

Personal Property Securities

Registrar's Practice Statement No. 5

Removal, Correction and Restoration of Data on the PPSR

Version 2.4

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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 prescribed personal property such as 'hoon liens' and 'proceeds of crime' over personal property. In order to ensure the data in the register is accurate, the *Personal Property Securities Act 2009 (PPS Act)* and the Personal Property Securities Regulations 2010 (**PPS Regulations**) place restrictions on the circumstance 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 PPSR. This Registrar's practice statement explains how the Registrar will maintain the data in respect of security interests and other prescribed property that is contained in the PPSR. In particular, it explains how the Registrar will generally exercise the power to remove, restore or correct data within the PPSR in accordance with Part 5.7 of the PPS Act.

Remove, Restore or Correct Data on the PPSR

The Registrar may, on the Registrar's initiative, register a financing change statement to remove, correct or restore data on the PPSR. There are a number of ways that it might come to the Registrar's attention that certain data registered on the PPSR should be removed or corrected, or that data that no longer exists on the PPSR should be restored. These include but are not limited to:

- the receipt of an application from an individual or an organisation to remove, correct or restore data;
- as a result of an investigation under section 195A of the PPS Act; and
- as a result of, or arising out of, the administrative process for an amendment demand.

Application

A person seeking to have data removed, restored or corrected on the PPSR should make an application in writing to the Registrar, using the form "*Application to Remove Data or Correct Registration Errors*" which is available from the forms page of the PPSR website (www.ppsr.gov.au). Any person may make such an application to the Registrar. However, the Registrar has complete discretion in relation to the consideration of any such application.

In completing the "*Application to Remove Data or Correct Registration Errors*", the applicant should have regard to the grounds upon which Registrar may remove, restore or correct data and provide sufficient evidence in support of one or more of those grounds. Those grounds are discussed in further detail below. The Registrar will only exercise the discretion to remove, restore or correct data if the Registrar is satisfied there grounds to do so.

Important:

1. Any material provided to the Registrar in connection with a request to have data removed, restored or corrected may be provided to an interested party.
2. The "*Application to Remove Data or Correct Registration Errors*" is not an alternative to the amendment demand process. If a person seeking to remove data from the PPSR is a person with an interest in the collateral and the data requested to be removed amounts to an authorised amendment demand, the person should utilise the amendment demand process described in Part 5.6 of the PPS Act. See further *Registrar's Practice Statement No. 4 - Amendment Demand Process*. If the Registrar considers that the amendment demand process is the more appropriate procedure an application to remove data will be rejected.

Please also note the effect of a successful *Application to Remove Data or Correct Registration Errors* will be to remove or amend the effect of the registration. If your purpose is directed at making the data not available for public search rather than challenging the correctness of the data you should make an application to restrict public access to the data using the form "*Application to Restrict Access to Data*". See further *Registrar's Practice Statement No. 6 – Restrict Access to Data*.

Process to Remove, Restore or Correct Data on the PPSR

If it comes to the Registrar's attention that, in relation to certain data registered on the PPSR, grounds might exist which suggest that the data should be removed, restored or corrected, the Registrar may investigate the matter.

If the Registrar suspects that grounds might exist to remove, restore or correct data and the Registrar is of the opinion that the data's removal, restoration or correction (as the case may be) might adversely affect a person; the Registrar may give notice to that person. The Registrar will not give any notice in relation to a removal that is urgently required.

The notices will be titled "*Notice in respect of Discretion to Remove Data*" and "*Notice in respect of Discretion to Restore Data*" or "*Notice in respect of Discretion to Correct Data*". The details of what the notices must contain are set out at attachments A and B to this Practice Statement.

If the Registrar has sent a Notice in respect of Discretion to Remove Data to a person the Registrar will only register a financing change statement to remove data if, the Registrar is satisfied that based upon the information set out in:

1. the Notice in respect of the Discretion to Remove Data that was sent to the person, and
 2. the response (if any) of the person to whom the notice was sent,
- there are grounds to remove the data and the removal of that data is appropriate.

If no *Notice in respect of Discretion to Remove Data* was sent, the Registrar will only register a financing change statement to remove data if, the Registrar is satisfied that there are grounds to remove the data and the removal of that data is appropriate.

Similarly, if the Registrar has sent a notice regarding the restoration or correction of data to a person, the Registrar will only register a financing change statement to restore or correct data if, it appears to the Registrar based upon the information set out in:

1. the notice that was sent to the person; and
2. the response (if any) of the person to whom the notice was sent,

that (where the financing statement is to restore data) the data was incorrectly removed or (where the financing statement is to correct data) that the data contains an error or omission that was made by the Registrar.

If no notice regarding the restoration or correction of data was sent, the Registrar will only register a financing change statement to restore or correct data if it appears to the Registrar that the data was incorrectly removed or that the data contains an error or omission that was made by the Registrar, respectively.

Please note that, in most instances, it is unlikely that a “*Notice in respect of Discretion to Restore Data*” or “*Notice in respect of Discretion to Correct Data*” will be sent, because the restoration or correction of errors will merely place a person in the position that they should have been in and the Registrar will not consider a person to be adversely affected by such action.

Removal of Data

The Registrar will only register a financing change statement to remove data, including an entire registration, from the PPSR if the Registrar is satisfied that one of the general grounds set out in section 184 of the PPS Act (and corresponding regulations) exists or if the data has been ineffective for 7 years or more.

General Grounds

The general grounds upon which the Registrar may remove data from the PPSR are as follows:

1. The application to register the data was:
 - 1.1. frivolous; or
 - 1.2. vexatious.
2. The data is offensive.
3. The retention of the data in the PPSR is contrary to the public interest. In general, in determining whether the retention of the data in the register is contrary to the public interest the Registrar will have regard to the following:
 - 3.1. whether the public is likely to be misled by the data in its present form;

3.2. whether the removal of the data will assist in maintaining the integrity of the PPSR;
and

3.3. any other relevant matter.

4. The registration of the data is prohibited by regulations made for the purposes of section 150(3)(d) of the PPS Act. The table below sets out the data that is prohibited by regulations. The kinds of registrations listed in the second column are prohibited unless the financing statement or financing change statement is lodged by a person named in the third column.

Item	Registration Kind	Persons permitted to register a financing statement or a financing change statement
a	A motor vehicle that has been impounded, immobilised or forfeited, or is subject to an impoundment, immobilisation or forfeiture application, under a law that provides for impoundment, immobilisation or forfeiture of a motor vehicle because it is being used, or has been used, in the commission of certain offences.	(i) A police commissioner; or (ii) a person authorised to register personal property on a transitional register; or (iii) a person authorised by a relevant agency to register data in relation to prescribed property.
b	Personal property that is subject to a notice or an order, or is confiscated or forfeited, under a provision of a proceeds of crime law.	(i) A proceeds of crime authorised person; or (ii) a person authorised to register personal property on a transitional register; or (iii) a person authorised by a relevant agency to register data in relation to prescribed property.
c	Personal property that is subject to an order of a court or tribunal (however described) that: (i) prevents or restricts a person dealing with the property; or (ii) enforces another court order (however described); or (iii) orders the sale or other disposal of all or part of the property.	(i) The person who applied for the order; or (ii) if the order was made on the court's own initiative — the person in whose favour the order is made.
d	Personal property that: (i) is not mentioned in paragraph (a), (b) or (c); and (ii) immediately before the registration commencement time, could have been registered on a transitional register maintained under a law of the Commonwealth, a State or a Territory.	(i) A person authorised to register personal property on a transitional register; or (ii) A person authorised by a relevant agency to register data in relation to prescribed property.

e	Registration of a security interest in relation any of the property set out in (a), (b), (c) or (d).	None
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5. The removal of the data is required by a court order.
6. The application to register the data was not made in the approved form.
7. The Registrar considers that the removal of the data is required urgently in the public interest.
8. A court order requires the data to be removed urgently. This includes any order made as the result of an interlocutory process including a mareva order.

Registration ineffective for 7 years or more

The Registrar will register a financing change statement to remove data (including an entire registration) with respect to a security interest from the PPSR to reflect the fact that the registration has been ineffective for 7 years or more. A registration with respect to a security interest is ineffective from the earliest of the following times (section 163 of the PPS Act):

1. the end time (if any) registered for the collateral;
2. if the registration is amended to omit the collateral description—the amendment time; or
3. the time when the description of the collateral in the registration stops being available for search in the PPSR (by reference to that time) in respect of the secured party.

Effect of Removal of Data

No verification statement will be issued in respect of a financing change statement which is registered by the Registrar to remove data with respect to a security interest to reflect the fact that the registration has been ineffective under section 163 of the PPS Act for 7 years (sections 156 and 185 of the PPS Act). A verification statement will generally be issued in respect of a financing change statement which is registered by the Registrar to remove data on any other ground.

Data which is removed on the grounds that it has been ineffective for 7 years or more or pursuant to a court order which expressly orders that the data will be available prior to the date of removal will be available for search in the PPSR by reference to any time before the time of removal, but not by reference to any time after the data is removed.

In all other cases, if the Registrar registers a financing change statement to remove data which is an entire registration, that data will not be publically available for search in the PPSR by reference to any time before (or after) the time of removal if the Registrar considers that it is appropriate. For example, if the Registrar is of the view that the particular data was never accurate, that data may not be available for search in the PPSR by reference to any time before (or after) the time of removal.

Restoration of Data

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

For further information in relation to the restoration of data process see *Registrar's Practice Statement No 8 Restoration of Data to the PPSR*.

Correction of Errors

The Registrar may, at the Registrar's initiative, register a financing change statement to amend a registration to correct an error or omission made by the Registrar.

In general, the Registrar will only be satisfied that a registration contains an error or omission made by the Registrar if the registration occurred via:

1. the web user interface of the PPSR and the Registrar is aware that there was an error with the PPSR, which caused the error or omission to occur and the error, the correction of that error was within the control of the Registrar, and the Registrar is of the opinion that the Registrar ought to exercise the discretion to correct the data; or
2. a B2G interface of the register and the Registrar is aware that there was an error with the PPSR end of the B2G link which caused the error or omission to occur, the error and correction of that error was within the control of the Registrar, and the Registrar is of the opinion that the Registrar ought to exercise the discretion to correct the data.

Effect of Correction of Data

A verification statement will generally be issued in respect of a financing change statement which is registered by the Registrar to correct data which contained an error or omission that was made by the Registrar. Although a search of the PPSR will reveal that the error once existed, at law, the corrected data will be taken to have never contained the error (section 188 of the PPS Act).

If a person would like to know whether particular data within a registration has been corrected by the Registrar, at first instance the person should contact the secured party listed in respect of 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 sent to:

Post: Personal Property Securities
Australian Financial Security Authority

AFSA Service Centre
GPO Box 1944
Adelaide SA 5001

Email: enquiries@ppsr.gov.au

Storage of Removed, Restored and Corrected Data

The Registrar will maintain a record of all information that is removed, restored or corrected in accordance with Part 5.7 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 077 777.

Attachment A

The "***Notice in respect of Discretion to Remove Data***" will contain the following information:

1. The data that the Registrar proposes to remove, including the relevant registration number. The data might be an entire registration or particular data contained in a registration.
2. The ground(s) upon which the Registrar proposes to remove that data.
3. The factual basis upon which the Registrar suspects that the grounds stated above might be satisfied.
4. Invite the secured party to respond before the end of:
 - 4.1. five business days after the notice is given; or
 - 4.2. a longer period approved by the Registrar.
5. State that if the Registrar is satisfied that there are grounds to remove the subject data and the Registrar considers it appropriate to do so, the Registrar will remove the subject data.
6. State that the Registrar's decision is reviewable by the Administrative Appeals Tribunal.
7. Any other relevant information.

The notice may also:

8. state nature of the registration;
9. any other relevant information that is contained in the register and readily available to the public; and/or
10. if relevant, request the person to provide the secured party group number that relates to the registration.

Attachment B

The "***Notice in respect of Discretion to Restore/Correct Data***" will contain the following information:

1. State the subject data that the Registrar proposes to restore or correct, including the relevant registration number.
2. The factual basis upon which the Registrar suspects that the data was incorrectly removed or contains errors.
3. Invite the person to respond before the end of:
 - 3.1.1. five business days after the notice is given; or
 - 3.1.2. a longer period approved by the Registrar,
(the "**response period**").
4. State that unless the Registrar is satisfied that the data was not incorrectly removed or does not contain errors; the Registrar will restore or correct the subject data.
5. State that the Registrar's decision is reviewable by the Administrative Appeals Tribunal.
6. Any other relevant information.

The notice may also:

7. state nature of the registration;
8. any other relevant information that is contained in the register and readily available to the public; and/or
9. if relevant, request the person to provide the secured party group number that relates to the registration.