the data in the registration becomes available for search in the Register.
144. The intention of this item is to clarify and simplify the provision. This item is also intended to further improve conceptual consistency within the PPS Act.
145. It should be noted, however, that the current and amended wordings both define a valid registration in terms of the data being searchable. In this respect, this Item will have no practical effect to the definition of registration time, the only difference is the conceptualisation of the Register as a register of financing statements.

Definition of amendment time

146. The current definition of amendment time provides that the amendment time is the moment when the amended registration becomes available for search in the Register. The definition is revised by this item to provide that the amendment time will be the time that the data in the amended registration becomes available for search on the Register.
147. The intention of this item is to clarify and simplify the provision.

Item 33 – Before subsection 163(1)

148. Item 33 inserts new subsection (1A) before subsection 163(1) of the PPS Act. New subsection 163(1A) will provide that a registration with respect to a security interest that describes the collateral is effective only with respect to the collateral as so described.

149. This amendment makes it clear that registration will only be effective with respect to the collateral described within that registration. For example, Jim takes a security interest in Bob's valuable electric guitar collection and baby grand piano, in exchange for lending Bob some money for some new clothes. Jim registers the security interest and selects the collateral class 'other goods'. He describes the collateral as 'guitars'. The description does not capture the piano, and the registration does not perfect the interest in the piano. This means that the registration is only effective with respect to the collateral described in the registration, being 'guitars'. Realising he has made a mistake, Jim makes a new registration in which he enters 'musical instruments' into the free text box. This description will capture the guitars and the piano, ensuring effective registration of Jim's security interest in all the collateral. However, Jim's security interest in the piano will only be perfected from the time of the new registration.

Item 34 – Subsection 163(1)

150. Item 34 substitutes the words 'for the description of the collateral' with 'for the security interest'.

151. Subsection 163(1) sets out the timeframes for which a registration will be effective, being the registration time, through to a range of times listed in that subsection.

152. This amendment will align the language relating to registration time in the PPS Act with other amendments in this Schedule which simplify the definition of 'registration time', and relate registration time to the security interest rather than the collateral.

Item 35 – Paragraph 163(1)(c)

153. **Item 35** replaces the words 'that time' in subsection 163(1)(c) with 'the registration time'.

154. This amendment will align the language relating to registration time in the PPS Act with other amendments in this schedule which simplify the definition of 'registration time.'

Item 36 – Paragraphs 164(1)(a) and (b)

155. Item 36 substitutes paragraphs 164(1)(a) and (b) of the PPS Act.

156. Current section 164 provides a general rule that a registration is ineffective because of a defect in the Register where there is a defect mentioned in section 165 of the PPS Act (current paragraph 164(1)(b)) or any defect if the defect is a seriously misleading defect (current paragraph 164(1)(a)).

157. It is possible that a defect will, however, fall within the categories prescribed at paragraph 164(1)(a) and also 164(1)(b).

158. Item 36 reverses the order of the paragraphs and adjusts their wording, in order to remove the risk that a defect can be both a defect provided for by section 165 and a seriously misleading defect.

159. Under new paragraph 164(a) and (b), a registration will generally be ineffective if it contains a defect mentioned in section 165 or *any other* defect in the data, if that defect is seriously misleading, other than a kind prescribed by the Regulations.

160. There is an undesirable overlap between paragraphs 164(1) (a) and (b). This is confused by section 166, which provides qualifications to the operation of paragraph

164(1)(b) but not (a). Therefore, if a defect is covered by both paragraphs 164(1)(a) and (b) and a qualification applies under section 166 applies, the position is unclear.

161. Item 36 reverses the order of paragraphs 164(1)(a) and (b) and adjusts their wording to remove the overlap between the two paragraphs and ensure that section 166 will only operate to remedy a *defect* under section 165, as opposed to a *seriously misleading defect* under paragraph 164(1)(b).

Item 37 – Section 165

162. Item 37 amends section 165 by replacing the reference to 164(1)(b) with 164(1)(a).
163. This amendment is necessary because Item 36 of this Schedule amends section 164. This amendment (in addition to Item 36 of this Schedule) will clarify when a defect renders a registration ineffective even when the defect is not seriously misleading.

Item 38 – Paragraph 165(c)

164. Item 38 repeals paragraph 165(c). Section 165 sets out when particular defects in a registration will render registrations ineffective for the purposes of paragraph 164(1)(b).
165. Paragraph 165(c) provides that if a registration indicates that a security interest is a purchase money security interest, and the security interest is not, in fact, a purchase money security interest, the registration is ineffective.
166. The PPS Act will be amended to remove the requirement to indicate in a registration whether a security interest is a purchase money security interest. As a result, this paragraph is removed.

Item 39 – Subparagraph 166(1)(a)(i)

167. Item 39 removes reference to paragraph 165(d) from subparagraph 166(1)(a)(i).
168. Section 166 sets out when a registration will be temporarily effective, even though it is defective under 164 or 165.
169. This amendment is made because paragraph 165(d) will be provided for in new subparagraph 166(1)(a)(iii) inserted by Item 41 of this Schedule.

Item 40 – Subparagraph 166(1)(a)(ii)

170. Item 40 removes the word ‘and’ from the end of subparagraph 166(1)(a)(ii). This amendment is made because a new subparagraph 166(1)(a)(iii) will be added by Item 41 of this Schedule.

Item 41 – At the end of paragraph 166(1)(a)

171. Item 41 inserts new subparagraph 166(1)(a)(iii).
172. Paragraph 165(d) provides a regulation making power for the Regulations to prescribe defects which will render registrations ineffective. Section 166 sets out when a registration will be temporarily effective. The section currently applies to defects mentioned in paragraphs 165(d).
173. There may, however, be circumstances where the Regulations prescribe a defect under 165(d) which should not be temporarily effective under section 166.

174. While section 166 will still apply to defects mentioned in paragraph 165(d), this new subparagraph provides a specific rule for defects mentioned in paragraph 165(d) and allows a regulation making power to prescribe circumstances where section 166 would allow the defect to be temporarily effective.
175. The regulation making power is inserted because there may be situations where a defect is prescribed by paragraph 165(d) which render a registration ineffective to which section 166 ought not to apply.

Item 42 – Section 167

Section 167 – Individual grantors – secured party required to end registration if security interest ends

176. Item 42 repeals and replaces section 167. New section 167 will require a secured party to apply to register a financing change statement to end a registration where a security interest ends, and the grantor is an individual.

Scope

177. Current section 167 places an obligation on secured parties to remove registrations when the security interest involved comes to an end. The current obligation arises where the property is used, or intended to be used, predominantly for personal, domestic or household purposes; or is described by serial number. The section requires the secured party to remove the registration from the Register if, broadly, the security interest becomes ‘unperfected’ which is not a defined term.
178. New section 167 will no longer apply to collateral ‘used, or intended to be used, predominantly for personal, domestic or household purposes’. This is because it is not clear how a secured party is expected to know whether collateral is used or intended to be used for personal, domestic or household purposes, or what happens if the grantor’s actual use of the collateral changes over the term of the financing. The section will instead apply to circumstances where the grantor identified in the registration is an individual. This is consistent with changes made throughout the Bill to remove the distinction between property used for personal, domestic and household purposes and commercial purposes.
179. New section 167 will also no longer refer to serial numbered property, which was a term used in current subsection 167(3). The reference to serial numbered property was intended to provide a consumer protection measure because registrations against serial numbered goods where the collateral was to be used, or intended to be used, predominantly for personal, domestic or household purposes do not identify the grantor. However, collateral will often be registered by serial number where the grantor is a body corporate or other commercial enterprise.
180. Section 167 no longer refers to serial numbered property because consumers will be protected by the section applying to grantors identified as individuals in the registration.
181. New section 167 also removes the term ‘unperfected’ as it is not relevant in this context. The obligation to remove a registration should instead turn on whether the secured party has been paid out, or still has a security interest to which the registration relates.

182. New section 167 will apply when a secured party no longer holds a security interest in the collateral described by registration, or where no actual or contingent obligations are secured by the security interest. This is except in the case of deemed security interests identified in subsection 12(3), because no obligation is secured by those security interests.

Requirement to end effective registration

183. When all criteria under new subsection 167(1) of the PPS Act are satisfied, the secured party is required to apply to register a financing change statement ending the registration before the end of 5 business days after the events in paragraph 167(1)(b) occur.

184. Note 1 provides that an extension may be granted by a court under section 293 of the PPS Act.

185. Note 2 provides that a secured party that fails to remove a registration under this section may be liable to an action for damages under section 271 of the PPS Act.

Item 43 – Part 5.6

Part 5.6 – Amendment demands

186. Item 43 repeals and substitutes Part 5.6 – Amendment demands of the PPS Act. This item makes considerable changes to how an amendment demand will be able to be made under the PPS Act. This item sets out the amendments that will be made to Part 5.6 in comparison to the current Part 5.6 of the PPS Act.

187. New Part 5.6 provides a clearer step by step process for making an amendment demand than current Part 5.6. New Part 5.6 removes the requirement that the Registrar assess the merits of an application. Instead, the secured party will be asked to show cause and the Registrar will make a decision based on the written submissions provided by the secured party. New Part 5.6 will streamline the approved forms so that a person making an amendment demand need only provide one set of forms (rather than two as currently required, which leads to a high rate of user error).

Section 177 – Guide to this Part

188. New section 177 updates the guide to Part 5.6 in current section 177 of the PPS Act.

189. Of particular note, the guide explains that if a secured party does not amend a registration in response to an amendment demand, the person who made the amendment demand can apply to the Registrar to register a financing change statement to give effect to the amendment demand (see under new section 180). The Registrar must register the financing change statement to give effect to the demand unless, having regard to the written submissions of the secured party, the Registrar believes on reasonable grounds that the demand is not authorised or a court declares the demand is not authorised (see new section 182A).

Section 178 – Amendment demands–general

190. Current section 178, which sets out how amendment demands are given, will be replaced by new section 178 of the PPS Act. New subsections 178(1) and 178(2) set out who is eligible to make a demand for amendment of a registration, and what amendment demands in relation to a registration are ‘authorised’. New subsections 178(1) and (2) are equivalent to current section 178(1), however are expanded for clarification.

Who may make an amendment demand?

191. Current section 178(1) states that the grantor or a person with an interest in collateral described in a registration may give an amendment demand to the secured party. New subsection 178(1) provides that the following persons are eligible to make an amendment demand with respect to a registration (paragraphs 178(1)(a)-(c)):

- a grantor
- a person other than the grantor who has an interest in the collateral described in the registration
- a person who has been but is no longer the grantor of a security interest in respect of which a registration is made.

192. For the avoidance of doubt new subsection 178(1) of the PPS Act restates current subsection 178(1) in expanded and clearer terms.

What amendment demands are authorised?

193. New subsection 178(2) of the PPS Act provides that an amendment demand is authorised if it is made by an eligible person under new subsection 178(1), and the amendment is an authorised amendment under the table in new subsection 178(2) of the PPS Act.

194. The table in current subsection 178(1), which sets out what amendments are ‘authorised amendments,’ will be updated and relocated to new subsection 178(2). The table in new subsection 178(2) allows an eligible person to make an amendment demand in three circumstances:

- table item 1 allows an eligible person to demand that a registration be removed if the secured party does not hold any interest perfected by the registration. Table item 1 of new subsection 178(2) replicates table item 1 of current subsection 178(1)
- new table item 2 allows an eligible person to demand amendment to end a registration where no actual or contingent obligation is secured by the registration, except in the case of a security interest to which subsection 12(3) applies (deemed security interests). Table item 2 is a new table item. Currently, section 178 does not expressly provide for registrations made because they are deemed security interests. These registrations may perfect a security interest that does not secure an obligation because it is a deemed security interest under subsection 12(3)
- table item 3 allows an eligible person to demand that a registration be amended to remove particular collateral from a registration if the secured party does not hold an interest in that collateral. Table item 3 of subsection 178(2) replicates table item 2 of current subsection 178(1).

195. New subsection 178(2) includes a list of examples of authorised amendment demands that reference the table items to assist users to understand if an amendment is an authorised amendment under the PPS Act:

- if the security interest is extinguished—table item 1 applies
- if there is no (or is no longer) a security agreement in force between the grantor and the secured party—table item 2

- if all obligations under the security agreement have been performed—table item 2
- if the secured party has agreed to release particular collateral described in the registration from coverage by the security agreement—table item 3
- if the registered collateral description includes an item or kind of property that is not (or is no longer) collateral under the security agreement—the amendment in column 2 of item 3.

196. The effect of new subsection 178(2) of the PPS Act, including the examples, is to make it easier for persons to understand if they are entitled to give an amendment demand to a registered secured party, and if so what amendment can be demanded.

Amendment demands by individuals

197. New subsection 178(3) provides that a secured party is not permitted to require payment for compliance with an amendment demand if the amendment demand is made by an individual. This is similar to current subsection 178(3), which prohibits a secured party requiring payment for compliance with an amendment demand in relation to collateral that is intended to be used primarily for personal, domestic or household purposes, or is being used by the grantor predominantly for personal, domestic or household purposes. Under new subsection 178(3) of the PPS Act, the protection applies if the grantor is an individual, rather than the use of the collateral or intended use of the collateral which can be difficult to determine and can change over time.

198. New subsection 178(4) voids any contract term to the extent that it purports to prevent the making of amendment demands by an individual, or requires an individual pay a secured party to comply with an amendment demand. There is no equivalent existing provision in Part 5.6 of the PPS Act.

199. The effect of subsections 178(3) and (4) of the PPS Act is to protect an individual's right to make an amendment demand in recognition of the potential power imbalance between a secured party and an individual.

Section 179 – Amendment demands—how made

200. New section 179 requires an eligible person to give a secured party an amendment demand in the approved form. Currently, a person is not required to use an approved form to give a secured party an amendment demand. The provision of an approved form will lessen the risk of mistakes being made by the eligible person.

201. The Note under this section describes how to give notice to a secured party by providing reference to subsection 287(2). Under this subsection, in certain circumstances, notice may be given by publication on the internet.

202. For requirements relating to approved forms, see section 302 of the PPS Act.

Section 180 – Amendment demands – withdrawal

203. New section 180 sets out how a person who has given an amendment demand to the secured party under section 179 can withdraw their amendment demand. There is no equivalent section in current Part 5.6.

204. New subsection 180(1) provides that a person who has made an amendment demand may withdraw the demand by giving the secured party notice in the approved form any time before a financing statement is registered to give effect to the demand. New

subsection 180(1) includes a note directing the user to subsection 287(2) for how to give notice to a person registered as secured party.

205. New subsection 180(2) of the PPS Act provides that if before withdrawing an amendment demand (under new subsection 180(1)) the person has applied to the Registrar to amend the registration (under new subsection 181(2) below), the person must give the Registrar a copy of the withdrawal notice.
206. The effect of new section 180 of the PPS Act is to provide clear guidance to users about how to withdraw an amendment demand, and avoids uncertainty about if an amendment demand has been withdrawn.

Section 181 – Amendment demands–application to register financing change statement

207. New section 181 will replace current sections 179 and 180 of the PPS Act. As with current sections 179 and 180, it will provide the process for a person to request the Registrar register a financing change statement to give effect to an amendment demand.
208. New Part 5.6 will not replicate current subsection 179(3) of the PPS Act, which provides that where a security interest is a security trust deed, an amendment demand can only be made by application to a court. The effect of this is that an amendment demand may be made where a security interest is a security trust deed under new Part 5.6 (provided it meets the requirements of Part 5.6).
209. This exception was included in the PPS Act on the basis that it would minimise the scope for inadvertent, fraudulent or negligent changes to a registration through a trustee's actions or omissions. It was reasoned that in cases of registrations involving security trust instruments, the beneficiaries of the trust rather than the trustee would suffer the direct loss where a security interest loses priority due to negligent or fraudulent action that brings a registration to an end.
210. However, it could also be argued, if investors have appointed a person to act as their trustee, that those investors, and not third parties, should bear the risk that their trustee might not do its job properly.

Scope

211. New subsection 181(1) provides that section 180 applies if three conditions are met:
- the person has given notice to the secured party under new section 179 (paragraph 181(1)(a)), and
 - the secured party has not applied to register a financing change statement to give effect to the amendment demand within 5 business days (paragraph 181(1)(b)), and
 - the person has not withdrawn the amendment demand under new section 180 (paragraph 181(1)(c)).

Application to register financing change statement

212. New subsection 181(2) allows a person to apply to the Registrar to register a financing change statement to give effect to an amendment demand.
213. New subsection 181(3) requires the application to be made in the approved form, including:

- a copy of the amendment notice given to the secured party, and
- any relevant associated correspondence with the secured party.

214. The effect of new subsections 181(2) and 181(3) of the PPS Act is to provide a simpler process to apply to the Registrar to register a financing change statement to give effect to the amendment demand. Users will be able to rely on the ‘amendment notice’ they gave to the secured party under new section 179 for their application to the Registrar to register a financing change statement.

215. The note under subsection 181(3) reminds people that they may commit an offence or be liable for a civil penalty if they make a false or misleading statement in their application or provide false or misleading information, under the *Criminal Code Act 1995* and the PPS Act. This note is intended to discourage non-bona fides applications to the Registrar, by reminding people of the potential consequences of making a false declaration.

216. The Registrar is obliged to accept the application if the correct form is used (the Registrar does, however, have a discretion to refuse amendment demands if the demand is clearly frivolous, vexatious or misleading, even where the correct form is used. See new subsection 181(5) of the PPS Act.

Notice to secured party and opportunity to make submissions

217. New subsection 181(4) replaces current subsections 181(4) and (5) of the PPS Act. Under current subsection 181(4) and (5) if a person applies to the Registrar to register a financing change statement under subsection 180(2) the Registrar must give the secured party an ‘amendment notice’ that invites the secured party to submit a response to the amendment demand in writing before the end of 5 business days.

218. New subsection 181(4) requires that the Registrar must give the secured party written notice of an application to the secured party, including:

- a copy of the application made under subsection 181(3) – paragraph 181(4)(a)
- a statement inviting the secured party to ‘show cause’ why the Registrar should not register a financing change statement in accordance with the application. This must be given in writing to the Registrar within 10 business days after the notice is given – paragraph 181(4)(b), and
- a statement noting that the period of 10 days specified in paragraph 181(4)(b) may be extended if the secured party applies to the Register before the 10 days, or by applying for an extension to a court under section 293 – paragraph 181(4)(c).

219. New paragraph 181(4)(c) has been inserted to let the secured party know about the additional pathway to extension via application to the Registrar or court.

220. Although there is no direct review to the Administrative Appeals Tribunal to challenge a decision in relation to an extension of time, external merits review via the court is available under section 293, and as an aspect of the Administrative Appeals Tribunal to review a substantive decision to register the financing change statement under section 191.

221. The note under subsection 181(4) refers to the notice requirements under subsection 287(2) which allow for a notice to be published on the website in certain circumstances,

for example when a secured party cannot be contacted using the contact details available on the Register.

Frivolous, vexatious or misleading applications

222. New subsection 181(5) provides that the Registrar may refuse the application to register a financing change statement under new section 181 if the Registrar considers that the application is, in a material particular, frivolous, vexatious or misleading, or manifestly in error.
223. There is no equivalent provision in current Part 5.6 of the PPS Act. This provision will mean the Registrar will no longer be required to continue to process an application when there are evident errors on the face of the application or the application is clearly frivolous, vexatious or misleading.
224. The note to new subsection 181(5) of the PPS Act states a decision to refuse an application under subsection 181(5) is reviewable by application to the Administrative Appeals Tribunal under section 191. A corresponding amendment will be made to section 191 to allow for review of a decision under subsection 181(5) (see Item 54 of this Schedule).

Section 182 - False or misleading statements or information—civil penalty

225. New subsection 182(1) provides that a person is liable for a civil penalty if a person makes a statement or gives information in relation to an application under section 181 knowing that the information is false or misleading, or omits anything in the statement without which the statement or information is misleading.
226. However, new subsection 182(2) of the PPS Act provides that 181(1) does not apply if the statement is not false or misleading in a material particular.
227. New subsection 182(3) provides that 182(1) does not apply if the statement did not omit any matter or thing without which the statement or information is misleading in a material particular.
228. The civil penalty is 600 penalty units. This is intended to deter parties from making frivolous, vexatious or misleading application to the Registrar to register a financing statement under new section 181.
229. The high penalty is justified because such applications could lead to significant loss for the secured party. For example, if the Registrar were to register a financing change statement there is risk that the secured party could suffer loss associated with loss of priority to other parties with an interest in the collateral, or loss if they property is dealt with.
230. The high penalty is also justified because such applications could undermine the reliability of the Register, and general confidence in the administration of the registration system.
231. It is also important to deter such applications because of the administrative burden on the Registrar and its resources. There is no cost associated with applying for an amendment demand under the current system or the new system, and persons should be discouraged from wasting the Registrar's time and resources.

Section 182A – Amendment demands–registration of financing change statement

Scope

232. New subsection 182A(1) sets out when an application can be made to register a financing change statement to give effect to an amendment demand, similar to current subsection 179(1). It provides that section 182A applies if:

- a person makes an application in accordance with new section 181
- the application was not refused under new subsection 181(5)
- the person has not withdrawn the amendment demand under new section 180, and
- a copy of an application to a court under new section 182B has not been given to the Registrar.

233. New subsection 182A(2) provides that 182A stops applying if and when a copy of an application made to a court under section 182B in relation to the amendment demand is given to the Registrar. This means that the Registrar will not proceed with the amendment demand if the matter is before the court. This is similar to current paragraph 179(2)(b) of the PPS Act.

Main rule – obligation to register financing change statement

234. New subsection 182A(3) provides that as soon as practicable after 10 business days the Registrar must register the financing change statement as requested by the eligible person. Within the 10 business day period, the secured party is required to respond to the amendment demand to show cause why the Registrar should not register the financing change statement, effectively justifying why the registration should remain as it is. This differs from current section 181 which requires the Registrar to register a financing change statement 5 business days after giving notice to the secured party under subsection 180(5), or a longer period approved by the Registrar. The time period was extended to allow a secured party more time to provide submissions in response to the show cause notice.

235. New subsection 182A(4) of the PPS Act provides that the secured party may apply for an extension to the Registrar, in writing, before the end of the 10 business day period specified in new subsection 182A(3). The Registrar has discretion to extend the period if the Registrar reasonably considers the secured party's extension application to be justified.

236. Although there is no direct review to the Administrative Appeals Tribunal to challenge a decision in relation to an extension of time, external merits review via the court is available under section 293, and as an aspect of the Administrative Appeals Tribunal to review a substantive decision to register the financing change statement under section 191.

237. The new Note under new subsection 182A(4) of the PPS Act provides that the 10 business day period specified in 182A(3) can also be extended by a court under section 293.

Exception–amendment not authorised

238. New subsection 182A(5) provides that the Registrar must not register the financing change statement if they believe on reasonable grounds that the amendment is not authorised, having regard to the following information:

- information in the application under section 181 (paragraph 181A(5)(a));
- information in any written submissions by the secured party (paragraph 181A(5)(b)); and
- any related information that the Registrar considers relevant (paragraph 181A(5)(c)).

239. Current section 181 of the PPS Act provides that the Registrar must not register the financing change statement if they suspect on reasonable grounds that the amendment is not authorised. New subsection 182A(5) has a higher threshold of ‘believes on reasonable grounds’. This better reflects the onus on the secured party to show cause as to why their registration should not be amended.

240. New subsection 178(2) outlines when an amendment demand is authorised.

241. A decision not to give effect to the amendment demand may be reviewable by application to the Administrative Appeals Tribunal (in accordance with items 53 and 54 of this Schedule which amend section 191).

242. The Registrar is not required to determine the merits of the application as between the parties. If the Registrar has accepted the application under section 181 there is a presumption that the amendment is authorised. The secured party must provide written submissions that show cause that the amendment is not authorised and the current registration should remain.

243. The effect of this provision, in addition to new subsections 182A(3) and (4) of the PPS Act, is to facilitate the efficient administration of the process and to compel a secured party to defend their registration.

Section 182B – Amendment demands–court orders

244. Current section 182 of the PPS Act provides a judicial process for making an amendment demand that will be replaced by new section 182B.

Application for a court order

245. New subsection 182B(1) provides that the secured party or the person who gave the amendment demand may apply to a court for an order relating to an amendment demand. The note to 182B(1) directs the user to Part 6.2 for which courts have jurisdiction, and for transfers between courts.

246. New subsection 182B(2) requires that the application be made after the end of 5 business days after the notice is given to the secured party under new section 179. This allows a period for the issue to be resolved as between the parties prior to involvement of the court.

247. If the secured party has been given notice of an application to register a financing change statement under new subsection 181(4) of the PPS Act, the application must be made before the end of 10 days after the day the notice under subsection 181(4) was given. This aligns the timing requirements for an application to court with the timing for the Registrar to register a financing change statement. A note alerts to the user that the period specified under paragraph 182A(4) may be extended by application to court under section 293.

248. New subsection 182B(2) of the PPS Act requires that a copy of the application to the court must be given to the Registrar as soon as reasonably practical. If the secured party

has received notice under new subsection 181(4) the notice must be given to the Registrar before the end of 10 business days after the secured party received the notice, or a longer period if extended by the court under section 293.

249. There is no equivalent provision in current section 182. The effect of this provision is to ensure that where an application has been made to register a financing change statement under subsection 181(4), the Registrar receives notice of an application to court under section 182B before the Registrar registers a financing change statement under subsection 182A(3). If the Registrar is not alerted to an application to Court, the Registrar is able to continue with the administrative process until it is alerted.

Right to appear

250. New subsection 182B(4) provides that the secured party and any other person, with an interest in the collateral described in the registration, have the right to appear before the court on an application made under 182B. The note to subsection 182B(4) alerts the user that the Registrar also has the power to intervene in the proceedings under section 218. This is equivalent to current paragraph 182(1)(a) and subsection 182(3) of the PPS Act.

Court order

251. New subsection 182B(5) of the PPS Act provides that a court may make an order declaring whether or not the amendment demand is authorised under new section 178 or any other order that the court thinks fit.
252. Current subsection 184(4) of the PPS Act allows the court to order the Registrar give effect to an amendment demand, or restrain the Registrar from giving effect to an amendment demand where the court finds the amendment is not authorised.
253. The effect of new subsection 182B(5) of the PPS Act is that it allows the court to make declarations with respect to whether the amendment demand is authorised. This is more appropriate than the current provisions which centre around the court making orders with respect to the actions of the Registrar and the person who gave the amendment demand.
254. The Registrar also has the power to intervene in the proceedings under section 218, as referred to in the note to subsection 182B(4).
255. If a court makes an order declaring that the amendment demand is authorised, the Registrar must register a financing change statement to give effect to the demand. The note to 182B(6) alerts the reader that the Registrar must give a verification statement to each secured party after registration of a financing change statement (section 156).
256. New subsection 182B(7) provides that if the court makes an order declaring that the amendment demand is not authorised, the Registrar must refuse any application (or further application) under section 181 for the registration of a financing change statement to give effect to either the amendment demand or an amendment demand of a similar kind specified by the court order.
257. The effect of new subsections 182B(6) and 182B(7) of the PPS Act in addition to new subsection 182B(5) is that the court is enabled to make declarations about the application and the registration.

Section 182C – Amendment demands – effect of removal of data from register

258. New section 182C is equivalent to subsection 181(5) of the PPS Act. Under new section 182C, if the Registrar registers a financing change statement to give effect to an amendment demand, the Registrar can decide if the data should be made unavailable for search in the Register by reference to any time before the time of removal.
259. New note 1 alerts the user that incorrectly removed data may be restored under section 186.
260. Note 2 alerts the reader that under section 191 applications may be made to the Administrative Appeals Tribunal for review of a decision by the Registrar under section 182C to make data unavailable for search in the Register (see section 191).

Item 44 – Paragraph 184(1)(b)

261. Item 44 repeals and replaces paragraph 184(1)(b) of the PPS Act. Current paragraph 184(1)(b) allows the Registrar to remove data that is prohibited by the PPS Regulations made under paragraph 150(3)(d). Paragraph 150(3)(d) will be repealed by Item 18 of this Schedule. As a result, the current wording in paragraph 184(1)(b) is no longer required.
262. The new paragraph 184(1)(b) allows the Registrar to remove data if the application to register the data was made for an improper purpose. The additional ground has been included to address an identified gap. Under section 184, the Registrar must give a verification statement to each party after the data is removed, and the Registrar's decision to remove the data is subject to review by the Administrative Appeals Tribunal under section 191. Incorrectly removed data may be restored under section 186.

Item 45 – After paragraph 184(1)(d)

263. Item 45 inserts paragraph 184(1)(da) after paragraph 184(1)(d) of the PPS Act. Section 184 of the PPS Act allows the Registrar to remove data, including an entire registration, from the Register at their own initiative.
264. Paragraph 184(1)(da) will allow the Registrar to remove data from the Register if required by court order. This paragraph replicates current subsection (1) of regulation 5.10 of the Personal Property Securities Regulations 2009. It will be relocated to the PPS Act as it is more appropriately placed in primary legislation. Regulation 5.10 will not be replicated in the Personal Property Securities Regulations 2023.

Item 46 – Subsection 184(3) (note)

265. Item 46 repeals and substitutes the note in subsection 184(3) stating that 'Data incorrectly removed by the Registrar may be restored under section 186'.
266. Section 184 of the PPS Act allows the Registrar to remove data, including an entire registration, from the Register at their own initiative. The current note in the section 184 states that 'Incorrectly removed data may be restored under section 186'.
267. The updates in the wording of the new note, in addition to amendments to section 186 (made by Item 46 and Item 47 of this Schedule), clarify that data incorrectly removed by the Registrar under section 186 may be restored by the Registrar.
268. Items 46 and 47 of this Schedule will clarify that section 186 will no longer be available to persons other than the Registrar who incorrectly remove data from the Register.

Item 47 – Section 186 (heading)

269. Item 47 repeals and substitutes the heading to section 186.
270. Section 186 of the PPS Act gives the Registrar power to amend the Register by restoring data that had been incorrectly removed.
271. The Federal Court has taken an expansive view of section 186, as it held that a secured party can use that section to require the Registrar to restore a registration that the secured party itself (or a person acting on behalf of a secured party) has removed in error.
272. Section 186 is intended to allow the Registrar to restore data that the Registrar themselves had removed incorrectly, for example under section 184 or section 185.
273. This amendment, in addition to amendments to subsection 186(1) (made by Item 48 of this Schedule) clarifies that 186 allows the Registrar to restore data removed from the Register in error by the Registrar themselves only.

Item 48 – Subsection 186(1)

274. Item 48 omits ‘the data was incorrectly removed from the Register under this Act’ and substitutes ‘the Registrar incorrectly removed the data from the Register’ in subsection 186(1) of the PPS Act and substitutes this with ‘the Registrar incorrectly removed the data from the Register’.
275. Current section 186 gives the Registrar a power to amend the Register by restoring data that had been incorrectly removed.
276. The Federal Court has taken an expansive view of section 186, as it held that a secured party can use that section to require the Registrar to restore a registration that the secured party itself (or a person acting on behalf of a secured party) has removed in error.
277. Section 186 is intended to allow the Registrar to restore data that the Registrar themselves had removed incorrectly, for example under section 184 or section 185.
278. This amendment, in addition to amendments to the heading to section 186 (made by Item 47 of this Schedule) clarifies that 186 allows the Registrar to restore data removed from the Register in error by the Registrar themselves only.

Item 49 – Section 188 (heading) (recommendation 159)

279. Item 49 repeals and substitutes the heading to section 188 of the PPS Act.
280. Section 188 of the PPS Act allows the Registrar to correct an error (or omission) on the Register, if that error was made by the Registrar, by registering a financing change statement.
281. The new heading specifies that the provision applies to correct registration ‘errors made by the Registrar’, and is consistent with changes to the heading of section 186 in Item 47 of this Schedule.

Item 50 – At the end of Part 5.7

Section 188A – Correction of registrations – migrated data

282. Item 50 inserts new section 188A at the end of Part 5.7 of the PPS Act.

283. Currently the Registrar lacks the legislative power to correct residual errors with registrations that were migrated from pre-PPS registers such as Australian Securities and Investment Commission's (ASIC) charges register.
284. Section 188A allows the Registrar to register a financing change statement at their own initiative to amend or remove a registration to correct an error or omission that occurred when data was migrated onto the Register under section 333 of the PPS Act.
285. If the Registrar corrects a migrated registration, the PPS Act applies as if the error or omission had never been made.

Item 51 - After subsection 190(6) (before the notes)

286. Item 50 inserts subsections (7) and (8) after subsection 190(6) but before the notes of the PPS Act.
287. Section 190 provides rules for the determination for fees for registration on, or searching the Register. Currently the Registrar does not have an ability to waive or refund fees paid for the purposes of the PPS Act.
288. New subsection 190(7) will allow a person to apply to the Registrar to waive fees or refund payments (or parts thereof) paid by a person arising where there is:
- error or inadvertence on the part of the Registrar;
 - the Registrar is satisfied that the fee liability was a result of an error or inadvertence caused by another individual and the payment of the fee would cause undue hardship to the person;
 - the Registrar is satisfied that the fee liability was a result of the person's own error or inadvertence and the person took all reasonable steps to avoid or mitigate the risk of such error or inadvertence; or
 - in any circumstances prescribed by the Regulations.
289. This amendment is made because the Register is a real time online notice board. Sometimes, computational errors result in a person being charged by mistake or a person does not receive the product that they paid for (for example search results). Due to the Registrar being unable to waive debts or refund fees, the current practice is for a person to request the Minister for Finance to make discretionary payments under Division 7 of the *Public Governance, Performance and Accountability Act 2013*. This is neither appropriate nor efficient.
290. This power is not intended to be available where a person merely makes a mistake when they make a registration. A security interest arises from commercial transactions. The onus is on the person making the registration to enter in the right information. Similarly, it is not intended to be applied where a person makes a mistake in their search terms.
291. For example, Michael's Registrations provides a third-party platform through which its subscribers can make registrations and search the Register. Michael's Registrations periodically upgrades its software. Michael's Registrations sometimes does not suspend access to its platform whilst the software is being tested. On one occasion Boris makes 100 registrations, which are accidentally registered as 'no stated end date' instead of for a

maximum period of 7 years. A 7-year registration costs \$6.00, a registration with 'no stated end date' costs \$115.00. When Michael's Registrations realises the error, they re-register each of the 100 interests for period of 7 years (costing \$600.00) and discharge the registrations with 'no stated end date' (which they were charged \$11,500). Michael's Registrations wants to recover the \$10,900 shortfall. The fees should not be waived because Michael's Registrations failed to take reasonable steps to mitigate the risk of the error.

292. New subsection 190(8) allows the Registrar to make a waiver or refund under subsection 190(7) at their own initiative or on application by a person using an approved form.
293. The effect of this is that the Registrar can waive or refund fees when they know there has been a computer error without having to wait for an application from the affected person under subsection 190(7).

Item 52 – At the end of section 190

294. Item 52 adds a note to the end of section 190 of the PPS Act. The note alerts the user that an application may be made to the Administrative Appeals Tribunal for a review of a decision by the Registrar to waive or refund fees under new subsection 190(7) (inserted by Item 51 of this Schedule).
295. Section 191 sets out when application may be made to the Administrative Appeals Tribunal for review of decisions made by the Registrar under the PPS Act. It will be amended to provide that a decision by the Registrar under subsection 190(7) is reviewable by application to the Administrative Appeals Tribunal (by Item 56 of this Schedule).

Item 53 – Paragraphs 191(a) to (c)

296. Item 53 repeals paragraphs 191(a), 191(b) and 191(c) of the PPS Act.
297. Section 191 sets out when application may be made to the Administrative Appeals Tribunal for review of decisions made by the Registrar under the PPS Act. Paragraph 191(a) allows for review of a decision to register a financing statement under subsection 150(1), paragraphs 191(b) and 191(c) allow for review of a decision to refuse to register a financing statement under subsection 150(2).
298. Section 150 will be amended to delete paragraphs 150(3)(c) and (d) (see Item 18 of this Schedule) which provides the Registrar with the discretion to refuse to register a financing statement or financing change statement. The Registrar will register the financing statement, or financing change statement, if the form is completed and the fee is paid. There will therefore be no need to provide for review as it concerns these paragraphs of section 150 of the PPS Act.

Item 54 – Paragraphs 191(g) to (j)

299. Item 54 repeals and replaces paragraphs 191(g) to (j) of the PPS Act to reflect changes made elsewhere in the PPS Act.
300. Section 191 sets out when application may be made to the Administrative Appeals Tribunal for review of decisions made by the Registrar under the PPS Act.
301. Replacement paragraph (g) allows for review of a decision by the Registrar to refuse an application to register a financing change statement to give effect to an amendment

demand under new subsection 181(5) of the PPS Act. Under new section 181(made by Item 43), a person will be able to apply to the Registrar to register a financing change statement to give effect to an amendment demand. The Registrar will be obliged to accept the application, unless they decide it is frivolous, vexatious or misleading or manifestly in error in a material particular under new subsection 181(5).

302. Replacement paragraph (h) allows for review of a decision to register a financing change statement to give effect to an amendment demand under new subsection 182A(3) of the PPS Act. This is equivalent to current paragraph (g) which allows for review of a decision to register a financing change statement to give effect to an amendment demand under current subsection 181(1) which will be repealed by Item 43.
303. Paragraph (ha) allows for review of a decision not to give effect to an amendment demand under subsection 182A(4)). This replaces current paragraph (h), which allows for review of a decision by the Registrar to refuse to register a financing change under subsection 181(1), which will be repealed by Item 43.
304. Paragraph (hb) allows for review of a decision by the Registrar that data removed from the Register is not to be made available for search in the Register, under section 182C. This is equivalent to current paragraph (j).

Item 55 – After paragraph 191(l)

305. Item 55 inserts new paragraph (la) after paragraph 191(l) of the PPS Act.
306. Section 191 sets out when application may be made to the Administrative Appeals Tribunal for review of decisions made by the Registrar under the PPS Act.
307. Paragraph 191(la) will allow for application to be made for review of a decision made by the Registrar to register a financing change to correct an error in a migrated registration under new section 188A (inserted by Item 50 of this Schedule).

Item 56 – At the end of section 191

308. Item 56 inserts new paragraphs 191(n) and 191(o) to the end of section 191 of the PPS Act.
309. Section 191 sets out when application may be made to the Administrative Appeals Tribunal for review of decisions made by the Registrar under the PPS Act.
310. New paragraph 191(n) provides an ability for an application to be made to the Administrative Appeals Tribunal for review of a Registrar's decision to refuse to waive or refund payment of a fee under new subsection 190(7) of the PPS Act (inserted by Item 51 of this Schedule).
311. New paragraph 191(o) provides an ability for an application to be made to the Administrative Appeals Tribunal for review of a Registrar's decision to waive or refund payment of part of a fee under subsection 190(7) (inserted by Item 51 of this Schedule).

Item 57 – At the end of Division 4 of Part 6.2

Section 219A – Court order about giving effect to a PPS order

312. Item 57 inserts section 219A at the end of Division 4 of Part 6.2 of the PPS Act.
313. New section 219A will allow the Registrar to apply to the court for an order about how to give effect to a ‘PPS order’, which is any order made by a court with respect to a PPS matter that directly or indirectly requires the Registrar to do something or refrain from doing something.
314. New section 219A is intended to assist the Registrar to comply with an order of the court in circumstances where the order is inapplicable to the operation of the Register or impossible to comply with.
315. Without this section the Register would not otherwise have standing to approach a court without intervening in the matter while it is on foot.
316. For example, if a matter is no longer on foot, and the Registrar was not a party to the matter, the Registrar will lack standing to seek direction about giving effect to an order.

Item 58 – Section 287 (after the heading)

317. Item 58 adds the subheading ‘*General rule*’ after the heading of section 287 of the PPS Act. This subheading is inserted because Item 60 will add an additional specific provision to allow a Registrar to provide notices to secured parties.
318. Section 287 sets out methods for providing a notice required to be given to a secured party. The general rule under 287 will provide that notice must be served at the address nominated by the secured party for giving notices in the registration. For example, if the Registrar was required to give notice to a secured party it must be given in writing at the address, fax or email specified in the secured party’s registration.

Item 59 – Section 287

319. Item 59 inserts the number (1) before the words ‘A notice’. This is added because new subsections 287(2) and 287(3) of the PPS Act will be added to section 287 by Item 60 of this Schedule.
320. Item 59 in combination with Item 60 amend section 287 to designate the current rule as the ‘general rule’ for giving notices to a registered secured party and to accommodate subsections 287(2) to (3) (added by Item 60). The overall effect will be that where the Registrar is unable to give a secured party notice under the general rule in subsection 287(1), they will be permitted in some circumstances to give notice via publication on the Australian Financial Security Authority’s website.

Item 60 – At the end of section 287

321. Item 60 adds new subsections 287(2) and 287(3) to section 287 of the PPS Act. These new subsections will, broadly, allow the Registrar to provide a notice to a secured party in a variety of ways.
322. Section 287 sets out methods for providing a notice required to be given to a secured party. The general rule under subsection 287(1) will provide that notice must be served at the address nominated by the secured party for giving notices in the registration. For

example, if the Registrar was required to give notice to a secured party it must be given in writing at the address, fax or email specified in the secured party's registration.

323. Overall this is an efficient and effective system. However, some registrations were migrated from pre-PPS registers without an address for giving notices. When this occurred, the field was populated with a generic register email inbox (inbox@ppsr.gov.au). This prevents the Registrar fulfilling their obligation to give notices to a secured party according to section 287, and is an obstacle to maintaining an accurate and up to date register.
324. Subsection 287(2) provides the Registrar with an ability to provide a notice to a secured party in circumstances where there is no registered address mentioned in the registration.
325. Paragraph 287(2)(a) of the PPS Act requires the Registrar is to give a notice in accordance with the general rule in new subsection 287(1) (as amended by Items 58 and 59 of this Schedule).
326. Paragraph 287(2)(b) allows the Registrar to give notice via publication on a website maintained by the Australian Financial Security Authority where there is no address for giving of notices, or where the Registrar believes on reasonable grounds that the registered address for the person is incorrect or otherwise insufficient for the giving of the notice or document to the secured party.
327. This provision is not intended to require the Registrar to determine in all cases if substituted notice is appropriate. It is also not intended to be a 'step two,' to be tried after first giving notice at the address specified. Rather, it is intended to provide flexibility for the Registrar in issuing notices.
328. New subsection 287(3) provides a balance to the new notice provision under subsection 287(2) by extending any period that would otherwise apply under the PPS Act by 28 days.
329. For example, the Registrar receives a request for an amendment demand. The Registrar is required to give notice to the secured party of the application, and invite the secured party to 'show cause' as to why the registration should not be amended as requested. There is no address for giving notices to the secured party in the registration. The Registrar publishes the notice on the PPSR website. The secured party has 10 days to respond to the notice, which will be extended by 28 days because notice is given by publication on the website.

Item 61 – Subsection 333(5)

330. Item 61 repeals the subsection and replaces it with a new subsection to reflect that despite new subsection 160(1) of the PPS Act, the registration time for a migrated security interest is the registration commencement time.
331. Section 333 allows for registration with respect to migrated data, which is data that already existed on other registers, for example the ASIC database, which was moved onto the Register.
332. 'Registration time' for a security interest perfected by registration determines the priority of that interest against other competing interests in the same collateral.

333. Subsection 333(5) is one of a number of provisions in the PPS Act that defines ‘registration time’ in terms of registering the ‘collateral’ or ‘personal property’, which is conceptually incorrect. The Register is a register of financing statements that perfect security interests in personal property rather than a register of collateral (or personal property). This amendment corrects this conceptual error by replacing the term ‘personal property’ with ‘migrated security interest’.
334. In addition to correcting the conceptual error in the subsection referred to above, Item 61 clarifies the general rule under subsection 160(1) for determining registration time for a security interest does apply to an interest that is a ‘migrated security interest’. A ‘migrated security interest’ is a security interest (transitional security interest) that was migrated from a pre-PPS register to the Personal Property Securities Register by the Registrar under Division 6 of the PPS Act.
335. For example, the PPS Act registrations were migrated from the ASIC register of company charges to the Personal Property Securities Register. The registration time of a migrated security interest is determined by section 333 of the PPS Act, not by subsection 160(1).

Item 62 – Subsection 336(5)

336. Item 62 repeals and replaces subsection 336(5) of the PPS Act, except for the note. The new subsection states ‘despite subsection 160(1), the registration time for a transitional security interest is the registration commencement time’.
337. Section 336 allowed for preparatory registrations for new registrations that would appear when the register commenced.
338. ‘Registration time’ for a security interest perfected by registration determines the priority of that interest against other competing interests in the same collateral.
339. Subsection 336(5) is one of a number of provisions in the PPS Act that defines ‘registration time’ in terms registering the ‘collateral’ or ‘personal property’, which is conceptually incorrect. The Register is a register of financing statements that perfect security interests in personal property rather than a register of collateral (or personal property).
340. This amendment corrects a conceptual error in the subsection, by replacing the term ‘collateral’ with ‘transitional security interest’.
341. In addition to correcting the conceptual error in the subsection referred to above, Item 61 of this Schedule clarifies the general rule under subsection 160(1) for determining registration time for a security interest does apply to an interest that is a ‘transitional security interest’. A ‘migrated security interest’ is a security interest (transitional security interest) that was migrated from a pre-PPS register to the Personal Property Securities Register by the Registrar under Division 6 of the PPS Act.
342. For example, the PPS Act registrations were migrated from the ASIC register of company charges to the Personal Property Securities Register. The registration time of a migrated security interest is determined by section 333 of the PPS Act, not by subsection 160(1).