

Personal Property Securities

Registrar's Practice Statement

No.9

Maintenance fees

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 prescribed personal property. The Registrar of Personal Property Securities (**Registrar**) is responsible for establishing and maintaining the PPSR. A key role of the Registrar is to preserve the integrity of data contained on the register.

Section 168 of the *Personal Property Securities Act 2009* (Cth) (**PPS Act**) provides a means under which the Registrar can require a secured party listed in a registration on the PPSR to pay a maintenance fee in order to maintain the effectiveness of the registration. This practice statement outlines the approach the Registrar will apply when considering exercise of that power.

Overview

Section 168

Section 168 of the PPS Act allows the Registrar to register a financing change statement to amend a registration to end its effect if a secured party has failed to pay a maintenance fee within 28 days after being given the required notice. This allows the Registrar to, for example, issue notices requiring the payment of a maintenance fee in respect of registrations that, although not susceptible to removal under s184¹, appear to no longer serve any function. Examples may be where the Registrar has information that indicates relevant parties may no longer exist, or detects multiple registrations against the same collateral by the same secured party.

The Registrar's intention

A key role of the Registrar is to ensure the PPSR is a reliable and effective financial risk management tool within the Australian economy. One of the ways that the Registrar can fulfil that role is by working to minimise the number of unnecessary and/or redundant registrations. Section 168 of the PPS Act provides one means by which the Registrar can attempt to reduce the volume of such registrations.

A maintenance fee was not included in previous fee determinations. With the end of the transitional period in early 2014, a decision was made to introduce a maintenance fee - effective from 1 July 2015 - to enable the Registrar to exercise the power under s168 in appropriate cases.

The fee is of a low value (currently \$4.00) and is not intended to generate significant revenue. In the vast majority of cases where a maintenance fee notice is issued, it is not expected that the fee will be paid by the secured party. Rather, it will provide a means by which the Registrar can register a financing change statement to end the effect of a registration once the period for payment has expired. The Registrar intends to issue a notice to pay a maintenance fee only after a secured party has been given ample opportunity to respond to any concerns raised by the Registrar.

¹ Section 184 of the PPS Act provides the Registrar with a power to register a financing change statement to remove data from the register where certain criteria are met; such as when the data is frivolous or vexatious.

Identification of target registrations

There are two ways that a registration may be identified as unnecessary or redundant, and become the subject of a notice to pay a maintenance fee:

1. **Ad hoc notification.** From time to time, the Registrar is made aware of registrations that no longer appears to serve a useful purpose under the PPS Act, but to which other processes for removal do not apply (see parts 5.6 and 5.7 of the PPS Act).
2. **Systematic approach.** Registrations that are potentially redundant and / or unnecessary are identified through a process of data analysis. Example of registrations that may warrant followed up by the Registrar are:
 - multiple identical registrations created by business-to-government (B2G) users;
 - registrations with organisation grantor identifiers that appear to be invalid; and
 - incorrect serial number / grantor names, e.g. N/A, TBA.

Maintenance fee process

Once the Registrar has identified registrations that appear to be unnecessary or redundant, a three stage process is initiated:

1. Initial contact
2. The Registrar's Notice
3. The Registrar's Decision

Stage 1 – Initial contact

The Registrar will attempt to make informal contact with the secured party of the registration. Where possible, initial contact is via telephone and followed up with a letter. The purpose of the initial contact is to alert the secured party that their registration has come to the attention of the Registrar, as it has features that suggest it may no longer serve a useful purpose under the PPS Act. At this stage the Secured Party will be offered assistance to rectify identified issues or to enable the secured party to discharge the registration themselves.

The process will cease at this stage if contact with the Secured Party addresses or clarifies issues identified by the Registrar. Where a letter is sent to the secured party, the Registrar will proceed to stage 2 if no response has been received within 21 days of the letter being sent. The secured party is under no obligation to respond to the initial contact.

Stage 2 – The Registrar's notice

If no response to the initial contact is received within 21 days, the Registrar will proceed to Stage 2 and give a written notice to the Secured Party pursuant to s168(1) of the PPS Act. The notice is sent to the email and postal address for service of the registration. It requires the secured party to pay the fee (currently \$4.00) within 28 days after the notice is given. It will also explain that if the fee is not paid that, under section 168, the Registrar may register a financing change statement amending the registrations to end its effect.

The Registrar may choose to also publish details of the notification on the PPSR website, www.ppsr.gov.au.

Stage 3 – The Registrar's decision

Under s168(2) of the PPS Act, if the fee is not paid within 28 days after the notice is given, the Registrar may register a financing change statement amending the registration to end its effect (i.e. discharge the registration). The Registrar must give a verification statement to each secured party after the registration of a financing change statement (see s156).

The Registrar will only end the effect of a registration in circumstances where:

- a) the maintenance fee is not paid; or
- b) insufficient response has been received from the Secured Party indicating that the registration is required.

Under section 190(6), an unpaid maintenance fee is not recoverable as a debt to the Commonwealth.

Storage of removed data

The Registrar will maintain a record of all information that is removed in accordance with section 168 of the PPS Act. Any such data will be stored separately to the publicly accessible PPSR. The storage of any data 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.