



Australian Government



Australian
Small Business and
Family Enterprise
Ombudsman



Personal Property Securities Register Research Paper

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Foreword

Running a small business is always difficult. The vast majority of small business owners are the tax collector, the HR specialist, the bookkeeper, the supply chain logistics manager, and the financial controller. As we have consistently argued, this burden means that systems and regulations imposed on small business by government need to be streamlined and easy to use. Put simply, 'easy to get right and hard to get wrong' should be the guiding principle all governments use when asking the small business community to interact with government processes and programs.



The Personal Property Securities Register (PPSR) is a prime example of the importance of this guiding principle.

When it was introduced, the PPSR was lauded as an opportunity to reduce red tape, amalgamating several different registers. Unfortunately the PPSR as it currently exists has not made life easier for small businesses. From the outset, the name caused confusion, with many small businesses thinking that their business assets would be excluded from 'personal property'. As small businesses started to engage with the Register, they found the language used overly technical, and the operation of the Register very complicated. Many small businesses we spoke to said that they would be unable to navigate the system without the help of their lawyers – an additional cost for small businesses already struggling to navigate complex systems and manage costly regulatory burdens.

The PPSR gives small business owners a better opportunity to secure their own assets, something which is sorely needed even in good economic times, and has never been more critical. A huge number of small business owners have put their hard-earned money into their business over the last twelve months, and few would know that they can secure these loans on the PPSR, moving them up the security chain in the event of an insolvency. Even more importantly, correctly registered interests mean that in the event of a customer insolvency, a small business will not need to fight tooth and nail to retain title to their goods.

Inability to access capital is one of the most consistent issues we hear about from the small business sector. Being able to efficiently and effectively secure title to pieces of equipment undoubtedly increases the flow of capital to small and family businesses. Unfortunately, we have heard that many banks use their greater knowledge of the complex system to retain security long after debts are repaid. Streamlining the system as proposed in this report, and making it more accessible to small business owners, will remove the ability of banks to retain these securities, without reducing a bank's capacity to secure against money lent. In turn, this will allow small businesses to more easily offer security for future loans, without having to negotiate with a bank to remove interests.

The Government's 2015 review of the PPSR and the governing Act was comprehensive, and the much awaited government response will no doubt be similarly thorough. I urge the government to consider the recommendations of this report alongside those it is already considering, to build a system that works for the small business community, and provides much needed certainty.

A handwritten signature in black ink, which appears to read 'Kate Carnell'. The signature is fluid and cursive.

Kate Carnell
Australian Small Business and Family Enterprise Ombudsman

Key terms

Account: To create, amend, and discharge registrations a person needs to create an account within the Personal Property Securities Register (PPSR). The account holder can manage registrations for one, or more than one, secured party. For small businesses, the account holder will be either themselves or the third party they have engaged to help manage their registrations.

Collateral: Collateral is the term used in the PPSR for the goods and assets of a business attached to a registration. To identify collateral requires selecting the type and then the class for the collateral.

Collateral class: There are 22 classes of collateral. These are grouped into four broad categories: tangible (physical property); intangible (non-physical property like intellectual property); general (a security taken over all goods and assets of a business); and financial (cash and shares).

Collateral description: This allows further detail to be entered to identify collateral when the collateral class has been selected as 'Other'.

Collateral type: Determined by how goods or assets attached to a registration will be used by the grantor. Where the collateral is for business purposes, it is Commercial; when it is not for business purposes, it is Consumer.

Financing Statement (Registration): The online form that a secured party completes to make a registration. The various information required is determined by the underlying Act.

Grantor: The entity that has offered goods or assets (i.e. collateral) as security and owes the obligation, such as payment for goods, or return of hired equipment. A small business is a grantor when they are: a customer; debtor; buyer; lessee; consignee; or borrower.

Perfected registration: A registration of an interest attached to collateral, which is enforceable through an agreement, and recorded correctly and in time on the PPSR.

Purchase Money Security Interest (PMSI): Where the credit provided (the interest) covers specific goods – for example, where a small business supplies goods on credit terms – if that interest is registered on the PPSR prior to delivery, the secured party can claim a PMSI.¹ A PMSI provides the secured party with a higher priority than other secured creditors for the collateral attached to the registration in the event the grantor enters liquidation.

Registrar: A Registrar oversees the operation of the PPSR and sits within the Australian Financial Security Authority (AFSA). The role of the Registrar is to ensure the PPSR is managed responsibly, made available for searches and registrations, and contains reliable information.

Secured Party: The entity with an interest in the goods or assets ('collateral') of a business until they are paid for, the equipment returned, or any other obligation (such as a loan being repaid) is met. A small business is a secured party when they are: a supplier; the owner that leases; a lender; consignor; or financier.

Verification Statement: The document automatically generated by the PPSR on completion of a registration and sent electronically to the secured party. It shows the details entered in the financing statement.

¹ As a comparison: when a bank provides a loan to a small business, the small business may use that loan for many different purposes. The bank will therefore register an interest over all the goods and assets of the small business.

Key statistics

There were 10,072,100 current registrations on the PPSR at 30 September 2020

- 7,767,895 (77%) over commercial collateral (for business purpose)
- 2,236,098 (22%) over consumer collateral (not for business purpose)

Of those registered as commercial collateral:

- 3,029,479 (39%) Other Goods – generally over specific goods detailed in registration
- 2,563,405 (33%) Motor Vehicle – commonly a second registration by a bank
- 1,631,258 (21%) AllPAAP – commonly a loan to business secured over all assets
- 543,753 (7%) in the other 19 collateral classes

Since the inception of the PPSR:

- 17,995,809 registrations have been created
- 13,365,284 (74.3%) through the B2G platform or through a user's own interface
- 4,446,344 (24.7%) through the AFSA Web interface

Of the 856,484 searches of the PPSR undertaken in September 2020:

- 779,049 (91%) by account holders and sophisticated users
- 77,435 (9%) by casual users

The searches looked for registrations over:

- 383,561 (45%) an organisational grantor
- 438,751 (51%) a motor vehicle

All figures are taken from the [AFSA quarterly statistics webpage](#).

The figures listed are those on the webpage on 23 October 2020.

Findings and Recommendations

Whittaker Review

Finding: A comprehensive review of the Act was completed in 2015 and made 394 recommendations. The report remains with the Attorney-Generals' Department and this office understands that the Department is currently finalising the Government's approach.

Recommendation 1: The Attorney-Generals' Department should simultaneously consider adoption of the recommendations in this report with those recommendations to be adopted from the Whittaker Review. However, given the findings in this report and to ensure consistency with our recommendations, the Department should not accept the following recommendations of the Whittaker report: 91, 117, 140, 141, 155, 240, 384, and 385.

Transparency

Finding: Small businesses are often unaware of registrations over their business until they offer their assets as security when they seek finance or look to sell assets or the business. There are inherent design shortcomings in the PPSR which can exacerbate this situation. In particular, the inclusion of phrases in the register may mislead where they are highly technical, legal, or counter-intuitive.

Recommendation 2: Rename the register to *Register of Titles and Rights (ROTR)*.

Recommendation 3: Replace the phrase "grantor" with "debtor" within the Act and the register.

Recommendation 4: The financing statement should require an address for service for a person that represents the grantor, in the form of a contact name and an email address.

Recommendation 5: The Registrar should send the verification statement, generated on a registration being completed, to both the secured party and the grantor.

Recommendation 6: The PPSR should be linked to a platform or portal regularly accessed by small businesses to transact with the Government – for example, the Australian Taxation Office Business Portal – to flag that registrations exist against a business with a link back to PPSR.gov.au.

Search and Monitor

Finding: The search function requires a detailed understanding of how different types of collateral are registered. The resulting report, called a search certificate, presents information in the legal language of the Act and can be difficult for a small business owner to interpret. This makes it difficult for a small business owner to monitor registrations.

Recommendation 7: Search functionally should be logical so that an infrequent user can obtain meaningful and reliable information on a secured party or grantor.

Recommendation 8: The search summary and search certificate should provide results in plain language that are understandable to the infrequent user.

Registrations

Finding: The PPSR is commonly understood and referred to as a noticeboard, and for frequent users that function is relied upon. However, if the data entered and options selected in a financing statement are not 'perfect' (as defined in the Act) a registration may be void. This results in a secured party becoming unsecured and changes the ranking of the security interest. As such, the PPSR is more than a simple noticeboard.

A 'perfected registration', where all possible elements are claimed to maximise the benefit of securing an interest, is easy to get wrong and hard to get right.

Recommendation 9: Utilise modern website technology to improve the registration process so that infrequent users are able to:

- a) Follow a customised journey.
- b) Be directed by plain language questions which assist in providing accurate answers.
- c) Be provided with a list of documents that create a security interest, informing the secured party that at least one of those must exist to perfect a registration.

Recommendation 10: During the registration process:

- a) Where an Australian Company Number (ACN) is provided, that number should be checked against the National Names Index during the registration process, to confirm the details entered are correct. Where the ACN cannot be confirmed as being the same as the name of the business grantor, the registration should not be able to be completed.
- b) For other information which can be checked against other State, Territory or Federal Government databases, and where an entry cannot be validated, an alert noting which details were not validated should be added to the verification statement.

Recommendation 11: Simplify the registration process so that:

- a) The information required in a financing statement be limited to the information that identifies the secured party, the grantor, the collateral, and the end time of registration.
- b) While ranking may be lost, that a security interest exists should not be affected by any defect, irregularity, omission, or error in a financing statement unless it is seriously misleading and has a material effect.

Recommendation 12: Employ RegTech solutions for ease of use:

- a) Software companies such as MYOB and Xero should develop functionality that provides a 'pop up' reminder to small business owners who record a personal loan to the business in the balance sheet, alerting them of the option to register on the PPSR.
- b) The software companies should also work with government to develop a RegTech solution that automatically registers, if the business owner chooses to do so.

Discharge

Finding: While the Act requires a secured party to remove their registration once an obligation has been fulfilled, many choose not to, or, as there is no commercial gain to do so, simply neglect to undertake this step.

Obsolete registrations negatively impact a small business by creating delays in obtaining finance or stalling the sale of the business or its assets. Yet it is only the secured party that can directly affect a discharge. Where the secured party has not done so, the small business grantor must first send a request to the secured party, then, if this is not actioned, make a request to the Registrar or take the matter to court. Either pathway can be costly in time and money.

Recommendation 13: Allow the grantor to be able to lodge an amendment demand with the Registrar to end registration. A period of 15 business days from lodgement should be allowed for the secured party to prove they still have a security interest or remove the registration. If no challenge is received by the Registrar from the secured party and the registration is not removed, the amendment demand should be processed.

Hire Industry

Finding: The hire industry was included under the Personal Properties Securities regime against the general wishes of that industry. However, it is the intent of the regime to facilitate lending, and it is critical that the PPSR captures each and every entity that has a security interest pending fulfilment of an obligation, such as the return of hired equipment, over goods and assets of a business.

Recommendation 14: On the basis that the other recommendations in this report are accepted and implemented, the hire industry should remain covered by the regime.

Background

In 1993, the Australian Law Reform Commission recommended a national reform to replace the more than 70 pieces of Commonwealth, State and Territory legislation and general law which determined the rights of creditors and debtors. The *Personal Properties Securities Act 2009* (the Act) was introduced to replace these disparate pieces of legislation with a single piece of Federal legislation. Prior to the Act's implementation, transactions could be subject to more than one registration in the same jurisdiction and some were subject to separate requirements from state to state.² The system was inefficient and inflexible and led to reluctance by financiers to accept certain types of property as collateral.³

The Act, which came into force on 30 January 2012, established a national regime for the creation, legal effect, and enforcement of security interests in personal property. The Act also established a single national register, the Personal Property Security Register (PPSR). The intention of the PPSR is to act as a notice board of security interests as defined by the Act held by individuals and organisations over goods and assets of another party, the grantor.

The Act and the PPSR were developed from the New Zealand model which had in turn been built on those used through various provinces in Canada.⁴ The Australian regime generally follows the principles of the UN Commission on International Trade Law *Model Law on Secured Transactions*.⁵

The Act and the PPSR aims to provide consistency and certainty for parties in relation to security interests in goods and assets, to simplify the arrangement of personal property security agreements, and to reduce legal disputes.⁶ As a result of the operation of the Act, it was intended that credit management would be improved, that there would be better protection for buyers of assets, and that the role of an insolvency practitioner, should one be needed, would be more efficient.

The Act underwent a statutory review by Mr Bruce Whittaker which was completed in March 2015.⁷ This review was comprehensive in its assessment of the Act and made a substantial number of recommendations. Submissions to the review indicated widespread concern over the intricacy, ambiguity, and a general lack of awareness of the Act. However, this was balanced by agreement that the intention of the Act – to improve access to credit through the implementation of a single register – was still required.

Certainly, it is true that the Act is comprehensive, long and includes a large number of technical terms. The PPSR reflects the Act which consequentially makes it difficult for the infrequent user to search or register an interest with confidence.

Value of the PPSR for small business

The PPSR, if used by a small business correctly as a secured party, can deliver significant value and benefits, including:

- Becoming a secured creditor, alongside – if not in front of – other secured creditors, resulting in a fairer distribution should the customer enter insolvency.
- The ability to claim 'in the proceeds' and receive back the value owing of goods.⁸

² *Personal Property Securities Law: a Blueprint For Reform* [1992] QLRCWP 39, page 29.

³ Commonwealth of Australia, *Review of the Personal Property Securities Act 2009*, Canberra, page 10.

⁴ *The Australian PPSA perspective from a Canadian perspective: some comparative reflections*, Anthony Duggan, Monash University Law Review, Volume 40, No.1, page 60.

⁵ United Nations, "*UNCITRAL Model Law on Secured Transactions*", Vienna, 2019.

⁶ Personal Property Securities Bill 2009, [Second Reading](#), McClelland, Robert, MP (Attorney General).

⁷ Commonwealth of Australia, *Review of the Personal Property Securities Act 2009*, Canberra

⁸ This is particularly useful for businesses in those industries, such as the food industry, where the chance of recovery of the actual good delivered is limited or where parts have been affixed to or commingled with other products to produce a final product.

- In those cases where a business registers assets which have serial numbers, the prevention of other businesses illegally selling those assets.
- Potentially having super-priority against other creditors, which serves as a defence to unfair preference claims.
- Receiving payment for final invoices (rather than having to write them off as bad debts) from a customer who wishes to sell their business but needs to have the registration removed prior to settlement.
- Understanding their customers better through PPSR compliance by investigating whether they are dealing with an individual, company, partnership, or trust.
- Where a business owner invests in their own business, a registration allows that if the company fails, the owner will recover some or all of their investment (see table below).⁹

SEED FUNDING	SHARES		UNDOCUMENTED/ UNSECURED LOAN		SECURED LOAN	
	LIABILITY	RETURN	LIABILITY	RETURN	LIABILITY	RETURN
Value of assets realised by liquidator	\$120,000		\$120,000		\$120,000	
Secured creditors (usually the bank)	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000 + \$70,000 (founder)	\$120,000
Priority creditors	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$0
Unsecured creditors	\$50,000	\$10,000	\$50,000 + \$70,000 (founder)	\$10,000	\$50,000	\$0
Shareholders	\$70,000	\$0	\$70,000	\$0	\$70,000	\$0
RETURN TO FOUNDER	As shareholder - \$0		As unsecured creditor - \$5,385		As secured creditor - \$70,000	

Table 1: Example of how a registration can protect the investment of a small business owner.¹⁰

However, there are limitations to the PPSR as it currently stands. In this report, the Ombudsman has made a number of recommendations which will improve the overall ease of use of the PPSR for small businesses through:

- a simple search function which shows whether goods and assets under consideration to be purchased are free of other interests.
- the ability to monitor the PPSR for interests over their business and actively seek discharge of obsolete interests, allowing their business to be in the best position to borrow funds, sell assets, or sell the business.
- being able to register critical trading relationships confidently and easily.

⁹ This is especially important given that the investment often comes from personal savings, personal loan or redrawing on a mortgage loan over primary residential property.

¹⁰ For a detailed explanation, see: Graeme Beattie, 2020, Mondaq, accessed 26 November 2020, <https://www.mondaq.com/australia/insolvencybankruptcy/973046/protecting-investment-of-small-business-owners-through-the-personal-property-securities-register>

The Whittaker Review

Finding: A comprehensive review of the Act was completed in 2015 and made 394 recommendations. The report remains with the Attorney-Generals' Department and this office understand that the Department is currently finalising the Government's approach.

The Whittaker Review was comprehensive in its review of the Act, and the operation of the PPSR. The Review made a substantial number of recommendations, some of which will go some way to assisting small businesses. Some of these have already been addressed or implemented by AFSA, including:

- Recommendation 166 – *That the Registrar be asked to maintain a “business day” calendar on the Registrar’s website.* The PPSR website features a business day calculator for easy calculation of 5, 10, 15 or 20 business days.¹¹
- Recommendation 137 – *That reg 5.9(g) of the Regulations be deleted, and that the balance of reg 5.9 be simplified.* Regulation 5.9 deals with the statements which must be made on an amendment demand. The PPSR website features example amendment demands to remove or end a registration.¹²

Of the remaining recommendations, the majority are of a technical or drafting nature and will not impact the ease of use for small businesses.

Recommendation 1: The Attorney-Generals' Department should simultaneously consider adoption of the recommendations in this report with those recommendations to be adopted from the Whittaker Review. However, given the findings in this report and to ensure consistency with our recommendations, the Department should not accept the following recommendations of the Whittaker report: 91, 117, 140, 141, 155, 240, 384, and 385.

The recommendations in the Whittaker Review may clarify how the Act operates, but those recommendations will not by themselves allow a small business to utilise the register with certainty. As such, the Ombudsman has prepared this report to make further recommendations which will assist small businesses, whether they are grantors or secured parties.

We have included a table in Appendix A of the Whittaker review recommendations highlighting those recommendations which we feel will have an adverse impact on small businesses, and some which will be beneficial. Some of the recommendations we have made in this report will run counter to some or all of those particular Whittaker recommendations, and we have indicated where that is the case. We have also indicated where a recommendation we have made is in support of a Whittaker recommendation.

In particular, it is our view that recommendations 91, 117, 140, 141, 155, 240, 384 and 385 will have adverse impacts and so should not be adopted.

¹¹ <https://www.ppsr.gov.au/business-calculator>

¹² <https://www.ppsr.gov.au/about-us/laws-rules-and-regulations/pps-r-practice-statements/registrars-practice-statement-no-4a>

Transparency

Finding: Small businesses are often unaware of registrations over their business until they offer their assets as security when they seek finance or look to sell assets or the business. There are inherent design shortcomings in the PPSR which can exacerbate this situation. In particular, the inclusion of phrases in the register may mislead where they are highly technical, legal, or counter-intuitive.

In our consultations, small businesses had a low awareness of the PPSR generally and were similarly unaware of which interests had been registered over the assets of their business, indeed in many cases, over their whole business. For those small business that had heard of the PPSR, many believed – based on the name of the register – the regime only applied to personal goods and assets and was therefore irrelevant to their business.

Being unaware of the PPSR and registered interests can also be a result of a secured party – such as a lender – being able to contract out of the requirement to provide a verification statement to the grantor.¹³ There is also no penalty in the Act, other than an actionable claim, for failing to provide a notice,¹⁴ which can further lessen the likelihood that a small business grantor is made aware of the register.

One of the main goals of the Act when it was introduced was to help small businesses quickly access working capital.¹⁵ Being aware of the regime will assist small business to address the negative impacts of a registration remaining on the PPSR after it should have been removed, for example:

- where the small business has repaid a loan and the lender does not remove a registration on the PPSR, that lender appears to continue to have a security interest over the assets of the small business, despite no obligation being owed by the small business; or
- where a registration has no end date and therefore remains current on the register.

These situations can potentially delay loan settlements, or delay sales processes, as a small business must seek removal of the obsolete registrations. The Act sets out that removal of a registration from the PPSR can be directly actioned only by a secured party.

Recommendation 2: Rename the register to *Register of Titles and Rights (ROTR)*.

Recommendation 3: Replace the phrase “grantor” with “debtor” within the Act and the register.

Recommendation 4: The financing statement should require an address for service for a person that represents the grantor, in the form of a contact name and an email address.

Recommendation 5: The Registrar should send the verification statement, generated on a registration being completed, to both the secured party and the grantor.

Recommendation 6: The PPSR should be linked to a platform or portal regularly accessed by small businesses to transact with the Government – for example, the Australian Taxation Office Business Portal – to flag that registrations exists against a business with a link back to PPSR.gov.au.

Note that:

Recommendation 2 replaces Whittaker Recommendation 385

Recommendation 3 replaces Whittaker Recommendation 384

Recommendation 4 replaces Whittaker Recommendation 155

¹³ section 157(3) of the Act

¹⁴ Section 147 of the Act – it is the understanding of this office that this provision has never been used.

¹⁵ Minister’s second reading speech to Personal Property Securities Bill 2009

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2009-06-24%2F0046%22>

Rename the register

Whittaker Recommendation 385 states “That the name of the Act not be changed”.¹⁶ As is discussed later in this report, there are a number of phrases associated with the PPSR and the Act which are not immediately clear to the infrequent or casual user – the name of the register is one of those. The name ‘Personal Property Securities Register’ is not just unclear in its intention, but in many cases actually misleads. The security interests able to be registered are not only over ‘personal’ goods and assets in the general understanding of that word. We propose a simple change in the name of the register to the *Register of Titles and Rights*. We accept that, for simplicity, the name of the Act should remain the same: we recognise the difficulties associated with renaming the Act and associated regulations.

Replace ‘grantor’ with ‘debtor’

Whittaker Recommendation 384 states “That the Act continue to use the term “grantor” rather than “debtor” to refer to the person who grants a security interest”.¹⁷ The term ‘debtor’ has a well understood meaning outside of the confines of the PPSR. ‘Grantor’ is very specifically used within the PPSR, as the person or entity which owes an obligation is deemed to have ‘granted’ a security interest to another party. This argument is the one which is used by Whittaker.¹⁸ However, it is our view that this terminology is overly specific and likely to confuse small business users.

Financing and verification statements

Provision of the verification statement is a simple way for small business grantors to be made aware of registrations as they are made and enable them to query incorrect or vexatious registrations quickly. It will also likely encourage a small business to visit the PPSR site and subscribe for notifications to subsequent changes to the registration, as well as help a small business to ensure the registration is removed when the obligation has been met.¹⁹ The requirement to email the verification statement to both the secured party and grantor will require an amendment to Section 156 of the Act²⁰, and will require the contact details noted in recommendation 4 to be collected during the registration process.

Linking the PPSR to other portals

We also recommend that the PPSR platform be linked to government platforms or portals that are frequently accessed by small business, to provide an alert that registrations exist against a particular entity. This is a further simple avenue to raise awareness and encourage small businesses to access the benefits of the regime.

While we note that small businesses can already subscribe to PPSR notifications to monitor registrations created, changed, or discharged against their business, this is useful only where a small business is aware of the PPSR. Recommendations 5 and 6 seek to raise awareness of the PPSR.

¹⁶ Commonwealth of Australia, *Review of the Personal Property Securities Act 2009*, Canberra, p464

¹⁷ Commonwealth of Australia, *Review of the Personal Property Securities Act 2009*, Canberra, p463

¹⁸ *Ibid.*

¹⁹ [Your business guide to the PPSR](#), page 50 ‘Want to get a PPSR registration removed?’

²⁰ Section 156 of the Act only requires that the Registrar give the secured party a copy of the verification statement.

Case Study: Small business owner searches his own business

A small business owner undertook a search having heard from another business owner about the PPSR. To their surprise they found that a trading partner they had dealt with on one occasion over 5 years ago had registered an interest against the business. The owner was unaware that someone could register without his knowledge and felt there was some level of distrust in the business relationship because of the registration.

Upon further research of the PPSR, the owner was displeased to learn that the old registration could affect his credit risk rating with lenders. The remaining registrations were lodged by his business lender which he understood and recalled at the time of signing the loan documentation that his banking relationship manager made it clear that the loan would be registered on the PPSR as a standard procedure.

The business owner contacted the secured party and requested a discharge. A request to discharge was lodged with the Registrar within 5 days and the obsolete registration removed.

Search and Monitor

Finding: The search function requires a detailed understanding of how different types of collateral are registered. The resulting report, called a search certificate, presents information in the legal language of the Act and can be difficult for a small business owner to interpret. This makes it difficult for a small business owner to monitor registrations.

There are complexities involved in searching the PPSR in relation to which search criteria to use. As an example, commercial collateral which has a serial number is registered – and therefore searchable – by either the serial number of the goods, or the corporate identity of the grantor, such as an ACN. In comparison, consumer collateral which has a serial number is registered by serial number only and does not identify the grantor (as they would be an individual). Selecting any collateral class, as opposed to not selecting any, will narrow the search function and provide fewer results, which can result in an incomplete picture being presented.

The results of a search on the PPSR website are provided in a summary form on screen. Searchers can then choose to download the summary or an individual search certificate. The summary certificate lists the data entered at the time of registration against each technical category. Where there are multiple registrations, multiple certificates are produced. Typically, it takes expert or experienced knowledge to understand what the information contained within a certificate means for a business. An example of a search certificate can be found in Appendix B.²¹

Case study: Difference in search results based on search criteria

A grantor believed that, based on a search conducted by its in-house lawyer, there were only two registrations over their business. It was discovered upon a second search there were actually 15 registrations.

The first search results were generated by searching for specific collateral classes, the second search results were generated by searching on the grantor's ACN only. This discovery also alerted the grantor that its recent requests for discharge of registrations (i.e. amendment demands to end a registration) had not been actioned by the secured parties.

Recommendation 7: Search functionally should be logical so that an infrequent user can obtain meaningful and reliable information on a secured party or grantor.

Recommendation 8: The search summary and search certificate should provide results in plain language that are understandable to the infrequent user.

Note that:

Recommendations 7 & 8 replace Whittaker Recommendation 117 and confirm Recommendation 85

Small businesses should be able to check, quickly and accurately, who has registered an interest over their business or its assets. This will allow a small business to ensure these interests are discharged when the underlying obligation has been met and keep their business in a prime position to seek new finance or attract buyers if seeking to sell. A search should be simple and straightforward, without needing to understand the nuance of technical phrases.

In particular, we are proposing that the search interface provides a default setting such that the user is offered whether a search is to be performed for a specific business, ABN or ACN, or a motor vehicle, with more options available only when specifically requested by the user. It is our understanding, based on our consultations, that these three options will satisfy the majority of those infrequent users who are performing a search with a specific intention in mind.

²¹ The search certificate has had some identifying information redacted, however is a real search certificate.

The results should be prefaced with a summary presenting key details: for example, the registration number, starting date, ending date, collateral class, and the name of secured party. The person searching can then choose to look at a particular search certificate for greater detail if required.

Registrations

Finding: The PPSR is commonly understood and referred to as a noticeboard, and for frequent users that function is relied upon. However, if the data entered and options selected in a financing statement are not ‘perfect’ (as defined in the Act) a registration may be void. This results in a secured party becoming unsecured and changes the ranking of the security interest. As such, the PPSR is more than a simple noticeboard.

A ‘perfected registration’, where all possible elements are claimed to maximise the benefit of registering a security interest, is easy to get wrong and hard to get right.

As has already been noted, the language used on the PPSR website is legalistic and reflects the complexities in the underlying Act. However, the Ombudsman believes that the terminology and the technology used on the website remains a barrier to perfecting a registration for the infrequent small business user, given that an error may limit or invalidate a registration.

Under the current registration process, standard questions use unfamiliar terminology. Common meanings of words apply differently to how they might be expected: for example, ‘personal’ can relate to the goods and assets of an individual, a sole trader and/or a corporate entity.

The registration process attempts to address all possible choices for all possible users – and this is generally a laudable intention for Government websites. However, of the 156,025 registrations created in September 2020, 77% were through the Business to Government (B2G) interface²² while only 23% were through the generic public web interface – numbers which have been similar since the PPSR was initiated.²³ That frequent users have deemed it necessary or beneficial to utilise an interface other than the generic one suggests that the generic interface has its limitations.

Consideration should be given to designing the generic interface for the infrequent user and presenting the most common journey in the first instance. This journey should be directed through answers to common language questions and where that is not a ‘yes’ the user should be directed to the more complex options.

Secured party

Currently there are multiple steps to getting started on the PPSR: an account must be established, then a secured party group (SPG) created. The two-step process is designed to allow a third party, such as a solicitor, to establish an account and create secured party groups for each of their clients. The secured party group can be a single entity or multiple entities. This is designed to allow large corporations to have one identifier. For example, on the search certificate included at Appendix B, it can be seen that the secured party could be any one of the 64 separate entities.

Yet for small businesses, they will often be both the account holder and the only entity within the secured party group. This can be understandably confusing, as well as forcing unnecessary duplication when the same business details are to be entered.

Given that frequent users, such as large corporations or solicitors, will utilise the B2G interface, it seems reasonable that the website interface should be built to accommodate the infrequent user and assume, in the first instance, they are both the account holder and SPG.

Collateral class

To perfect a registration describing collateral accurately can be confusing as it requires selecting both a ‘type’ and a ‘class’. The exercise of selecting the correct collateral type and correct class is

²² The B2G is a customised interface for large, complex, or frequent business users.

²³ <https://www.afsa.gov.au/statistics/ppsr-quarterly-statistics>, last accessed 23 October 2020

complicated and an incorrect choice may render the registration ineffective if it is seriously misleading, even where there is no intention to mislead.

For example, a tractor to be used on a farm is not in the collateral class ‘agriculture’ (this class includes crops and livestock only); rather, it should be registered as a ‘motor vehicle’. It would then potentially require second registrations under ‘other goods’ for any attachments or spare parts, or ‘other intangible property’ for a warranty.

There are currently 22 collateral classes. Recommendation 93 of the Whittaker Review seeks to reduce the number of collateral classes to six. Further, Recommendation 92 of the Whittaker Review suggested that a single registration should be able to be made over a number of collateral classes.²⁴ This would mean that, for example, only one registration would be required to secure an interest in, say, a tractor and its attachments, spare parts, and warranties.

While the Ombudsman supports both of these recommendations, we also note that 93% of registrations are in one of three collateral classes (Motor Vehicles, Other Goods, and All Present-and-After-Acquired Property):

Table 1²⁵

Collateral class	Proportion of current commercial registrations (at 30 September 2020)
Other Goods	39%
Motor Vehicle	33%
All Present and After Acquired Property - No Exceptions	21%
All Present and After Acquired Property - With Exceptions	3%
Intangible Property	1%
Agriculture	1%
Financial Property	1%
Aircraft	0%
Watercraft	0%
Total	100%

As such, an example of a simple improvement to the generic interface would be to assume a user is an incorporated entity, is both the account holder and secured party group and is seeking a registration in one of the three most common collateral classes. At each step, an ‘other’ option would direct a user to additional information where they fall outside any of these.

²⁴ Whittaker recommendation no. 92.

²⁵ <https://www.ppsr.gov.au/about-us/news-engagement/ppsr-statistics/registrations-collateral-class>, last accessed 20 October 2020

Simplifying the journey on the generic interface for infrequent users will increase the opportunity to perfect a registration.

Recommendation 9: Utilise modern website technology to improve the registration process so that infrequent users are able to:

- a) Follow a customised journey.
- b) Be directed by plain language questions which assist in providing accurate answers.
- c) Be provided with a list of documents that create a secured interest, informing the secured party that at least one of those must exist to perfect a registration.

Note that:

Recommendation 9 confirms the intention of Whittaker Recommendations 92, 93 and 98

Technology enables the use of plain language questions and allows a user to simply fill in the details once and populate the necessary fields throughout the financing statement. Technology can also direct users through a registration process by flowing further questions based on responses to those already asked.

For example, to the question “*Are you a company?*” a positive response should then ask for an ACN and automatically verify the Company Name, while a negative response could prompt “*Are you an individual/sole trader?*” and so on.

We recommend that, throughout the registration process, simple plain language definitions, together with a hypothetical scenario, are provided wherever a technical phrase or unclear language is considered necessary to use. Plain language questions and definitions will help with the selection of the correct collateral class and allow multiple collateral classes within the same registration.

Finally, a checklist, automatically generated based on responses provided during the registration process, which notes examples of documents which must be held by the secured party will assist an infrequent user to understand any other requirements expected of them.

Source of truth

Recommendation 10: During the registration process:

- a) Where an Australian Company Number (ACN) is provided, that number should be checked against the National Names Index during the registration process, to confirm the details entered are correct. Where the ACN cannot be confirmed as being the same as the name of a business grantor, the registration should not be able to be completed.
- b) For other information which can be checked against other State, Territory or Federal Government databases, and where an entry cannot be validated, an alert noting which details were not validated should be added to the verification statement.

Currently, the PPSR website can check certain data against a source of truth. For example, where the grantor is an incorporated entity, the system provides the opportunity to verify their Australian Company Number (ACN) issued by the Australian Securities and Investments Commission (ASIC) against the ASIC National Names Index (NNI). However, where the system advises that an ACN does not exist, or the details do not match, users are still able to proceed.

We are recommending that where ACN data entered cannot be verified against the NNI, the user should not be able to continue with the registration. Preventing a user from continuing will not only reduce the risk of an incorrect registration being made but will also guard against those instances

where a grantor provides fraudulent information. Similarly, identifiers for other types of grantors should be able to be checked and verified against any relevant Government held database.

For collateral, where the user chooses to enter identifying information, the data should be checked against a source of truth. For example, on entering a 17-digit Vehicle Identification Number (VIN) for motor vehicles, the description of the vehicle's make, model and plate number from the records held by the State or Territory vehicle registration authority should be displayed; a hull identification number for a watercraft should be checked against the Register of Ships; and a patent or trade-mark number should be checked against the register held by IP Australia.

As there may be circumstances where the identifier varies from an official register, differences should be seen as an alert only and allow the user to continue with a registration. Accordingly, for collateral, an alert should be added to the verification statement that the identifying details have not been validated.

Information included on a registration

Recommendation 11: Simplify the registration process so that:

- a) The information required in a financing statement be limited to the information that identifies the secured party, the grantor, the collateral, and the end time of registration.
- b) While ranking may be lost, that a security interest exists should not be affected by any defect, irregularity, omission, or error in a financing statement unless it is seriously misleading and has a material effect.

Note that:

Recommendation 11 replaces Whittaker Recommendations 91 and 240 and confirms Recommendation 127

The PPSR is generally recognised – and, indeed, was designed – to be a noticeboard of security interests. It is relied upon by many in the financing and insolvency industries to fulfil that role.

However, when the Act was written, it prescribed the detail to be captured in a financing statement and specified that any defect could render a registration void, should the grantor enter administration or liquidation. Given that a perfected registration can impact the ranking of a security interest, this inclusion moved the PPSR away from being a simple noticeboard that alerted others of a security interest.

However, registration on the PPSR is not relied upon as proof of a security interest, only an indication of a possible security interest. When a grantor does enter liquidation, the various parties impacted rely on the PPSR simply as a noticeboard of potentially secured creditors. For example, liquidators will require secured parties to provide the documents that prove the security interest exists before noting them as secured creditors. As such, there appears to be no benefit for requiring the intricate details of a security interest, such as a PMSI (see below), to be captured in a financing statement and published on the PPSR.

This recommendation seeks to resolve the conflict between the PPSR being a noticeboard or being the factor that determines if a security interest in goods or assets exists. The PPSR should not be the arbiter of whether a security interest exists between parties – rather, that should be a question of law.

Purchase Money Security Interest (PMSI)

PMSI is based on credit being provided for specific goods or assets and a registration being made on the PPSR before those goods or assets are delivered. Claiming a PMSI can be advantageous for a

small business supplier as it provides the opportunity to claim priority over other secured creditors, such as a financial institution, for the goods provided should their customer enter liquidation.

Currently, there is an option to declare that a registration is a PMSI. However, there is no definition provided to enable a user to decide whether or not they are entitled to select the PMSI option. Getting this right is crucial as claiming a PMSI when there is none renders a registration ineffective²⁶, while failing to claim a PMSI when it does exist is a lost benefit to the small business.²⁷ This is one aspect where the PPSR stops simply being a notice board, and impacts the effectiveness of a registration.

We do not support recommendation 91 of the Whittaker Review which retains indicating in the financial statement if a PMSI exists. Our view is in line with the New Zealand PPSR regime where selecting whether or not the security interest is a PMSI is not required at the time of registration but left to be determined after the fact by the parties. To ensure the PPSR is only a noticeboard, factors such as a PMSI should be left to a question of fact rather than if the user has ticked a box.

Case study: Retention of title for stock and used goods.

NT Steel supplied WA Fabrication (company names changed) with steel stock. NT Steel had a security and an interest over the steel it supplied by including a 'retention of title' clause in its terms, retaining title to the steel until payment was received. NT Steel also secured that interest by making a registration on the PPSR for the steel provided.

When WA Fabrication collapsed it owed NT Steel approximately \$280,000. NT Steel did not want the return of its steel but the PPSR registration meant they were in a strong position to negotiate a settlement with the liquidators.

Due to the registration on the PPSR, NT Steel had the highest priority claim (including above the claim by WA Fabrication's financial institutional lenders) over the following:

- Stock supplied but as-yet unused in any fabrication project
- Steel supplied that had been incorporated in work-in-progress
- Steel that had been used in completed fabrication jobs where the customer was yet to pay WA Fabrication. In this case, NT Steel had security over the debt due from these customers.

The liquidators were immediately aware of NT Steel's security over the steel and quickly wanted to settle with NT Steel so the WA Fabrication business could be kept going. The liquidators also raised a claim that NT Steel had potentially received \$125,000 in preferential payments.

After negotiations with the liquidator, NT Steel recovered approximately 50% of its debt and, as it had secured its interest prior to the claimed preference payments, it was able to defeat the claim against preferential payments.

The PPSR registration by NT Steel over WA Fabrication was the critical factor. As a result of making the registration, NT Steel recovered 50% of its debt and defended the preference action. Without the registration, NT Steel would have been an unsecured creditor, likely to recover little or nothing against the outstanding \$280,000 and potentially be required to return previous payments of \$125,000 to satisfy the preference claim.

²⁶ [Section 165 of the Act](#) states that claiming a PMSI when there is no PMSI is a particular defect which makes the registration ineffective pursuant to [section 164 of the Act](#).

²⁷ [Section 62 of the Act](#).

Look for Regtech Solutions

Recommendation 12: Employ RegTech solutions for ease of use:

- a) Software companies such as MYOB and Xero should develop functionality that provides a ‘pop up’ reminder to small business owners who record a personal loan to the business in the balance sheet, alerting them of the option to register on the PPSR.
- b) The software companies should also work with government to develop a RegTech solution that automatically registers, if the business owner chooses to do so.

A small business owner will ordinarily provide the bulk of start-up capital for their businesses. They also provide loans, or invest additional capital into the business to allow it to grow or simply stabilise cash-flow in difficult times. During the recent economic challenges caused by the COVID-19 pandemic, many more small business owners will have made loans to their businesses to ensure solvency. The vast majority of these small business owners will be unaware of the capacity of the PPSR to give them a better opportunity to secure their own assets, something which has never been more critical.

As detailed in Table 1, registration of amounts loaned to the business on the PPSR will put business owners in the same security position of banks in the event of an insolvency. Ensuring small business owners are aware of the capacity to secure loans made to the business will allow those business owners greater ability to recover from business failure, reduce the economic devastation often felt when a business closes, and increase the likelihood of them opening a new business in the future.

Companies that provide accounting software to small business owners (such as Xero and MYOB) are uniquely placed to support their clients by providing information about the PPSR, and the ways a registration can be used to secure assets. The software companies could also assist their clients by working with government to develop a RegTech ‘overlay’ which, when the small business owner directs it, automatically creates a registration on the PPSR for amounts loaned to the business. This would allow small business owners to be confident of a registration without the need to seek expensive legal advice, or risk an imperfect registration.

Discharge

Finding: While the Act requires a secured party to remove their registration once an obligation has been fulfilled, many choose not to, or, as there is no commercial gain to do so, simply neglect to undertake this step.

Obsolete registrations negatively impact a small business by creating delays in obtaining finance or stalling the sale of the business or its assets. Yet it is only the secured party that can affect a discharge. Where the secured party has not done so, the small business grantor must first send a request to the secured party, then, if this is not actioned, make a request to the Registrar or take the matter to court. Either pathway can be costly in time and money.

There is no mandatory requirement on a secured party to discharge a registration when a debt has been settled in respect of non-consumer property (that is, commercial non-serial numbered property).²⁸

²⁸ The Act only imposes a requirement upon the secured party to end a registration within 5 business days of a debt being settled concerning consumer property or serial numbered property: [Section 167 of the Act](#). Note: consumer property and serial numbered property can only be registered for a maximum of 7 years: <https://www.ppsr.gov.au/glossary/duration>

While the Act requires a person who has registered a financing statement to remove that registration when the security interest ceases to exist,²⁹ the Act also allows a person to make a registration where they believe they are, or will become, a secured party.³⁰

Comments related during our stakeholder consultation indicate that, in practice, banks and lenders rarely discharge their registrations upon loans being repaid on the belief that a small business may come back to them (and possibly continue to do business with them) in the future. It is therefore up to the grantor – in this case, the small business – to initiate discharge of the registration and prove that no security interest exists.

Recommendation 13: Allow the grantor to be able to lodge an amendment demand with the Registrar to end registration. A period of 15 business days from lodgement should be allowed for the secured party to prove they still have a security interest or remove the registration. If no challenge is received by the Registrar from the secured party and the registration is not removed, the amendment demand should be processed.

Note that:

Recommendation 12 replaces Whittaker Recommendations 140 and 141 and confirms Recommendation 139

Currently, discharging a registration can only be directly affected by a secured party lodging an ‘amendment demand’ through the PPSR. For a small business grantor to affect a discharge they must first provide an amendment demand to the secured party and allow them 5 business days to respond. If the secured party does not apply to have the registration removed within the 5 business days, grantors have the option of requesting the Registrar or the Courts to remove the registration. Unfortunately, either pathway will create a significant inconvenience and potential cost to the grantor.

On its website, the Registrar notes that although applying for a discharge through the Registrar is free, a decision can take “weeks or even months”. It goes on to note that “it may be better to seek an order from a court if...you need to remove the registration urgently”.³¹ This advice is mirrored in the AFSA guide to the PPSR.³²

Where there are multiple obsolete registrations against a small business, each secured party must be contacted through their “address for service” which is frequently a generic email or fax number. These requests rarely trigger action by the secured party and require repeated follow ups. PPSR service providers, who establish working relationships with high volume users such as banks, have shared with this Office their frustration when trying to identify an individual within a secured party to action an amendment demand, with requests often taking months to be actioned.

In comparison, in New Zealand, where the secured party fails to comply with a discharge request from the grantor within 15 working days the grantor may enter that request into the register. The secured party then has a further 15 working days to provide a court order to maintain the registration. Where a court order is not provided, the grantor’s request is then processed. This places the burden on the secured party to prove they still hold a security interest and can maintain the registration.

²⁹ [Section 151 of the Act](#).

³⁰ Whilst a civil penalty applies together with a right to recover damages under section 271 of the Act for any loss or damage resulting from a failure to discharge an obligation, as required under section (2), this office is unaware of enforcement by the Registrar.

³¹ <https://www.ppsr.gov.au/managing-and-maintaining/dispute-ppsr-registration>, accessed 21 November 2020

³² Australian Financial Security Authority, “Your business guide to the Personal Property Securities Register (PPSR)”, Canberra, Second edition, p50

Case Study: A bank not releasing

A search on the PPSR for client 'ABC Pty Ltd' (name changed) identified 22 PPSR registrations against them by a large Australian bank for facilities which had previously been satisfied in full. ABC Pty Ltd's PPSR Specialist issued an Amendment Demand to the bank on 6 August 2020 requesting that the 22 registrations be discharged.

The Amendment Demand was sent to the address for service which was an email. Follow up emails were sent on 13/08/2020 and 24/08/2020, with no response received. On 8/09/2020 the Amendment Demand was resent, not only to the email address for service, but to two other email addresses within the bank. This triggered a response from an Agribusiness Manager in country WA who then proceeded to have the registrations discharged. The PPSR Specialist lodged a complaint with the bank and was told that due to COVID-19, not all email addresses were currently being monitored as they had been previously.

All obsolete PPSR registrations were all discharged by 25 September 2020, almost 2 months after the initial request.

Hire Industry

Finding: The hire industry was included under the Personal Properties Securities regime against the general wishes of that industry. However, it is the intent of the regime to facilitate lending, and it is critical that the PPSR captures each and every entity that has a security interest pending fulfilment of an obligation, such as the return of hired equipment, over goods and assets of a business.

Prior to the introduction of the Act, where a customer was behind in payments, the hire business would simply prove ownership of the machine by the hire agreement and have the right to retake possession. With the enactment of the Act, and by including (or, rather, not excluding) the industry, a hire agreement is no longer sufficient to secure ownership where a hire exceeds two years. Under the Act, where a hire extends beyond two years it is deemed a PPS lease³³ and to secure their interest, the hire business must register the hire arrangement on the PPSR.

Recommendation 14: On the basis that the other recommendations in this report are accepted and implemented, the hire industry should remain covered by the regime.

The Ombudsman recognises that hire businesses face some unique issues, and the Hire and Rental Industry Association (HRIA) has made the case for the sector well. While other small business may lose, for example, a consignment of goods, or the value of several months of invoices, the impact on a hire business of losing its core equipment is devastating.

The HRIA holds the firm opinion that hire agreements are non-finance leases and should not have been brought into the PPS regime. Many of the concerns raised impact all small businesses, such as the complexities of the current PPSR interface, and the inherent difficulties in perfecting a registration. However, these difficulties should be addressed by adoption of the recommendations in this report.

We understand that a primary concern for the hire industry is the vesting of ownership of hired equipment in a customer's business after two years if the hire arrangement has not been registered on the PPSR. Where such a customer enters liquidation, the hired equipment vests in the company for the liquidator to utilise to satisfy the creditors to that company. Hire companies have found themselves in the position of buying back their own equipment from a liquidator – a situation which would be avoided were the assets registered on the PPSR. This, in our mind, shows the value of the PPSR for the industry.

We also note the concern where an intended term of hire is less than two years and, due to circumstances outside of the control of the hire company, extends past the two-year period and therefore becomes a PPS lease. However, such a risk can be mitigated by either registering the lease on the PPSR at the outset irrespective of the term of the lease or, where a term has exceeded 18 months, a new hire agreement is entered into and registered. This is in line with the guidance provided in the association's PPSA and Hire Business Guidance Note.³⁴

While we acknowledge the significant impact on hire companies where equipment may be lost should a hire unexpectedly exceed two years, we do not support their exclusion from the regime. While a hire agreement sets the terms between the parties, registration on the PPSR alerts other parties to the arrangement and protects the secured interest of the hire company in their

³³ [Section 13 of the Act.](#)

³⁴ Hire and Rental Industry Association Limited "Guidance Note, Personal Property Securities Act 2009 ('PPSA') and hire businesses", October 2017 update, page 8

equipment. This also places them in a strong position to access capital even when their assets are in the possession of other businesses.

Registration on the PPSR also minimises the ability for other entities to fraudulently sell assets of a hire company. A third party – that is, neither the hire company nor their client – interested in buying a piece of equipment, or a business using hired equipment, can confirm the true ownership of the asset. Excluding the hire industry may lead to potential grantors misrepresenting the ownership of certain assets.

Appendix A

Whittaker Review and recommendations

Adverse impact for small business

The Ombudsman does not support the following recommendations:

Number	Relevant recommendation	Comment
91	<i>If item 7 of the table in s 153(1) is retained, that it be made clear that a registration that does not tick the PMSI box can nonetheless perfect a PMSI, but on the basis that the PMSI cannot benefit from the super-priority afforded by s 62.</i>	ASBFEO recommends that item 7 of the table in s 153(1) be deleted and the existence of a PMSI be a question of fact.
117	<i>That the Register continue to use an exact-match methodology for searches</i>	ASBFEO considers that with advances in technology, expanded keyword match types should be allowed to enable greater reach and relevance.
140	<i>That the Act not be amended to prohibit a secured party from obliging its grantor not to make amendment demands</i>	ASBFEO disagrees with this recommendation on the basis that the amendment demand procedure should be accessible by both parties to a registration.
141	<i>That no additional mechanisms need to be included in the Act to facilitate the removal of registrations.</i>	ASBFEO strongly disagrees as indicated by our support of Recommendation 139 seeking a move to the New Zealand model to enable grantors to effect removal of registrations.
155	<i>That s 157 not be amended to provide that a secured party need only give a notice of verification statement to a grantor in relation to commercial property if it agrees with the grantor that it will do so.</i>	ASBFEO considers this is a key reason small business grantors are not aware of the regime. ASBFEO has recommended the Registrar automatically send a notice of verification statement to both parties. If that is not adopted, then ASBFEO recommends s 157(3) be removed from the Act.
240	<i>That s 62 not be amended to require a secured party that wants to claim PMSI priority to give notice of this to existing secured parties, or to provide other information in its registration.</i>	ASBFEO, as noted against Recommendation 91, does not support the need to indicate a PMSI in a registration. Accordingly, ASBFEO recommends Sect 62 (2)(c) be deleted.
384	<i>That the Act continue to use the term “grantor” rather than “debtor” to refer to the person who grants a security interest</i>	ASBFEO considers the use of “grantor” to be unclear and potentially misleading. “Debtor” is more widely understood.
385	<i>That the name of the Act not be changed</i>	While the name of the Act may stay as it is – the Ombudsman notes the inherent difficulty of

		changing the name of an Act and associated regulations, the name of the register should be changed in order to minimise misunderstanding and confusion.
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Assist small business

The Ombudsman does support these recommendations:

Number	Relevant recommendation	Comment
85	<i>That the layout of the Register, and the order and manner in which it asks questions of a registrant or a searcher, be reviewed in order to make the Register as simple and easy to use as possible, particularly from the perspective of an unsophisticated user.</i>	ASBFEO agrees with this recommendation which is addressed in recommendations 5 and 6 of this report.
92	<i>That item 4(c) of the table in s 153(1) and the functionality of the Register be amended to enable a registration to be made against a number of collateral classes at the same time using a common free text field.</i>	ASBFEO agrees with this recommendation.
93	<i>That the collateral classes on the Register be changed to the following 6 classes</i> <ul style="list-style-type: none"> • <i>serial-numbered property (with appropriate sub-classes for the different types of serial-numbered property);</i> • <i>other goods;</i> • <i>accounts;</i> • <i>other intangible property;</i> • <i>all present and after-acquired property;</i> • <i>all present and after-acquired property except.</i> 	ASBFEO recommends and supports the reduction of collateral classes, noting such reduction would have to balance competing interests of ease of registration and useful information being returned on a search.
98	<i>That item 4(d) of the table in s 153(1), and clause 2.4 of Schedule 1 to the Regulations, be deleted.</i>	ASBFEO agrees with this recommendation to allow a claim for proceeds to be across multiple classes of collateral.
127	<i>That s 165(c) be deleted.</i>	ASBFEO agrees with the recommendation to remove from possible defects in registration an indication of a PMSI in the financing statement.
139	<i>That the amendment demand process in Part 5.6 of the Act be recast along the lines of the approach taken in New Zealand under s165 of the NZ PPSA</i>	ASBFEO strongly supports adoption of the New Zealand model for amendment demands.

International frameworks and comparisons

We have reviewed personal property securities registers in countries that function with a similar justice system to Australia. In particular, we have looked at New Zealand, United Kingdom and Canada.

Standardising secured transaction laws commenced in the United States during the 1950's (in Article 9 of their *Uniform Commercial Code*) and spread to Canadian provinces in the 1980's and to New Zealand in 1999. The New Zealand PPSA closely follows the Canadian *Saskatchewan Personal Properties Securities Act 1993*. The Australian PPSA was enacted some 10 years after the NZ PPSA. Various Pacific Island nations have also enacted personal property securities legislation.³⁵ The policy rationale for the implementation of personal property securities reform has been much the same in each jurisdiction and was described succinctly by the Court of Appeal of New Zealand in *New Zealand Bloodstock Ltd v Waller [2006] 3 NZLR 629 at [13]* as:

... the adoption of a unitary concept of security (under which the legal forms by which security is obtained become largely irrelevant) and establishment of priority rules which depend primarily on time of registration save for the super priority accorded to registered purchase money security interests (i.e. in favour of unpaid vendors) over prior general securities.

The concepts of security interests, collateral, attachment, perfection, priority, registration, and enforcement of those interests are core concepts across all the jurisdictions.

	Australia	New Zealand	Canada
Number of registers	1	1	Many. PPSA is a provincial system where each province/territory has its own PPSA rules and regulations ³⁶ which can result in friction.
Notice of registration	A secured party is given a verification statement in relation to a registration and must as soon as practicable after the time of the registration event give notice to the person registered as a grantor, unless the latter has waived their right in writing to receive it. ³⁷	The secured party must give a copy of the verification statement to the debtor within 15 working days of receiving the verification statement, unless the latter has waived their right in writing to receive it. ³⁸	A copy of the verification statement need not be provided to the debtor where the latter has waived their right in writing to receive same. This is often obtained by adding waiver language to the standard form documents. A penalty applies for failing to give such notice in writing where such

³⁵ *Personal Property Security Act 2012* (Papua New Guinea), *Secured Transactions Act 2012* (Palau).

³⁶ Sourced on 10/9/2020 - <http://www.ppsa.ca/ppsacaV3/general/faq.jsp>

³⁷ Section 157 of the PPSA.

³⁸ Section 148 of the [NZ PPSA](#).

			right has not been waived. ³⁹
Duration of registration	A choice of up to 7 years, up to 25 years or for an indefinite period. For consumer property, the maximum duration is 7 years.	Up to a maximum term of 5 years for any and all registrations.	Secured party can select the duration, with fees charged on a per year basis.
Discharge of registration	<p>For serial numbered collateral and consumer goods discharges, the secured party must discharge the registration before the end of 5 business days after all obligations are met.</p> <p>For all other collateral, if not removed by the secured party, the grantor will need to send an amendment demand to the secured party. The grantor must then wait 5 business days. If the registration has still not been removed, then the grantor can submit an amendment statement to the Registrar requesting removal of the registration or apply to a court for an order⁴⁰ to remove the registration.</p>	<p>For consumer goods discharges, the secured party must discharge the registration within 15 working days after all obligations under the security agreement creating the security interest are performed.⁴¹ The debtor may demand the secured party register a financing change statement to discharge the registration after all obligations under the security agreement creating the security interest are performed.⁴² Section 165 of the NZ PPSA provides that if the secured party fails to comply with the demand or fails to give that person a court order maintaining the registration, within 15 working days, the person may enter into the register that financing change statement.</p>	<p>Varied. In Ontario, a lender is required to register a discharge within 30 days of a consumer loan being repaid. Where the lender, without reasonable excuse, fails to register the certificate of discharge within 10 days after receiving a demand for it, it must pay \$500 to the borrower and any damages resulting from the failure, recoverable in any court of competent jurisdiction. If no discharge is registered, the registration will remain on the system until the end of the registration period.</p>

³⁹ Ontario PPSA, Section 46(7).

⁴⁰ Section 182 of the PPSA.

⁴¹ Section 161 of the [NZ PPSA](#).

⁴² Sections 162 and 163 of the [NZ PPSA](#).

Appendix B



Australian Government
Australian Financial Security Authority

PPSR
Personal Property
Securities Register

12/10/2020

PPSR Registration Number Search Certificate

This is a PPSR registration number search certificate for a grantor search

This Search certificate is provided under section 174 of the *Personal Property Securities Act 2009*

Search certificate number: [REDACTED]
Search number: [REDACTED]

This search certificate reflects the data contained in the PPSR at 12/10/2020 14:31:23 (Canberra Time).

Your search has found multiple registrations. Each registration is identified by a unique PPSR Registration Number. This certificate provides the details of one of the registrations.

Search Criteria Details

Grantor type:	Organisation
ACN:	[REDACTED]
PPSR registration state searched:	Current
Collateral class:	All collateral classes
PMSI:	Registrations that are either a PMSI or not a PMSI
Transitional:	Not Transitional Transitional - non migrated Transitional - migrated
Registration Kind:	All registration kinds
Sort registrations by number:	Ascending

PPSR Registration Details

PPSR Registration number:	[REDACTED]	Change number:	49065486
Registration kind:	Security interest		
Giving of notice identifier:	763023:		
Registration start time:	06/06/2018 11:01:20 (Canberra Time)		
Registration end time:	06/06/2025 23:59:59 (Canberra Time)		
Registration last changed:	06/06/2018 11:01:20 (Canberra Time)		
Subordinate registration:	Not stated	Transitional:	No
PPSR registration state:	Current		

Grantor Details

Organisation identifier:	[REDACTED]	Organisation identifier type:	ACN
Organisation name:	[REDACTED]		

Collateral Details

Collateral type:	Commercial property
Collateral class:	Other goods

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This search certificate reflects the data contained in the PPSR at 12/10/2020 14:31:23 (Canberra Time).

Description: All goods, equipment and/or other tangible property (including any accessions to those goods, equipment and/or property), sold, leased, hired, rented, bailed, supplied on consignment, sold subject to a conditional sale agreement (including retention of title) or otherwise made available by the secured party to the grantor.
Yes - All present & after acquired property

Proceeds: Yes
Inventory: No
Subject to Control:
Purchase Money Security Interest: Yes

Secured Party Details

Organisation identifier:	008421761	Organisation identifier type:	ACN
Organisation name:	BORAL LIMITED (Verified)		
Organisation identifier:	000003056	Organisation identifier type:	ACN
Organisation name:	ALLEN TAYLOR & COMPANY LTD (Verified)		
Organisation identifier:	103076508	Organisation identifier type:	ACN
Organisation name:	ALLEN'S ASPHALT PTY LTD (Verified)		
Organisation identifier:	003290999	Organisation identifier type:	ACN
Organisation name:	ALSAFE PREMIX CONCRETE PTY LTD (Verified)		
Organisation identifier:	050051360	Organisation identifier type:	ACN
Organisation name:	BARNU PTY. LTD. (Verified)		
Organisation identifier:	004428148	Organisation identifier type:	ACN
Organisation name:	BAYVIEW PTY LIMITED (Verified)		
Organisation identifier:	004258262	Organisation identifier type:	ACN
Organisation name:	BAYVIEW QUARRIES PROPRIETARY LIMITED (Verified)		
Organisation identifier:	007591835	Organisation identifier type:	ACN
Organisation name:	BITUMAX PTY. LIMITED (Verified)		
Organisation identifier:	141170658	Organisation identifier type:	ACN
Organisation name:	BITUMEN IMPORTERS AUSTRALIA PTY LTD (Verified)		
Organisation identifier:	000102376	Organisation identifier type:	ACN
Organisation name:	BITUPAVE LTD (Verified)		
Organisation identifier:	082448342	Organisation identifier type:	ACN
Organisation name:	BORAL BRICKS PTY LTD (Verified)		
Organisation identifier:	008674244	Organisation identifier type:	ACN
Organisation name:	BORAL BRICKS WESTERN AUSTRALIA PTY LTD (Verified)		
Organisation identifier:	090736888	Organisation identifier type:	ACN
Organisation name:	BORAL BUILDING MATERIALS PTY LIMITED (Verified)		
Organisation identifier:	004496940	Organisation identifier type:	ACN
Organisation name:	BORAL BUILDING PRODUCTS LIMITED (Verified)		
Organisation identifier:	008528523	Organisation identifier type:	ACN
Organisation name:	BORAL CEMENT LIMITED (Verified)		
Organisation identifier:	620531820	Organisation identifier type:	ACN
Organisation name:	BORAL CONCRETE CONTRACTING PTY LIMITED (Verified)		
Organisation identifier:	000028080	Organisation identifier type:	ACN
Organisation name:	BORAL CONSTRUCTION MATERIALS GROUP LTD (Verified)		

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This search certificate reflects the data contained in the PPSR at 12/10/2020 14:31:23 (Canberra Time).

Organisation identifier:	000614826	Organisation identifier type:	ACN
Organisation name:	BORAL CONSTRUCTION MATERIALS LIMITED (Verified)		
Organisation identifier:	052451626	Organisation identifier type:	ACN
Organisation name:	BORAL CONSTRUCTION RELATED BUSINESSES PTY LTD (Verified)		
Organisation identifier:	008872884	Organisation identifier type:	ACN
Organisation name:	BORAL CONTRACTING PTY LTD (Verified)		
Organisation identifier:	009483765	Organisation identifier type:	ACN
Organisation name:	BORAL CORPORATE SERVICES PTY LIMITED (Verified)		
Organisation identifier:	616863113	Organisation identifier type:	ACN
Organisation name:	BORAL FINANCE PTY LIMITED (Verified)		
Organisation identifier:	007604033	Organisation identifier type:	ACN
Organisation name:	BORAL HOLLOSTONE MASONRY (SOUTH AUST.) PTY LIMITED (Verified)		
Organisation identifier:	000736318	Organisation identifier type:	ACN
Organisation name:	BORAL INSURANCE PTY LIMITED (Verified)		
Organisation identifier:	000341239	Organisation identifier type:	ACN
Organisation name:	BORAL INTERNATIONAL PTY LIMITED (Verified)		
Organisation identifier:	090736879	Organisation identifier type:	ACN
Organisation name:	BORAL INVESTMENTS PTY LIMITED (Verified)		
Organisation identifier:	163076275	Organisation identifier type:	ACN
Organisation name:	BORAL IP HOLDINGS (AUSTRALIA) PTY LIMITED (Verified)		
Organisation identifier:	000223718	Organisation identifier type:	ACN
Organisation name:	BORAL MASONRY LTD (Verified)		
Organisation identifier:	002944694	Organisation identifier type:	ACN
Organisation name:	BORAL MONTORO PTY LIMITED (Verified)		
Organisation identifier:	004111479	Organisation identifier type:	ACN
Organisation name:	BORAL PLASTER FIXING PTY LIMITED. (Verified)		
Organisation identifier:	007164954	Organisation identifier type:	ACN
Organisation name:	BORAL PRECAST HOLDINGS PTY LTD (Verified)		
Organisation identifier:	000061843	Organisation identifier type:	ACN
Organisation name:	BORAL RECYCLING PTY LIMITED (Verified)		
Organisation identifier:	000187002	Organisation identifier type:	ACN
Organisation name:	BORAL RESOURCES (COUNTRY) PTY. LIMITED (Verified)		
Organisation identifier:	000756507	Organisation identifier type:	ACN
Organisation name:	BORAL RESOURCES (NSW) PTY LTD (Verified)		
Organisation identifier:	009671809	Organisation identifier type:	ACN
Organisation name:	BORAL RESOURCES (QLD) PTY LIMITED (Verified)		
Organisation identifier:	007516494	Organisation identifier type:	ACN
Organisation name:	BORAL RESOURCES (SA) LIMITED (Verified)		
Organisation identifier:	004620731	Organisation identifier type:	ACN
Organisation name:	BORAL RESOURCES (VIC.) PTY LIMITED (Verified)		
Organisation identifier:	008686904	Organisation identifier type:	ACN
Organisation name:	BORAL RESOURCES (W.A.) LTD (Verified)		
Organisation identifier:	000373660	Organisation identifier type:	ACN
Organisation name:	BORAL SHARED BUSINESS SERVICES PTY LTD (Verified)		

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This search certificate reflects the data contained in the PPSR at 12/10/2020 14:31:23 (Canberra Time).

Organisation identifier:	000022917	Organisation identifier type:	ACN
Organisation name:	BORAL TIMBER FIBRE EXPORTS PTY LTD (Verified)		
Organisation identifier:	000111571	Organisation identifier type:	ACN
Organisation name:	BORAL TRANSPORT LIMITED (Verified)		
Organisation identifier:	000795166	Organisation identifier type:	ACN
Organisation name:	CONCRITE PTY LTD (Verified)		
Organisation identifier:	004200266	Organisation identifier type:	ACN
Organisation name:	DANDENONG QUARRIES PTY LIMITED (Verified)		
Organisation identifier:	000512005	Organisation identifier type:	ACN
Organisation name:	DE MARTIN & GASPARINI CONCRETE PLACERS PTY LIMITED (Verified)		
Organisation identifier:	074598299	Organisation identifier type:	ACN
Organisation name:	DE MARTIN & GASPARINI CONTRACTORS PTY LIMITED (Verified)		
Organisation identifier:	000205372	Organisation identifier type:	ACN
Organisation name:	DE MARTIN & GASPARINI PTY LIMITED (Verified)		
Organisation identifier:	074598262	Organisation identifier type:	ACN
Organisation name:	DE MARTIN & GASPARINI PUMPING PTY LIMITED (Verified)		
Organisation identifier:	000080704	Organisation identifier type:	ACN
Organisation name:	DUNCAN'S HOLDINGS LTD (Verified)		
Organisation identifier:	003497229	Organisation identifier type:	ACN
Organisation name:	DUNMORE SAND & SOIL PTY. LIMITED (Verified)		
Organisation identifier:	002840271	Organisation identifier type:	ACN
Organisation name:	FLYASH AUSTRALIA PTY LIMITED (Verified)		
Organisation identifier:	008021449	Organisation identifier type:	ACN
Organisation name:	GYPSUM RESOURCES AUSTRALIA PTY LIMITED (Verified)		
Organisation identifier:	093059404	Organisation identifier type:	ACN
Organisation name:	HIGHLAND PINE PRODUCTS PTY LIMITED (Verified)		
Organisation identifier:	003414079	Organisation identifier type:	ACN
Organisation name:	LYMPIKE PTY LTD (Verified)		
Organisation identifier:	091426452	Organisation identifier type:	ACN
Organisation name:	OBERON SOFTWOOD HOLDINGS PTY. LIMITED (Verified)		
Organisation identifier:	000133951	Organisation identifier type:	ACN
Organisation name:	PENRITH LAKES DEVELOPMENT CORPORATION LTD (Verified)		
Organisation identifier:	160844173	Organisation identifier type:	ACN
Organisation name:	Q-CRETE PREMIX PTY LTD (Verified)		
Organisation identifier:	009907779	Organisation identifier type:	ACN
Organisation name:	ROAD SURFACES GROUP PTY LTD. (Verified)		
Organisation identifier:	000289207	Organisation identifier type:	ACN
Organisation name:	RONDO BUILDING SERVICES PTY LTD (Verified)		
Organisation identifier:	105536552	Organisation identifier type:	ACN
Organisation name:	SOUTH EAST ASPHALT PTY LTD (Verified)		
Organisation identifier:	010421879	Organisation identifier type:	ACN
Organisation name:	SUNSTATE CEMENT LTD. (Verified)		
Organisation identifier:	004231976	Organisation identifier type:	ACN
Organisation name:	USG BORAL BUILDING PRODUCTS PTY LIMITED (Verified)		

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This search certificate reflects the data contained in the PPSR at 12/10/2020 14:31:23 (Canberra Time).

Organisation identifier:	000852175	Organisation identifier type:	ACN
Organisation name:	USG INTERIORS AUSTRALIA PTY. LTD. (Verified)		
Organisation identifier:	166574063	Organisation identifier type:	ACN
Organisation name:	VENTIA BORAL AMEY NSW PTY LIMITED (Verified)		
Organisation identifier:	166572925	Organisation identifier type:	ACN
Organisation name:	VENTIA BORAL AMEY QLD PTY LIMITED (Verified)		

Address for Service

Contact name:	BCAS DEPT		
Email:	bcas@boral.com.au		
Fax:	02 9033 5217		
Mailing address:	PO Box 6041		
	North Ryde		
	NSW		2113
	AUSTRALIA		
Physical address:	Trinity T2		
	39 Delhi Road		
	North Ryde		
	NSW		2113
	AUSTRALIA		

How to verify this certificate on the PPSR

You can use the search number from an original search (as shown on this certificate) to retrieve the original search results and to issue a copy of the search certificate at <https://transact.ppsr.gov.au/ppsr/Home>. There is no fee, however this process will not provide any update to the information in the original search.

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End of search certificate

EMAIL: enquiries@ppsr.gov.au WEBSITE: www.ppsr.gov.au

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