

Personal Property Securities

Registrar's Practice Statement

No.8

Restoration of Data to the PPSR

Version 1.1

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Background and Purpose

The Personal Property Securities Register (**PPSR**) is an online register, which allows parties to make registrations in respect of security interests in personal property and other notifications regarding prescribed personal property such as 'hoon liens' and proceeds of crime. In order to ensure the data in the PPSR is accurate, the *Personal Property Securities Act 2009 (Cth)* (**PPS Act**) and the *Personal Property Securities Regulations 2010* place restrictions on the circumstances in which a registration can be made. For example, a person may only apply to register a financing statement in respect of a security interest if the person believes, on reasonable grounds, that the person named as the secured party in the statement is, or will become, a secured party in relation to the collateral.

The Registrar of Personal Property Securities (**Registrar**) is responsible for establishing and maintaining the PPSR. Part 5.7 of the PPS Act empowers the Registrar to remove, restore and correct data on the PPSR. In particular, section 186 empowers the Registrar to restore data to the PPSR where it has been incorrectly removed. This Registrar's practice statement explains how the Registrar will exercise the power to restore data to the PPSR under section 186 of the PPS Act.

Overview

Pursuant to section 186 of the PPS Act, the Registrar may (at his or her initiative) register a financing change statement to restore data to the PPSR (including an entire registration) if it appears to the Registrar that the data was incorrectly removed from the PPSR under the PPS Act.

A key responsibility of the Registrar is to ensure that the PPSR provides a high level of certainty to those users who place reliance upon it. This is consistent with the PPS Act's objective to provide *'more certain, consistent, simpler and cheaper arrangements for personal property securities for the benefit of all parties'*.¹ At the same time the Registrar recognises that a secured party who has incorrectly removed data from the PPSR, in relation to their security interest, is likely to have an interest in having the removal reversed if possible.²

The Registrar will be likely to exercise the discretion in section 186 to restore the missing data if the likelihood of a third party having relied upon the state of the PPSR after the data was removed, and thereby being disadvantaged by its restoration, is very low.

Restoration of Data Process

In general, there are 4 stages in the restoration of data process:

1. the Request to Restore Data Form
2. the Registrar's Letter
3. Analysis of any additional information provided by the applicant and others
4. the Registrar's Decision

¹ Replacement Explanatory Memorandum, Personal Property Securities Bill 2009 (Cth), 11

² As in *SFS Projects Australian Pty Ltd v Registrar of Personal Property Securities* [2014] FCA 846; *SFS Projects Australian Pty Ltd v Registrar of Personal Property Securities (No 2)* [2014] FCA 987

Stage 1 – Request to Restore Data Form

A person seeking the restoration of data must complete a 'Request to remove, restore or correct data' form available from the Forms page on the PPSR website www.ppsr.gov.au. In order to expedite the process, the form should be accompanied by the following:

- an explanation or evidence which shows the basis of the application,
- a statement from the grantor which confirms that the security interest is still effective and that they have no objection to the restoration of the data,
- any information regarding the identity and rights of third parties who may be affected by the restoration of the data,
- a copy of the verification statement issued when the registration was incorrectly discharged,
- a copy of the verification statement issued for any registrations created by the applicant after the registration was discharged,
- advice as to whether the grantor is under external administration under Chapter 5 of the *Corporations Act 2001* or personal insolvency under the *Bankruptcy Act 1966*, and providing details of the related appointment (such as name and contact details for the liquidator, voluntary administrator, deed administrator, controller, receiver, bankruptcy trustee or debt agreement administrator), and
- copies of search certificates for any searches conducted by or on behalf of the applicant or any known third parties after the registration was incorrectly discharged.

The request and any attachments should be addressed to:

Personal Property Securities
Australian Financial Security Authority
National Service Centre
GPO Box 1944
ADELAIDE SA 5001

Alternatively, it may be sent via email to forms@ppsr.gov.au.

Creation of a new registration to mitigate risk

It can take a number of weeks, depending on the volume and complexity of documents that may need to be considered as part of any request, for a response to the applicant to be finalised. For this reason, where a registration has been discharged, applicants should also consider creating a new registration with respect to the same secured party, grantor and collateral included in the discharged registration.

This new registration may reduce the likelihood of a PPSR user being misled by the absence of the removed data. As discussed above, an important consideration for the Registrar when deciding whether to exercise the discretion in section 186 involves maintaining the level of certainty provided by the PPSR, including the potential impact on third parties of retrospectively changing the PPSR by restoring data.

Stage 2 – Registrar's Letter

Following the receipt of a completed request for restoration form and supporting documentation, a review of PPSR transactions will be conducted by the Registrar to identify any activity in relation to

the grantor of the registration and the registration itself since the data was removed or the registration was discharged. This includes gathering information regarding any:

- registrations created,
- searches conducted using the discharged PPSR Registration Number,
- searches conducted using the grantor details, and if applicable,
- searches conducted using the serial number by which the collateral may (or must) be described.

Once this information is gathered, it will be cross-checked against the information supplied by the applicant in Stage 1 and, if there is still PPSR activity that cannot be accounted for, the Registrar will write to the applicant seeking their comments and further information. These comments might include records that indicate that the unaccounted-for searches and registrations were made by the applicant or known third parties (such as insolvency practitioners).

The letter will also require the applicant to provide any information listed in Stage 1 if it was not attached to the initial request.

Stage 3 – Analysis of information

If there is no indication that the absence of the removed data has been relied on by third parties, then the Registrar will proceed to Stage 4. However, if it is apparent that the PPSR may have been relied upon by third parties after the removal of the data, the Registrar will consider information provided by the applicant in Stages 1 and 2 to explain the identified activity and its relevance to their request. It should be noted that the Registrar has limited power to compel third parties to provide information. For this reason it is not the practice of the Registrar to approach third parties directly for comment. Therefore, applicants should ensure they provide the Registrar with all information that is accessible to them to explain any identified activity on the PPSR.

Discharging a registration where the grantor is insolvent

The consequences of incorrectly discharging a registration where the grantor of the security interest becomes insolvent or bankrupt differ; an unperfected security interest, (for example, an unregistered security interest), will vest in the grantor upon the grantor's winding up or bankruptcy.³ Further, a security interest which is perfected only by registration may vest in an insolvent grantor company if the registration is made in the six months prior to external administration and more than 20 business days after the security agreement in relation to the particular collateral came into force.⁴

For this reason the Registrar - in Stage 1 - asks to be advised of any appointment of a liquidator (or other external administrator under Chapter 5 of the *Corporations Act 2001*), bankruptcy trustee or other *Bankruptcy Act 1966* related appointment (such as a debt agreement administrator) in relation to the grantor. In some cases, other avenues of relief available to the applicant, such as action under

³ *Personal Property Securities Act 2009* (Cth) s267 and also see Part 8.2 generally

⁴ For full details, see *Corporations Act 2001* (Cth) s588FL. It should be noted, however, that relief may be available to an affected secured party under s588FM – see, for example, *Re Barclays Bank plc* [2012] NSWSC 1095; and *In the matter of Transurban CCT Pty Limited and Transurban CCT Nominees Pty Limited in its own capacity and as Trustee of the Transurban CCT Trust* [2014] NSWSC 1909

s588FM of the Corporations Act, may be more appropriate to pursue than a request under section 186 of the PPS Act.

In cases where a grantor is under some form of insolvency administration, the Registrar may write to the administrator (for example, a liquidator or bankruptcy trustee), to provide them with the opportunity to confirm that they:

- on behalf of the creditors of the grantor, do not object to the restoration of the data,
- have no knowledge of any third party who may have relied on the PPSR following the removal of data (including discharge of the registration), and
- have no knowledge of any other security interest holders that could be affected by restoration of the data.

Stage 4 – Registrar's Decision

Finally, the Registrar may, after considering all available information, choose to exercise their discretion to restore the incorrectly removed data.

Pursuant to section 186 of the PPS Act, the Registrar may register a financing change statement to restore data to the PPSR if it appears to the Registrar that the data was incorrectly removed from the Register under the PPS Act.

If it is evident that a third party has relied on the PPSR after the relevant data was removed, or that an unidentified third party might have so relied, this will weigh against the exercise of the Registrar's discretion. The Registrar may also have regard to whether any other sources of publicly available information (such as documents regarding external administration of the grantor through the ASIC Register) were available at the time of search which could have put searching parties on notice regarding matters pertaining to the incorrectly removed data. The length of time that has elapsed since the erroneous removal is also a factor that the Registrar may have regard to.

It is important to note that a decision by the Registrar to register a financing change statement to restore incorrectly removed data to the PPSR is reviewable by the Administrative Appeals Tribunal⁵, whereas review of decision not to restore should be brought under the Administrative Decisions (Judicial Review) Act 1977.⁶

Effect of Restoration of Data

A verification statement will be issued in respect of a financing change statement which is registered by the Registrar to restore data. At law, the restored data will be taken to have never been removed (section 186 of the PPS Act).

If the restoration is to restore an entire registration, a search of the PPSR by reference to a time after the time of restoration, will not reveal that the data was ever removed. If the restoration is in

⁵ *Personal Property Securities Act 2009* (Cth) subsection 191(k)

⁶ *Scottish Pacific (BFS) Pty Ltd v Registrar of Personal Property Securities* [2017] FCA 1378]

relation to only particular data contained within the registration, a search of the PPSR by reference to a time after the time of restoration will reveal that the data had been removed.

If a person would like to know whether particular data within a registration has been restored by the Registrar, at first instance the person should contact the secured party listed in the registration. If the response is unsatisfactory, the person may email or write to the Registrar, requesting further information and including copies of the correspondence with the secured party. Such communications should be addressed to the Registrar and sent to:

Post: Personal Property Securities
Australian Financial Security Authority
National Service Centre
GPO Box 1944
ADELAIDE SA 5001

Email: enquiries@ppsr.gov.au

Storage of Restored Data

The Registrar will maintain a record of all information that is restored in accordance with section 186 of the PPS Act. Any such data will be stored separately to the publicly accessible PPSR. The storage of any data removed will be subject to the requirements of the *Archives Act 1983 (Cth)*.

Further Information

Enquiries about any information contained in this practice statement may be directed via email to enquiries@ppsr.gov.au or by telephone on 1300 007 777.