



Registrar of Personal Property Securities

Practice Statement Number 4

Using the amendment demand process

This Registrar's Practice Statement is intended to help users of the Personal Property Securities Register (PPSR) understand and use the amendment demand process to request removal or amendment PPSR registrations.

Summary of Practice Statement content

This Practice Statement outlines:

- The two different amendment demand processes – administrative and judicial
- How the Registrar administers these processes
- What is required from applicants and secured parties using the amendment demand administrative process
- The review options available

Key Terms

Address for service – an email and postal address listed in the PPSR registration as the contact details for a secured party

Administrative process – a process that can be used to request the Registrar to remove or amend a registration contained on the PPSR

Authorised amendment – amendments to registrations that are authorised to be made under the PPS Act amendment demand process

Amendment demand – a written demand sent by someone with an interest in property listed in a registration demanding its removal from the PPSR

Amendment notice – a notice sent by the Registrar to a person who made a registration as part of the administrative process

Amendment statement – a form available on the PPSR Website that requests the Registrar remove or amend a registration contained on the PPSR

Grantor – a person or entity that is listed in a registration as granting an interest in certain property

Judicial process – a process that can be used to ask a court to remove a registration from the PPSR

Natural justice – a set of legal rules that apply when making decisions under Acts which support the right to be given a fair hearing and the opportunity to present one's case.

PPS Act – The *Personal Property Securities Act 2009* (Cth) which sets out the rules for administering the PPSR

Registrar – The Registrar of Personal Property Securities makes or delegates power to make decisions under the PPS Act

Security interest – an interest in property that is created through a transaction that secures payment or performance of an obligation

Secured party – a person or entity that made a registration on the PPSR over property they claim to have an interest in

Statement of reasons – a written statement that explains the reasons for making a decision

What is the amendment demand process?

The operation of the Personal Property Securities Register (**PPSR**) is governed by the rules set out in the PPS Act. Some of these rules set out a process by which you can apply to have a registration amended or removed from the PPSR.¹ This is called the amendment demand process.

There are two different amendment demand processes:

1. the amendment demand *administrative process* and
2. the amendment demand *judicial process*.

The *administrative process* involves applying to the Registrar of Personal Property Securities (**Registrar**) to amend or remove a registration.²

The *judicial process* involves applying to the court to and make an order to remove or amend (or not remove or amend) a registration.³

Who can use the amendment demand process?

Only a person with an interest in the collateral (i.e. the personal property) that is described in a registration can make an application under the amendment demand process.

Someone with an interest in the property could include:

- The owner of the property
- Someone who has possession of the property
- Someone listed as a *grantor* in the registration⁴
- An external administrator appointed to a grantor
- Someone who also claims to have a security interest in the property
- An agent such as a lawyer or accountant acting on behalf of the above

¹ PPS Act Part 5.6 – Amendment Demands

² PPS Act sections 179-182

³ PPS Act section 182

⁴ Sometimes a company can appear to be the grantor in a registration where they have the same name as a previously deregistered company. For more information, see

How do I start the amendment demand process?

Ideally, most disputes about registrations should be resolved directly between you and the secured party. Therefore, regardless of whether you want to use the administrative or judicial process, they both start the same way – by sending a written demand called an *amendment demand*. This notice must be sent to the person who made the registration, known as the *secured party*.⁵

In order to meet the requirements of the PPS Act, you must send the notice to the secured party's *address for service*. This is the email and postal addresses listed in the registration. This and other relevant information can be found by doing a PPSR search on the registration.⁶

If you know of any other email or postal address at which you can contact the secured party, you may also want to send a copy of the amendment demand to those addresses.

In the amendment demand, you must clearly state whether you want the secured party to:

1. remove the registration or
2. amend the registration to remove some of the property described in it.⁷

You should provide the secured party with evidence that shows the property described in the registration no longer secures any debt owed to them by you or anyone else.

Other things you need to include in your amendment demand are:

- The date
- The PPSR registration number
- The secured party's name
- The email and/or postal address for service (and any other address you are sending a copy to)

www.ppsr.gov.au/previous-securities-registers-and-migrated-data

⁵ PPS Act section 178 – How amendment demands are given

⁶ See www.ppsr.gov.au/fees for current PPSR search fees

⁷ PPS Act subsection 178 – Authorised amendments

- Your name and contact details so they can respond to you
- If applicable, the Giving of Notice Identifier (which can be found in a search of the registration).

How long do I have to wait after sending an amendment demand?

You must wait at least 5 business days after sending your amendment demand before you can continue the amendment demand process.⁸ 'Business day' has a particular meaning under the PPS Act.⁹ If you need help calculating this, you can use the business days calculator available at www.ppsr.gov.au/business-days-calculator.

If the secured party removes or amends the registration as you demanded, the amendment demand process ends.

Should I use the administrative or judicial process?

You should seek independent legal advice when considering which process to undertake. However, three important factors to consider in making this decision are time, cost and complexity:

1. Time: The administrative process can be quite time consuming, taking on average 2-3 months to complete from start to finish.
2. Cost: Taking the judicial avenue can be costly as it involves going to court. However, you may want to consider whether time taken to resolve your matter is a factor in the cost.
3. Complexity: The administrative process favours the secured party. Accordingly, if the matter involves numerous other legal issues it may be more beneficial to resolve these by taking the judicial avenue. A particularly complex matter can take a significant amount of time to resolve administratively and the judicial process can also have the benefit of resolving legal issues that arise outside of the scope of the PPS Act.

How do I use the administrative process?

Once you have sent an amendment demand and waited 5 business days you can start the administrative process.

To do this, you need to complete a form called an *amendment statement*.¹⁰ It is important you complete this form correctly or it will be returned to you as invalid.

Common issues with amendment statements include:

- Not entering the correct PPSR Registration number
- Inaccurate Applicant and Secured Party contact details
- Ticking the wrong boxes on the signing page or not completing this section at all
- Failing to sign the form
- Not waiting 5 business days after sending an amendment demand before submitting
- Not including the documents listed below.

Once you have filled in the amendment statement, you will need to send a copy to us at forms@ppsr.gov.au. Importantly, in order to process your request as quickly as possible, you must include a copy of the following documents:

- the amendment demand you sent to the secured party
- any responses from the secured party
- if you are not the grantor in the registration, some evidence to show you have an interest in the property (such as documents that prove ownership)
- any evidence which supports your demand

We send a copy of all of these documents to the secured party.

I've sent you my amendment statement – what happens now?

Once we've processed your valid amendment statement, we will send a notice to the secured party

⁸ PPS Act s179 – Scope of subdivision A – administrative process

⁸ PPS Act section 10 – 'business day'

¹⁰ PPS Act subsection 180(3)

called an *amendment notice*.¹¹ We will let you know when we have sent it. This notice invites the secured party to do one of two things:

1. remove or amend the registration in accordance with your demand, or
2. if they don't think they should do this, respond and tell us why.

In the amendment notice, we will invite the secured party to respond before the end of five business days.¹² See below for further information about this.

I've received an amendment notice – what do I need to do?

If you have received an amendment notice, it's because a person with an interest in property listed in one of your registrations wants you to remove or amend it.

You will likely have already received an amendment demand from them and may have even responded to it. Even if you have, it is important that you also respond to the amendment notice.

If you are happy for the registration to be removed or amended, you can find information on our website to assist you with this.

If you want to object to the removal or amendment, make sure you send us evidence that supports your position. This may include:

- a security agreement, such as a loan contract, trading terms or a lease
- bank statements or invoices that show you are owed money in relation to a secured loan.

Anything provided in response to an amendment notice may be given to the person who made the request.

You may also want to commence the judicial process – see below for further information.

Now five business days has passed, when will my request be finalised?

Removing a registration can have very serious consequences for a secured party. Therefore, we give the secured party ample opportunity to defend their registration.

Even though we ask the Secured Party to respond to the amendment notice before the end of 5 business days, this is where the process can be delayed. We are bound by the rules of *natural justice* – a legal principle that means we need to give the secured party the opportunity to present their case. Often, the secured party or the Registrar may need more time to finalise this step (such as making further attempts to get in contact with the secured party). Sometimes we may also ask you if you want to comment on the secured party's response.

As a result, the time it takes to finalise your request can vary greatly. If it is urgent, you may still want to consider following the judicial process.

Can anything stop my request once I've made it?

There are two things that will cause the administrative process to stop once you've started it:

1. If someone starts the judicial process
2. If the secured party removes or amends the registration as you requested.¹³

If you no longer want to go ahead with your request, then you can let us know in writing that you believe the registration should remain. We will then consider this relevant information when we make our decision.

How do you make a decision in relation to my request?

The decision made in the administrative process is complex. We can only remove or amend a registration where it is an *authorised amendment*.¹⁴ Under the PPS Act, an amendment is authorised only when none of the property in the registration¹⁵ secures any debt or obligation owed by someone to the secured party.

¹¹ PPS Act section 180 – Administrative process – amendment notices

¹² PPS Act subsection 180(1)

¹³ PPSA Act subsection 179(2)

¹⁴ PPS Act subsection 181(1)

¹⁵ Or in the case of an amendment, the particular collateral

Where we suspect on reasonable grounds this is not the case, we will not remove or amend the registration. To make our decision, we will consider the response of the secured party, as well as any other relevant evidence.

As an indication, we remove about 90% of registrations that we are requested to remove under the administrative process.¹⁶

I'm not happy with the decision – can I appeal? Can you tell me the reasons why you made your decision?

The PPS Act doesn't allow for the decision to be appealed internally. However, a decision made in relation to the administrative process can be reviewed by the Administrative Appeals Tribunal (AAT).¹⁷

The AAT is an independent tribunal that reviews certain decisions made by Australian Government departments. Fees apply for making an application to the AAT to review a decision. For more information, see the AAT website at www.aat.gov.au.

As this is a decision that can be reviewed by the AAT, you are also entitled to request written reasons for the decision.¹⁸ This is known as a *statement of reasons*. To get a statement of reasons, you must send us a written request within 28 days of the decision. We will then supply you with a statement of reasons within 28 days of your request. There is no fee for requesting a *statement of reasons*.

You can also make a written complaint to the Commonwealth Ombudsman at any time if you believe we have treated you unfairly or unreasonably. For more information, see their website at <http://www.ombudsman.gov.au/>.

I want to use the judicial process – what do I do?

As an alternative to the administrative process, you can apply to a court for an order about an amendment

demand. Only the person who gave the amendment demand or the secured party who made the registration can do this.¹⁹

Like the administrative process, you must wait 5 business days after the amendment demand is sent to the secured party before you can make your application.²⁰

What happens to a registration once it is removed?

When we remove a registration as a result of an amendment demand, it will no longer have any effect. This means it will no longer be found in a search conducted against the relevant grantor or collateral. However, it can still be found on the PPSR by searching for the PPSR registration number. If this is done, it is clear from the search results that the registration has been removed from the PPSR.

The exception to the above is where we will decide to make a registration not available for search.²¹ In these instances, the registration cannot be found on the PPSR by searching for the PPSR registration number. We may make this decision if we determine that the registration should never have been made in the first place.

I want a registration amended, not removed. Is there anything I need to do differently?

The process is the same, however it is not possible to amend some registrations. Collateral listed in registrations that migrated from the ASIC Register of Company Charges cannot be amended. In this case, we will need to create a new registration and remove the migrated one, linking it to preserve visibility of the previous registration.

Generally, looking at the documents attached to the migrated registration can identify the true property it secures. This may avoid the need to use the amendment demand process.²²

¹⁶ See Registrar's blog 'What are the powers of the Registrar and how are they exercised?' <https://www.ppsr.gov.au/blog-speeches>

¹⁷ PPS Act paragraph 191(g)

¹⁸ *Administrative Appeals Tribunal Act 1975* (Cth)

subsection 28(1)

¹⁹ PPS Act subsection 182(1)

²⁰ PPS Act subsection 182(2)

²¹ PPS Act Subsection 181(5)

²² For more information, see www.ppsr.gov.au/previous-securities-registers-and-migrated-data