

# **Personal Property Securities**

## **Registrar's Practice Statement No. 1**

### **Access to PPSR for government agencies**

Version 2.2

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## Background and Purpose

- 1 The primary purpose of the Personal Property Securities Register (**PPSR**) is to allow for registration of security interests in collateral. However, transitional registers that were replaced by the PPSR (such as state-based registers of encumbered vehicles) permitted certain other interests in personal property to be registered. The *Personal Property Securities Act 2009* (Cth) (**PPS Act**) also provides for the PPSR to include data with respect to certain personal property prescribed in the Regulations (prescribed property), which may be registered on the PPSR as other 'Registration Kinds'. Many government agencies at the Commonwealth and State/Territory level will require access to the PPSR to register and search for security interests and/or prescribed property.
- 2 In recognition of those requirements, the Personal Property Securities Law Agreement 2008 (executed by Heads of Government) provides for the Registrar of Personal Property Securities (**Registrar**) to maintain ongoing cooperative arrangements with relevant State and Territory agencies, which may include provision of free access to the PPSR for certain purposes. Further details about the intergovernmental agreement are noted below. This Registrar's Practice Statement deals with how government agencies at the Commonwealth, State and Territory level may:
  - apply for the access required in order to transact in the PPSR in relation to prescribed property (other Registration Kinds) on the basis that fees are remitted; and
  - apply for access to the PPSR in relation to security interests on the basis that fees are remitted.

## Prescribed Property and Registration Kinds

- 3 Section 148(c) of the PPS Act provides scope for the PPSR to contain data in relation to personal property that is prescribed by the regulations (other than personal property subject to a security interest). The Personal Property Securities Regulations 2010 (see Part 5) contain rules about which parties are permitted to make and amend financing statements in respect of prescribed property. Such parties are usually limited to government agencies.
- 4 The types of interests in personal property other than security interests that are able to be registered on the PPSR as prescribed property (other Registration Kinds) are:
  - Proceeds of Crime;
  - Hoon Liens;
  - Court Orders; and
  - Other Prescribed Property.

“Other prescribed property” is personal property that does not fall within the other prescribed categories and, immediately before registration commencement time, could have been registered on a transitional register.

- 5 Every PPSR Account Customer will be assigned one Registration Kind. By default this will be Security Interest. Whenever a new registration is created by an Account Customer, the Registration Kind of the registration will be the Registration Kind assigned to the account. The Registration Kind is set at the account level and affects all users belonging to that account.
- 6 The process of registration for an other Registration Kind is the same as the process for registering a security interest. It will be the user's responsibility to ensure that they use the appropriate account to create the correct Registration Kind. There will be no validation rules relating to Registration Kind to prevent a user from registering a kind (for example, a hoon lien) against an inappropriate collateral type (for example, agriculture – crop).
- 7 A search of the PPSR will reveal registrations in respect of security interests and with respect to prescribed property. Search results and search certificates clearly specify the Registration Kind to which the registration relates. For example, a search by Vehicle Identification Number (VIN) will reveal any security interests and/or hoon liens registered in respect of that motor vehicle. If registrations in respect of proceeds of crime, court orders or other prescribed property have been registered in respect of the vehicle, the search will also reveal the details of those registrations.
- 8 Applicants for an account with a different Registration Kind will be notified of the outcome of their application. When a user of an account that is set up to perform registrations of a different Registration Kind logs on to the PPSR, the login details panel displays the Registration Kind they are actioning.
- 9 Government agencies seeking to create/amend registrations with respect to prescribed property using other Registration Kinds should apply (via an “applicant – authorised person”) to the Registrar for an account using the form “*Application for account for registering prescribed property (other registration kinds)*” available from the forms page of the PPSR website ([www.ppsr.gov.au](http://www.ppsr.gov.au)).

The applicant should be a person who, in accordance with regulation 5.4, is permitted to register a financing statement or financing change statement with respect to the particular different Registration Kind sought in the application.

- 10 It is the Head of Agency's (or equivalent) responsibility to ensure that all users of the account satisfy one of the following criteria:
  - an authorised person;
  - a delegate of an authorised person; or

- a person acting on behalf of one of the above and who acts solely in accordance with that person's instructions.
- 11 In general, a successful applicant for an other Registration Kind account will be provided with an other Registration Kind account with all the standard functions of an external account. The standard functions include the functions required to register, amend and discharge a registration and also the functions to search the PPSR for registrations. Access to the search functionality is provided primarily to enable users to search the PPSR for the registrations that they have registered on behalf of the government agency. If the applicant seeks to utilise the search functionality to search the PPSR more generally, they should disclose this on the application form.
  - 12 If at anytime the Registrar suspects that the use of any functionality of the account (including the additional functionality of searches) is being abused by the government agency, the Registrar may suspend the account, or remove the functionality that is suspected of abuse (for example the ability to search). In general, if a government agency transacts through an intermediary (see below) the Registrar will limit that agency's use of the functionality that which is required to register, amend or discharge registrations.
  - 13 A government agency that has a need to register more than one Registration Kind will need to apply to the Registrar for separate accounts. The Registrar will then create the appropriate Registration Kind accounts as required.
  - 14 It is anticipated that most applicants for accounts assigned to Registration Kinds other than security interests would access the PPSR over the standard web user interface. However, government agencies that are transacting in high volumes on those accounts might wish to explore utilising a Business-to-Government (B2G) interface, if they consider that the benefits of using such an interface would justify the associated costs. Registration Kind accounts may be linked to a Business-to-Government (B2G) interface of the agency itself, or a B2G interface operated by an intermediary (such as an information broker). Applicants wishing to use such facilities should indicate this on the application form, because other formalities must be satisfied to establish the necessary linkages to a B2G interface.

## Fees and charges

- 15 The Personal Property Securities (Fees) Determination 2011 does not differentiate between registrations in relation to security interests, and registrations in relation to prescribed property using other Registration Kinds.
- 16 Pursuant to section 7 of the Personal Property Securities (Fees) Determination 2011 the Registrar may remit, in whole or in part the fees payable by the Commonwealth, or a State or Territory government. An account that has been assigned to a government agency for the purposes of creating/amending registrations of other Registration Kinds, and which will have all associated fees remitted, may or may not also provide access to additional functionality (for example, searches). As mentioned above, the application

form for government agencies to have accounts assigned different Registration Kinds includes a section for specifying whether the government agency also requires access to search functionality on the PPSR that does not relate to prescribed property, and the reasons such access is required. The Registrar will decide whether the other Registration Kind account will include access to search facilities, using similar principles as are specified below under 'Security Interests'. In the event that an agency is not permitted to access to search functionality in a Registration Kind account, any searches (and registrations relating to other Registration Kinds) would need to be performed through a different account, which may not necessarily have the benefit of fee remission.

## Security Interests

- 17 The activities of government agencies will not always be restricted to transactions that relate to different Registration Kinds. The operations of some Commonwealth and State/Territory government agencies will require for example, ability to conduct searches by reference to a grantor or serial number (for example a VIN) which will retrieve data that relates to both security interests and different Registration Kinds.
- 18 The circumstances in which the Registrar is permitted to remit fees extends to, in addition to accounts permitted to deal with Registration Kinds dealt with above, accounts held by government agencies (at the Commonwealth and State/Territory level) more generally.
- 19 As between the Commonwealth and the States/Territories, the Personal Property Securities Law Agreement 2008 contains a clause which provides that:
  - “4.4.1 The Registrar will maintain ongoing cooperative arrangements with relevant State and Territory agencies.*
  - 4.4.2 These arrangements may include:*
    - a) providing State and Territory agencies with free access to the register for the purposes (including law enforcement) as recognised in the Personal Property Securities Act or the subordinate legislation made pursuant to that Act;...”*
- 20 Although transactions relating to other Registration Kinds on the PPSR by State and Territory government agencies are likely to fall within the scope of paragraph 4.4.2(a), the Agreement does not mandate free access for such arrangements, nor do its terms necessarily restrict the extent to which free access might be applied.
- 21 The Registrar has the discretion to grant accounts established for dealings in security interests with fee remission for government agencies. The Registrar may consider granting a security interest account fee remission status for a government agency if the Registrar is satisfied that access to the PPSR by the applicant is required for, or would facilitate:
  - i. the enforcement of the criminal law or a law imposing a penalty;

- ii. the protection of the public revenue;
  - iii. the exercise of powers or the performance of functions in relation to consumer protection;
  - iv. the exercise of the powers or the performance of functions in relation to the regulation of insolvency or bankruptcy;
  - v. the exercise of the powers or the performance of functions of that body in relation to licences;
  - vi. the decommissioning or other transitional activities associated with a transitional register (under the *Personal Property Securities Act 2009*);
  - vii. the exercise of the powers or the performance of functions in relation to intelligence or security; and
  - viii. the exercise of comparable powers or performance of comparable functions that the Registrar is satisfied are of such a nature as to warrant the remission of fees.
- 22 Government agencies that would like to be considered for a security interest account with a fee remission arrangement may apply to the Registrar using the form "*Application for government agency account for security interests with concessional fees*" available from the forms page of the PPSR website ([www.ppsr.gov.au](http://www.ppsr.gov.au)).
- 23 In deciding whether an agency is eligible for an account which has fees remitted, the Registrar will have regard to other relevant factors, including cost recovery principles.

## Restrictions, monitoring and review

- 24 An account with a fee remission arrangement may be issued subject to restrictions which include, but are not limited to restrictions on the volume of transactions of a particular type (for example, registrations or searches). In addition, as a condition of establishing the arrangement, the Registrar may require the applicant agency to enter into a Memorandum of Understanding (MOU) which deals with the use of the accounts, and provides for some obligations on the part of the relevant agency heads. Such conditions will apply over and above the ordinary conditions of use of accessing the PPSR. A sample MOU is at Attachment A.
- 25 A fee remission arrangement applying to an account will be subject to monitoring and review. The Registrar may at any time impose restrictions on, or withdraw altogether, the fee remission facility.

## Ad hoc Registrations of Prescribed Personal Property

26 If an authorised person wishes to make a registration in respect of prescribed personal property, but does not currently have an account of the appropriate Registration Kind, that person may apply to the Registrar for an ad hoc registration. If the kind of prescribed personal property that the person seeks to register is "Court Orders" please follow the application process outlined in the *Registrar's Practice Statement No. 2 – Application to Register a Financing Statement – Court Orders*, which is available from the forms page of the PPSR website ([www.ppsr.gov.au](http://www.ppsr.gov.au)) or from this link:

<http://www.ppsr.gov.au/ASKTHEREGISTRAR/FORMS/Pages/default.aspx>

If the prescribed personal property is any other kind, the person should apply to the Registrar using the form an *Application for Registration – Prescribed Property*, which is available on request from the National Service Centre, Australian Financial Security Authority via telephone on 1300 007 777. The person should enclose with that form a signed declaration that the person is an authorised person and provide supporting evidence (including for example a copy of the relevant instrument of delegation and a reference to the relevant legislation). Following the acceptance by the Registrar of an application, the Registrar will register a financing statement on that person's behalf.

27 Please note, as with ad hoc applications to register court orders, a fee for registration of the prescribed personal property will be charged in accordance with the Personal Property Securities (Fees) Determination 2011. Payment of that fee should be made by lodging a completed *AFSA Method of Payment* form, together with the application.

### Further information

Enquiries about any information contained in this practice statement may be directed via email to [enquiries@ppsr.gov.au](mailto:enquiries@ppsr.gov.au).

## ATTACHMENT A

**Sample MEMORANDUM OF UNDERSTANDING: GOVERNMENT AGENCY ACCESS TO PERSONAL PROPERTY SECURITY REGISTER**

***NOTE:** This is document intended to provide an indicative guide as to the terms of a Memorandum of Understanding (MOU) that an applicant agency may be required to enter into with the Registrar as a condition of being allocated an account that benefits from a fee remission. The Registrar will consider each case on its merits and reserves the right to alter, remove or supplement any of the sample terms and conditions contained in this document.*

**MOU no.** PPSXXX(X)00001 **Replaces MOU no.**

**Registrar:** The Registrar of Personal Property Securities

**PPSR:** The Personal Property Securities Register

**Registrar's  
Contact Officer:**

Postal address:

Email:

Telephone:

**Agency Head** Name  
Position

**Agency** Name – office

**Agency's  
Contact Officer:**

Postal address:

Email:

Telephone:

**Functions to support:** See Schedule 1

**Access to PPSR data:** See Schedule 2

**Accepted and agreed**

**Signed by:** **Signature**.....  
**Name** ..... **Date**.....  
**Position** .....

**Signed by:** **Signature**.....  
**Name** ..... **Date**.....  
**Position** .....

**1. Parties**

This Memorandum of Understanding (MOU) is between:

- the Registrar; and
- the Agency.

**2. Function of this MOU**

The *Registrar’s Practice Statement No. 1– Access to the PPSR for Government Agencies* deals with the circumstances in which a government agency may be granted access to the PPSR for transactions regarding prescribed property and security interests on the basis that fees are remitted. In accordance with the matters outlined in that Practice Statement, it is proposed that the Agency will be allocated one or more accounts which will enable access to the PPSR. It is proposed that the Registrar will remit fees associated with that access, on the basis that the transactions performed by the Agency on the PPSR are for the purpose of performing certain functions and/or exercising certain powers of the Agency.

This MOU sets out the conditions under which the Registrar will establish, and maintain, access by the Agency to such an account.

**3. Commencement and duration of this MOU**

This MOU commences on the date it is signed by the last party to sign it, and continues until terminated:

- at any time by mutual agreement; or
- by either party giving the other 60 days notice, which sets out the reasons for the termination.

#### 4. Effect of this MOU

This MOU does not create legally enforceable obligations between the parties, and revokes and replaces the existing arrangements (if any) identified in the MOU details.

#### 5. Access to PPSR

The Registrar has arranged, or will arrange, for the Agency to be allocated the accounts enabling access to the PPSR as specified in Schedule 2.

Access to the PPSR through the accounts specified in Schedule 2 may only be used for the purposes of the functions/powers identified in Schedule 1. The Agency Head is responsible for ensuring that the Agency does not access the PPSR through the accounts in Schedule 2 for other purposes.

The Agency Head further agrees that access to the PPSR through the accounts specified in Schedule 2 is at all times subject to and conditional upon compliance with the current versions of the PPSR General Conditions of Use and (if applicable) the following further terms and conditions, which are available from [www.ppsr.gov.au](http://www.ppsr.gov.au) or by calling 1300 007 777:

- PPSR Account Customer Terms and Conditions;
- AFSA Credit Application – Terms and Conditions;
- PPSR B2G Access Terms and Conditions; and
- All terms and conditions relating to any relevant Third Party Facility.

*[If schedule 2 states any registration kind other than security interest]* The Agency Head will ensure that a “user” with the permission (role) to register a financing statement in respect of prescribed property (other Registration Kinds) will only be created for persons who meet the one of the of the following criteria:

- a person who is not prohibited to register that interest within the meaning of Personal Property Securities Regulations 2010 regulation 5.4 (“authorised person”);
- a delegate of an authorised person; or
- a person acting on behalf of one of the above and who acts solely in accordance with that person’s instructions.

#### 6. Agency Head to notify Registrar of changes in circumstances

The Agency Head will notify the Registrar within 7 days if a function or power identified in Schedule 1 is not, or ceases to be a function or power of the Agency.

#### 7. Support

The Registrar will arrange for support to assist the Agency in dealing with enquiries relating to the PPSR.

- General enquiries concerning the operation of the PPSR can be sent by email to [enquiries@ppsr.gov.au](mailto:enquiries@ppsr.gov.au)

- For specific enquiries concerning the Agency's access and this MOU, contact the **Registrar's Contact Officer**.

## **8. Fees**

Subject to the conditions in this MOU, the Registrar will remit PPSR fees in relation to the accounts specified in Schedule 2. No fees will be charged for the provision of support.

## **9. Usage Monitoring**

The Registrar may at any time generate reports regarding the use of the Agency's PPSR accounts specified in Schedule 2.

## **10. Declaration of compliance**

The Registrar may at any time (but not more than once each quarter) provide to the Agency Head a Declaration of Compliance in the form set out in Schedule 3 (or in such other form as the Registrar notifies the Agency Head) and notify the Agency Head when that Declaration of Compliance falls due.

The Agency Head is to confirm, by completing and returning that Declaration of Compliance, that the Agency has complied with the provisions of this MOU during the period specified in the Declaration.

## **11. Restrictions on usage, suspension and termination of fee remission arrangement**

The Registrar reserves the right, at any time, to impose restrictions on the use of the account(s) specified in Schedule 2. For example, access to a search facility may be disabled on an account allocated for the purpose of registering prescribed property (other Registration Kinds).

The Registrar reserves the right to suspend or terminate any account subject to fee remission arrangement at any time.

In particular, the Registrar may impose restrictions or suspend or terminate the account(s) specified in Schedule 2 if, as a result of activities under clauses 9 or 10, or by other means, the Registrar suspects on reasonable grounds that the Agency's access to the PPSR through that account is being used for purposes other than for the purposes specified in Schedule 1.

## **12. Variation of this MOU**

Either party may propose a variation to this MOU by giving the other party a notice setting out details of the proposal. Unless otherwise indicated, this MOU can only be varied by agreement of the parties in writing.

## **13. Dispute resolution**

The parties must attempt to resolve any dispute concerning this MOU by negotiations between the Contact Officers. If those negotiations fail to resolve that dispute:

- either party may give the other a notice setting out specific details of that dispute, and reporting the failure of negotiations to resolve it; and
- if that dispute is not resolved through negotiations between the Contact Officers, that dispute is to be referred upward, through the parties' equivalent management levels until resolved.

#### **14. Notices**

A notice under this MOU must be:

- in writing and marked for the attention of the recipient's Contact Officer;
- sent to the recipient's Contact Officer's relevant address (as identified in the MOU Details or as the recipient has otherwise notified the sender) by email transmission, hand delivery or pre-paid post (electronic delivery is preferred); and
- signed by, or sent from the email address of, the sender's Contact Officer or other authorised officer.

**SCHEDULE 1**

The Agency has been allocated an account that is subject to discretionary fee remission by the Registrar in order to support the Agency to carry out the following activities:

[Describe the relevant functions/powers performed by the Agency for which access to PPSR is required to support]

**SCHEDULE 2**

Account: *Insert account number(s), if known*

Account type: *Insert Security Interest, or other Registration Kind as appropriate*

**SCHEDULE 3****Sample Declaration of Compliance**

This Declaration of Compliance must be completed by the Agency Head in accordance with clause 10 of the Memorandum of Understanding (**MOU**).

Completion of this form by the Agency Head formally assures the Registrar that all terms and conditions, as agreed in the MOU, are being complied with. This includes, but is not limited to, confirmation that the Restrictions on Usage as outlined in clause 11 and schedule 1 are being complied with.

I, [Name of the Agency Head] assure the Registrar that all terms and conditions are being complied with as agreed in the MOU [MOU number] between the Registrar of Personal Property Securities and [Name of Agency].