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Digest of PPSA cases

This is a summary of reported cases that have commented – even briefly – on the *Personal Property Securities Act 2009* (Cth) (the 'PPSA'). However it mostly excludes cases that have merely mentioned the PPSA without any discussion.

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Case	Citation, judges	Comments
123 Sweden AB v Appleyard Capital Pty Ltd ***Extension of time***	**[2014] NSWSC 782** Brereton J	Application by 123 Sweden under *Corporations Act* s588FM to fix a later time for registration in respect of a security interest granted by Appleyard, where registration was made over 12 months late due to 123 Sweden not being aware of the registration requirement. The court made the order, subject to a condition (which it called a *'Guardian'* condition) reserving the right of insolvency administrators to apply to discharge if insolvency occurred within 6 months. The court noted that imposing this condition did not render the order useless, as there would be no certainty that any such application by an insolvency administrator would be successful: it would depend on the court's assessment of the merits of the positions of the secured creditor and unsecured creditors at the time if the application were made. The court held that there was no need to impose a '*Joplin'* condition, to the effect that the order would have no effect on the priority of other security interests already registered in the meantime, as the order to allow late registration would not affect their position anyway.
4 in 1 Wyoming Pty Ltd, Re ***Extension of time***	**[2017] NSWSC 407** Gleeson JA	Applications by Northern Managed Finance Pty Ltd under *Corporations Act* s588FM to fix a later time for registration, and under s293(1) to extend the 15 business day period under s62(3)(b) for PMSI registrations, where registrations had incorrectly specified security interests as transitional when they were not, omitted PMSI specification, or were registered against ACNs instead of ABNs and vice versa. The court granted the orders, but reserved the right of insolvency administrators to apply to discharge if insolvency occurred within 6 months.
AAD Services Pty Ltd v ALD Wholesale Pty Ltd ***Meaning of 'security interest'***	**[2019] VSC 564** Lansdowne AsJ	Mr Tahiri assigned to Cardboard Collection Services Pty Ltd the proceeds of a judgment against AAD, in exchange for CCS agreeing to pay $40,000 of his legal fees. Mr Tahiri was obliged in some circumstances to make a top up payment to CCS (eg if the judgment was for less than $40,000), or to retain some of the proceeds himself (eg if the judgment was for more). He became bankrupt. His trustee in bankruptcy argued that the assignment agreement was a security interest, securing an obligation of Mr Tahiri to repay a loan made by CCS; and, as CCS had not perfected its interest, that the judgment vested in the trustee under s267 or s267A. The court disagreed. While the document was not entirely internally consistent, its terms indicated that it was intended to operate in as an absolute assignment. The provisions for top up payments or retentions, dependent on the value of the asset assigned, did not prevent it being an assignment. To be a security interest under s12(1), it would need to operate as a secondary interest, securing payment or performance of a primary obligation, said to be repayment of a loan made by CCS. This interpretation was less consistent with the terms of the document, which did not contemplate either a loan or a repayment.
Accolade Wines Australia Limited, Re ***Extension of time***	**[2016] NSWSC 1023** Brereton J	Application by Alleasing Pty Ltd and Alleasing Finance Pty Ltd under *Corporations Act* s588FM to fix a later time for registration in respect of security interests granted by various customers, and under s293(1)(a) to extend the 15 business day period under s62(3)(b) for PMSI registrations. Registrations had originally been made against customers' ABNs rather than ACNs, and Alleasing sought to correct this by new registrations. The court made the order under s588FM, subject to a condition reserving the right of insolvency administrators to apply to discharge if insolvency occurred within 6 months. The court also allowed the extension of time for PMSI registrations. In doing so, the court accepted evidence that it

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		was common for financiers taking security to undertake a 'triple search' of ACN, ABN and name, and so a 'reasonably prudent financier' would have been aware of the original defective registrations against the ABNs. That, and the fact that AllPAP securities are always liable to be trumped by later PMSIs, meant there was unlikely to be prejudice to other secured parties. The order was subject to the condition that the holders of AllPAP securities be joined as defendants and given 28 days to contest the order.
ACN 153 866 114 Pty Ltd, Re	**[2015] NSWSC 2039** Black J	Application for extension of time to hold creditors' meeting in administration. One reason for seeking the extension was to allow the administrators more time to investigate the validity of multiple PPSR registrations. The court considered this a valid reason for allowing the extension.
Alleasing Pty Ltd v OneSteel Manufacturing Pty Ltd ***Extension of time***	**[2017] FCA 656** Davies J	OneSteel, subject to deed of company arrangement, agreed to grant a security interest to Alleasing (replacing an earlier security interest which had vested on administration due to ineffective registration). Although a registration for the new security interest was made promptly, the security interest (being granted by a company subject to deed of company arrangement) would still vest in the grantor unless an order was made under *Corporations Act* s588FM to fix a later time for registration. The court granted the order, and also an order under s293(1)(a) to allow the security interest to have PMSI priority.
Allied Distribution Finance Pty Ltd v Samwise Holdings Pty Ltd ***PMSI priority; effect of PPSA on transactions where secured party retains title***	**[2017] SASC 163** Blue J	Commercial Distribution Finance Pty Ltd provided floorplan finance over motorbikes to Bill's Motorcycles. It retained ownership of the motorbikes and registered a PMSI. Then, Bill's Motorcycles granted an all assets security interest to Samwise, which perfected its interest by registration. Then, Allied entered into a floorplan finance agreement with Bill's Motorcycles, Allied registered a PMSI, and CDC transferred the motorcycles to Allied. Allied claimed its PMSI had priority over Samwise's interest. This depended on whether Allied's interest was perfected by registration at the time the grantor (Samwise) obtained possession of the inventory (the motorbikes): s62(2)(b)(i). The court held that Allied had priority. In s62(2)(b)(i), 'obtains possession of the inventory' meant obtaining possession as grantor of the relevant PMSI. This happened when Samwise became a grantor of the security interest held by Allied, not at the earlier point when Samwise had first obtained possession of the motorbikes under the financing arrangement with CDF, or any other earlier point when it granted another security interest (such as the interest granted to Samwise). In giving an overview of the PPSA and its major principles, the court commented on the PPSA's effect on security transactions where a secured party retained ownership. The court said the PPSA treated such transactions as if the property were owned by the grantor and the financier held security, but did not actually deem the property to be owned by the grantor. The financier retained legal ownership for the purpose of enforcing general law rights against the person having possession (the grantor) and against strangers (persons other than those having competing security interests in the property). The decision was upheld on appeal in *Samwise Holdings Pty Ltd v Allied Distribution Finance Pty Ltd* [2018] SASCFC 95.
Amerind Pty Ltd, Re ***Circulating security***	**[2017] VSC 127** Robson J	Amerind, acting as trustee, granted security to a bank to secure invoice financing arrangements. The bank's security was perfected.

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interests		Amerind went into administration and the bank appointed receivers. The Commonwealth Department of Employment contended that various assets were subject to a circulating security interest and so subject to employee priority under *Corporations Act* s433. The court held: • Amerind's right of indemnity as trustee was trust property, and so not subject to s433 at all. But even if this were wrong, the trustee's right of indemnity was not a current asset of the kind listed in s340(5) and was not a circulating asset. In particular, it was not an 'account' arising from the provision of trustee services. • a bank account (the 'trade account'), into which the bank paid drawdown proceeds that Amerind was then free to spend, was a circulating asset, as Amerind had retained effective control over it, with the bank's consent, in the ordinary course of business. In so finding, the court said that even if an asset (such as an ADI account) was subject to s340(5) as referred to in s340(1)(a) ('current assets'), it was also necessary to consider whether it might be a circulating asset under s340(1)(b) ('in any other case'). • drawdown proceeds provided by the bank after appointment of receivers were circulating assets. The time to consider characterisation was the date of appointment of receivers; and these drawdown proceeds were the proceeds of stock, and were given the same circulating characterisation as the stock. • other general receipts were circulating assets. Amerind had also granted a ROT security interest to Alpine MDF Industries Pty Ltd. The terms of Alpine's security interest were set out in a master trading agreement. Alpine registered a financing statement before the administration, but more than 20 business days after execution of the master trading agreement. The court held the security interest came into force when the master agreement was signed, not at the later times when orders were placed, and so it vested under *Corporations Act* s588FL. Aspects of the decision were overturned on appeal in *Commonwealth v Byrnes and Hewitt* [2018] VSCA 41.
Amotran Pty Ltd, Re ***Extension of time***	**[2017] VSC 637** Judd J	Application by Bendigo and Adelaide Bank Limited under *Corporations Act* s588FM to fix a later time for registration in respect of a security interest granted by Amotran, where registration was initially made against the applicant's ACN only but, as it was also a trustee, should also have been made against the trust's ABN. The incorrect registration had originally been made by Bank of Cyprus, to which Bendigo Bank became the successor. The court granted the order. Liberty was reserved to any liquidator, administrator or deed administrator or unsecured creditor to apply to discharge or vary the order if liquidation, administration or deed of company arrangement commences within 6 months. The court was prepared to grant the order ex parte, without Amotran having been notified. Amotran's business was in difficulty, and the court accepted there was a reasonable apprehension that if Amotran were given prior notice, it might move quickly into liquidation or administration.
Apex Gold Pty Ltd, Re ***Extension of time***	**[2013] NSWSC 881** Hammerschlag J	Application by RF Capital Pty Limited under *Corporations Act* s588FM to fix a later time for registration in respect of security interests granted by Apex Gold to RF Capital, where registration was made late due to lawyer's inadvertence. Apex was insolvent or about to be, and RF Capital intended to appoint both an administrator and receivers. The court made the order, subject to a condition reserving the right of insolvency administrators to apply to discharge if insolvency occurred within 6 months.

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		The order was also conditional on it having no effect on the priority of another creditor, Dyno Nobel Asia Pacific Pty Limited, which had made a registration in the intervening period. Finally, Apex Gold had not been given notice of the proceedings and so it was also given 7 days to apply to discharge.
Arcabi Pty Ltd, Re ***Bailments and consignments***	**[2014] WASC 310** Master Sanderson	Arcabi held rare notes and coins (1) to store them for customers (bailment), and (2) on consignment, to sell for customers. Arcabi went into receivership. Receivers sought directions as to how to deal with the notes and coins. The bailments were held not to be PPS leases because even if some of the customers were in the business of profiting by buying and selling coins, they weren't in the business of profiting from the bailment itself. 'Value' was said to be a difficult question, but it wasn't necessary to decide due to the decision on business. The consignments were held not to be commercial consignments because even if some of the customers were in the business of profiting by sale via consignment, Arcabi was known to be in the business of selling or leasing goods for others. The court saw the conclusion on bailments as consistent with the NZ case *Rabobank New Zealand Ltd v McAnulty* [2011] NZCA 212.
Aristocrat Technologies Australia Pty Ltd v Allam ***Liens arising at general law***	**[2017] FCA 812** Perram J	After protracted litigation, Allam held a costs certificate for around $100,000 against Aristocrat, while Aristocrat held costs orders, in the process of being taxed, for around $700,000 against Allam. Aristocrat sought set-off. Allam's solicitors argued that they held a lien over the proceeds of Allam's certificate. The court granted the set-off, and held that the solicitors' lien did not prevail over the set-off. The court noted in passing that the PPSA would not apply to the lien (which it said was probably a charge arising by operation of law): s8(1)(c).
Arrium Finance Limited v National Australia Bank Limited ***Extension of time for security granted in administration***	**[2017] FCA 818** Besanko J	Application by administrators of Arrium Finance and related companies under *Corporations Act* s588FM to fix a later time for registration in respect of security interests granted by Arrium to NAB, where the security interests were granted after administration had commenced. The court granted the order, noting that securities granted after administration would vest automatically under s588FL in the absence of an order, and finding it just and equitable (s588FM(1)(b)) to do so and accepting that it was in the best interests of the companies.
Arrium Limited, Re ***Extension of time for security granted in administration***	**[2016] FCA 972** Davies J	Administrators of OneSteel Manufacturing Pty Ltd, an Arrium group company, sought orders under *Corporations Act* s447A relieving them from personal liability for entering into contracts to install a beneficiation plant, and a secured loan to fund it. The court granted the order. The administrators also sought an extension under *Corporations Act* s588FM to fix the time allowed for registration of the security as 20 business days after the security agreement came into force. The extension was sought because s588FL provides for vesting if registration is not made by the 'critical time' (the commencement of administration) which could mean that any new security granted by a company already in administration would automatically vest immediately. The court granted the order.
Assta Labels Pty Ltd, Re	**[2018] NSWSC 1094**	Application by HP Financial Services (Australia) Pty Limited under s293(1) to extend the 15 business day period under s62(3)(b) for PMSI registrations, where registrations were made against ABNs instead of ACNs.

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Extension of time	Kunc J	The court noted that other secured parties (some named defendants, others not) had been given notice of the proceedings and had either consented to the relief or declined to respond. The court granted the order, but reserved the right of other secured parties with registrations who were not named defendants to apply to set aside or vary the order.
Auburn Shopping Village Pty Ltd v Nelmeer HoteliersPty Ltd	**[2017] NSWSC 1230** Ward CJ in Eq	Nelmeer agreed to sell poker machine permits to Auburn. Auburn said that the contract required Nelmeer to sell the permits free of encumbrances. Auburn did not complete on time, as there were existing PPSR registrations against Nelmeer, and so it considered Nelmeer was not ready to deliver unencumbered title. Nelmeer, which no longer wished to complete, said that Auburn had repudiated the contract. The court agreed with Nelmeer. The existence of a registration did not create an encumbrance. And the PPSR registration complained of was a supplier's PMSI over goods, which could not have applied to the poker machine permits in any case or, if it had, would have been ineffective under s165(c). In any case the contract did not contain an express or implied term requiring Nelmeer to sell free of encumbrances or to provide comfort that none existed. The decision was upheld on appeal (without further discussion of PPSA issues) in *Auburn Shopping Village Pty Ltd v Nelmeer Hoteliers Pty Ltd* [2018] NSWCA 114.
Auluaulu International (PVT) Ltd v GS Logistics Pty Ltd	**[2017] VCC 1204** Judge Marks	Auluaulu and a related company (also Auluaulu) purchased swimwear from Linea Aqua PVT Limited and on-sold it to Watersun Swimwear Pty Ltd. Logistics, a freight forwarding company, agreed to ship the goods from Linea Aqua to Watersun. The shipping contract provided that Logistics held a lien over the swimwear when owned by Watersun, to secure amounts payable by Watersun. Auluaulu paid Linea Aqua for the swimwear, but Watersun did not pay Auluaulu. Watersun also did not pay Logistics. Logistics sold the swimwear. Auluaulu claimed ownership of the swimwear and sued Logistics in conversion. The court, applying sale of goods principles from the *Goods Act 1958* (Vic), held that property in the swimwear had passed from Linea Aqua to Auluaulu and then to Watersun, despite Auluaulu not having been paid. Logistics' 'contractual lien' was a PPSA security interest, in the nature of a pledge as contemplated by s12(1)(f), and was perfected when Logistics took possession of the swimwear. As property in the swimwear had passed to Watersun, the lien applied to the swimwear in accordance with its terms; Logistics was entitled to sell the swimwear as it had done; and Auluaulu's conversion claim failed.
Ausfert Pty Ltd v Superfert Dongbu Pty Ltd	**[2014] SASC 157** Parker J	Application under cross-vesting legislation for transfer of a case from the SA Supreme Court to the WA Supreme Court. The case involved a dispute about a joint venture for a fertililser business, a guarantee of money owing under supply contracts, and questions of whether financing arrangements had been structured as supply arrangements to attract the operation of the guarantee. The court granted the order, chiefly on the basis that most of the relevant witnesses and business records were in WA. The fact that the contracts were governed by WA law was said *not* to carry great weight, on the basis that the primary issues to be decided would involve contract law and Commonwealth legislation – the *Corporations Act* and the PPSA – rather than specifically WA law.
Auto Moto Corporation	**[2013] NSWSC 1403**	Auto Moto agreed to provide finance to Simon Wakim, who said he represented Haberfield Automotive Pty Ltd. Auto

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Pty Ltd v SMP Solutions Pty Ltd	Stevenson J	Moto drew up a loan agreement, never signed by Haberfield, providing for a loan to be made to Haberfield, secured over the trading stock (vehicles) held by Haberfield. From time to time Auto Moto delivered cars to Wakim to sell, issuing invoices stating that it retained title until paid. Auto Moto also agreed to sell a Lamborghini, held by Haberfield, as agent for Haberfield. The Lamborghini was ultimately sold through a chain of agency arrangements to SMP. Haberfield went into liquidation. Auto Moto claimed to hold a security interest over the Lamborghini on two grounds: • the secured loan agreement; and • an agreement that when Auto Moto sold the Lamborghini as Auto Moto's agent, it could retain the proceeds to satisfy the amount Haberfield owed it. The court rejected both arguments. As to the first, there was no secured loan: the behaviour of the parties had not been consistent with the making of loans secured over trading stock but, rather, supply of individual vehicles on retention of title terms. And in relation to both arguments, Wakim lacked authority to commit Haberfield to a security agreement. He was not a director or shareholder of the company. He apparently had authority to commit Haberfield to vehicle sales, but not to grant of security interests.
Balmain Leagues Club Ltd v Rozelle Village Pty Ltd	**[2014] NSWSC 295** Brereton J	Balmain sought an injunction to restrain Rozelle appointing a receiver on the basis of alleged events of default. Balmain had to establish a sufficient arguable case that there was no event of default. One of the alleged events was breach of an undertaking not to create a security interest, defined as '*Any bill of sale (as defined in any statute), mortgage, charge, lien, pledge, hypothecation, title retention arrangement, trust or power, as to in effect as security for the payment of a monetary obligation or the observance of any other obligation.*' Various PPS registrations existed, some stated to be PMSIs and others not, but all of which looked like retention of title or leasehold interests. The court held it was 'at least arguable' that these were not caught by the security interest definition and thus did not constitute security interests as defined.
Barclays Bank plc, Re ***Extension of time***	**[2012] NSWSC 1095** Black J	Application under *Corporations Act* s588FM to fix a later time for registration in respect of security interests granted by Centrebet, where registration was made 2 months late due to lawyer's error. The court made the order. Due to the apparent financial strength of Centrebet, the court did not consider it necessary to impose conditions reserving the right of insolvency administrators to apply to discharge if insolvency occurred within 6 months, or reserving the rights of other secured parties.
Bargara Esplanade Management Pty Ltd v Department of Agriculture, Fisheries and Forestry	**[2018] QCATA 54** Senior Member Brown and Member Traves	The Department cancelled fishing licences held by a trustee company which was in liquidation. Bargara was the new trustee of the trust but had not taken a transfer of the licences. Both Westpac Banking Corporation and B&B Russell No 2 Pty Ltd held security interests over the licences. Westpac had also noted its interest on a register maintained by the Department, but B&B had not. The Department consulted Westpac (who did not object) before cancelling the licence, but not B&B. Bargara challenged the cancellation. It argued (among other things) that Westpac's PPSR registration for its security interest was not properly made against the trust's ABN, and that therefore B&B's security interest had priority, and so the

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		Department should have consulted B&B. The Tribunal disagreed. It was irrelevant whether Westpac's PPSR registration was correct. The fishing licence legislation required the Department to consult anyone (such as Westpac) who had noted its interest under that legislation, and allowed it to disregard the interest of any other third party (such as B&B) who had not.
Bauer Equipment Australia Pty Ltd v ACN 153 866 114 Pty Ltd	**[2016] QSC 76** Bond J	Bauer leased a drilling rig to ACN, and registered a financing statement outside the 6 month time limit required by *Corporations Act* s588FL. Bauer terminated the lease, and then ACN went into administration. The administrators argued that the lease vested on administration, whereas Bauer argued that termination meant there was, at the time of administration, no longer a security interest capable of vesting. As a preliminary matter, the administrators sought transfer of the proceedings to the NSW Supreme Court. The court agreed, on the basis that the equipment and relevant witnesses were in NSW, and that the NSW court was already involved in making orders for the administration.
Beechworth Land Estates Pty Ltd, Re ***Is a 'security interest' a new species of property?***	**[2015] NSWSC 336** RobbJ	The case concerned the validity of administrators appointed to two companies, Beechworth and Griffith Estates Pty Ltd, when NSW mortgage duty had not been paid on the security agreements under which they were appointed. Validity required that the security interests were enforceable at the time of appointment. The court found substantially all Beechworth's property was in Victoria, and the security interest was enforceable over the Victorian property despite failure to pay NSW duty, rendering the appointment valid. All Griffith's property was in NSW, so its security interest was unenforceable at the time of appointment, but subsequent payment of duty would validate it retroactively and the court might be able to cure the invalidity under s447A of the *Corporations Act.* A passing comment by the Court concerned the effect of words granting 'a security interest', which is relevant to discussions about whether a 'security interest' under the PPSA is a new type of property interest, or simply a term that describes certain kinds of traditional security and other interests. The Court noted that: • Beechworth had entered into a general security deed which granted 'a fixed charge over all present and after-acquired property that was not a security interest [sic – but possibly 'that was not personal property'] under [the PPSA], as well as a security interest over all personal property encompassed by the PPSA'; • Beechworth's property consisted of a debt owed to it by a third party, and a mortgage granted by that third party; and • 'The effect of the general security deed was to grant … *a charge* over the debt…' (emphasis added). That is, while nothing in the decision turned on the distinction, the Court appeared to proceed on the basis that words of grant of 'a security interest' were effective to grant a charge, rather than a new species of property.
Beri Distributors Pty Ltd v Capital Works Construction Pty Ltd	**[2015] WADC 124** Deputy Registrar Hewitt	Beri supplied goods to Capital Works on retention of title terms, but did not perfect its security interest. Coffey had guaranteed Capital Works' obligations. Beri sought summary judgment against Capital Works and Coffey for payments owing. Coffey sought leave to defend the summary judgment application on grounds that the failure to perfect the security interest had prejudiced him as guarantor. The court rejected that argument: there was no evidence of any detriment suffered, or at least none that could not be cured by registration. However, leave to defend was allowed on other grounds.

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Bernard v Bernard	**[2017] FCCA 2197** Judge Terry	The case concerned division of property on break-up of marriage. Equipment had been owned by the wife, then transferred to a trustee company controlled by the husband. The equipment (both when owned by the wife and the trustee company) had been hired to a second company. The second company went into liquidation. The equipment was sold. The liquidators of the second company claimed that the hiring arrangements were security interests that had not been perfected, that the equipment had been in the second company's possession on the liquidation date, and accordingly that the sales proceeds vested in them under s267. The court found the two companies shared premises, and the liquidators had not demonstrated whether the equipment remained continuously in the second company's possession, or was merely taken by the second company when required for a job and then returned. The onus was on the liquidators to show that the equipment was in the second company's possession at the liquidation date, and they had not done so. Accordingly the sales proceeds did not vest in the liquidators, and were available for distribution between the husband and wife.
Beton Pumping Group Pty Ltd v Zoomlion Capital (Australia) Pty Ltd ***Enforcement - duty of honesty and commercial reasonableness***	**[2017] VSCA 183** Whelan and Santamaria JJA	Beton had granted security over equipment financed by Zoomlion. Beton had defaulted, and Zoomlion had obtained an order (in previous unreported proceedings) that Beton deliver up the equipment. Beton now applied for a stay of that order, while it appealed. The court rejected the stay, as Beton was unwilling to pay the sum in dispute into court. In discussing the previous unreported proceedings, the court noted that Beton had counterclaimed that Zoomlion's actions in attempting to repossess the equipment were part of a conspiracy to injure Beton, and a breach of its duty under s111 to act honestly and in a commercially reasonable manner in enforcement. Beton had alleged that the conspiracy and breach of s111 was constituted by Zoomlion appointing an agent to repossess the equipment who was a competitor of Beton; by Zoomlion and the agent having received information from a former employee of Beton; that the agent had solicited business from Beton's customers; and that these things had been done in the knowledge that they would destroy Beton's business. The trial judge had summarily dismissed this counterclaim, finding it had no real prospect of success. A day later, in *Beton Pumping Group Pty Ltd v Zoomlion Capital (Australia) Pty Ltd (No 2)* [2017] VSCA 185, the court (again constituted by Whelan and Santamaria JJA) similarly dismissed an application for a stay while Beton applied for leave to appeal to the High Court.
Biondo v Baycorp Collections PDL (Australia) Pty Ltd	**[2018] FCCA 1853** Judge Riley	St George Bank made a secured car loan to Biondo. St George assigned the loan and security to Baycorp. Baycorp did not register a financing change statement to record itself as secured party. Biondo defaulted, and Baycorp obtained an order for her bankruptcy. Biondo sought to have the order reviewed. She argued (among other things) that Baycorp had wrongly stated in its bankruptcy petition that it did not hold security. Under s44 of the *Bankruptcy Act 1966* (Cth), holding security to cover its debt should have disentitled Baycorp from to lodging the petition, unless it offered to surrender the security. Baycorp argued that it did not hold security for the purposes of s44, because (1) its security was unperfected due to its failure to lodge a financing change statement recording it as the new secured party, and (2) s91 of the *National Credit Code* prevented it enforcing the security due to the amount secured being under $10,000 and less than 25% of the amount originally lent. The court disagreed. Even if failure to register the financing change statement meant that the security was unenforceable, it was still a security held by Baycorp. And s91 was not an absolute prohibition on enforcement that

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		rendered the security non-existent; rather, it merely imposed limits on Baycorp's right of enforcement. However, the court would allow Baycorp to amend its petition to include an offer to surrender its security.
Black Opal IP Pty Limited, Re ***Extension of time***	**[2013] NSWSC 1225** Brereton J	Application by Black Opal under *Corporations Act* s588FM to fix a later time for registration in respect of a security interest granted by Integra, where registration was made 12 months late due to lawyer's inadvertence. The court made the order, subject to a condition reserving the right of insolvency administrators to apply to discharge if insolvency occurred within 6 months. The court noted that the grantor, Integra, was solvent and likely to remain solvent, but that the evidence did not 'comprehensively' establish solvency in the way the evidence in *Re Barclays Bank plc* [2012] NSWSC 1095 (where no condition was imposed) had done.
Blakeley v Yamaha Music Australia Pty Ltd ***Unfair preferences and 'unsecured debts'***	**[2016] VSC 231** Gardiner AsJ	Australian Music Pty Ltd bought goods on retention of title terms from Yamaha. The liquidators of Australian Music claimed payments made to Yamaha for the goods were unfair preferences 'in respect of an unsecured debt': *Corporations Act*, s588FA. Yamaha sought to have the liquidators' proceedings struck out on grounds that the debt was clearly secured. Goods had been supplied on retention of title terms both before and after commencement of the PPSA. The court held that a debt secured by pre-PPSA retention of title was 'unsecured' for s588FA purposes. Retention of title had not, before the PPSA, been security; but the PPSA changed this 'by a statutory construct, to afford a security interest'. The true position would depend on when stock was supplied and when debts arose, but the liquidators' position was at least arguable. Yamaha's application for summary judgement was dismissed. The court's position is the opposite of that reached by the Federal Court in *Hussain v CSR Building Products Limited* [2016] FCA 392 a week earlier.
Bluenergy Group Limited, Re	**[2015] NSWSC 977** Black J	Keybridge Capital Limited was a secured creditor of Bluenergy, which was subject to a deed of company arrangement. The DOCA provided (in terms similar to s444D(1) of the *Corporations Act*) that it bound all the company's creditors in respect of claims arising on or before the specified date, and provided for the extinguishment of Keybridge's debt. It also provided (in terms similar to s444D(2)) that it did not prevent a secured creditor who had not voted in favour of the relevant resolution from realising or otherwise dealing with its security. The court held, following *Australian Gypsum Industries Pty Ltd v Dalesun Holdings Pty Ltd* [2015] WASCA 95, that the secured debt and the security for that debt were separate, and that s444D(2) did not prevent the extinguishment of the debt. Rather, the effect of s444D(2) was that the secured creditor retained the benefit of its security, but only over the assets subject to security at the relevant time and only to the extent of the debt at the relevant time – not to future or contingent debts or to after-acquired assets. Keybridge argued that s19 of the PPSA, providing for a secured party's interest in after-acquired property to attach at the moment of acquisition by the grantor, had the effect that a right to after-acquired property was a proprietary right that would be preserved by s444D(2). The court rejected that argument: s19 did not change the effect of s444 which was to allow a company subject to DOCA a 'fresh start' in respect of after-acquired assets.
BMW Australia Finance Limited v @Civic Park Medical Centre Pty Ltd	**[2019] FCA 999** Jagot J	Application under s293(1)(a) to extend the 15 business day period under s62(3)(b) for PMSI registrations of security interests, where registration was originally made against trustee grantors' ACNs rather than against the trusts' ABNs. The court granted the extension. The court was satisfied the omission was due to inadvertence. There had been

Case	Citation, judges	Comments
Extension of time		delay in bringing the application but this was due to the numbers of grantors involved, and registrations against ACNs had been maintained during the period of delay. The court noted with approval that the applicant had served its application on affected parties (rather than proceeding ex parte) and none had appeared or complained.
Board of Directors of Rizzo-Bottiglieri-De Carlini Armatori SpA v Rizzo-Bottiglieri-De Carlini Armatori SpA	**[2018] FCA 153** Rares J	Application for recognition of an Italian *fallimento* proceedings as a foreign main proceeding under the *Cross-Border Insolvency Act 2008* (Cth), equivalent to a liquidation, in respect of a shipping company. The court decided to make orders staying proceedings against the company, in terms reflecting *Corporations Act* ss471B and 471C, including preserving secured creditors' rights to realise or otherwise deal with a security interest. The court noted that 'security interest' in s471C had its PPSA meaning, and that there was a question whether the effect of PPSA s8(1)(b) and (c) meant that maritime liens over ships of the company would be excluded from the definition of 'security interest'. The court found it unnecessary to answer the question, but said that 'the fact that it [the question] arises emphasises again the burdensome effect on the commercial community and the courts of the current drafting style of Commonwealth Acts and subordinate legislation'.
BOQ Credit Pty Ltd v Chatah	**[2017] NSWSC 1444** McCallum J	Chatah granted security to BOQ over a car to secure a loan. He defaulted, and BOQ sought to seize the car under s123, but he refused to surrender it. The court ordered that he deliver possession of the car and that BOQ was entitled to seize it.
Browning v Australia and New Zealand Banking Group Limited	**[2014] QCA 43** Margaret McMurdo P, Muir JA and Daubney J	This case mentions the PPSA only tangentially. ANZ sought and obtained default judgment against the Brownings, for recovery of land and livestock and payment of an amount due. The Brownings had made various allegations against ANZ, including 'misuse and abuse of the Verification Statement under the [PPSA] to aid in the facilitation of criminal offenses'. The court did not discuss this or other similar allegations. However the court did find some technical defects in ANZ's case – for example, that its pleadings had not directly alleged that ANZ had advanced money and that it had become due and owing – and so set aside the default judgment, allowing the matter to proceed to trial.
Caason Investments Pty Ltd v Ausrock Metals Ltd ***Extension of time***	**[2016] WASC 267** Master Sanderson	Application by Caason under *Corporations Act* s588FM to fix a later time for registration in respect of a security interest. The court made the order. One other security interest had been registered. The secured party sought a condition along the lines of *Re Apex Gold Pty Ltd* [2013] NSWSC 881 and *Re Cardinia Nominees Pty Ltd* [2013] NSWSC 32 stating that the extension order would have no effect on the priority of that other security interest. The court declined to do so, instead considering that a *Guardian* condition reserving liberty to apply generally would suffice to allow the court to remedy any prejudice.
Cancer Care Institute of Australia Pty Ltd, Re ***Fixtures***	**[2013] NSWSC 37** Black J	Varian Medica Systems Australiasia Pty Ltd supplied linear accelerators (equipment used for cancer treatment) to CCIA under a perfected purchase money security interest. The linear accelerators were large items, bolted to a steel frame, removeable but only with a couple of days' work and $60,000 of expenditure. CCIA's operations were conducted in premises owned by Cortez Enterprises Pty Ltd. The property was mortgaged to Suncorp-Metway and other financiers.

Case	Citation, judges	Comments
		CCIA went into administration. Cortez and its financiers claimed the equipment constituted 'fixtures', and so belonged to Cortez and was subject to the real property mortgages. The court held that was not 'fixtures', applying the test of ascertaining the objective intention of the equipment's owner, with relevant factors including the degree of affixation and the object or purpose for which it was affixed. In considering the parties' intention, the court said that the fact that CCIA and Varian had proceeded on the basis that CCIA was able to give effective security over the equipment was inconsistent with any objective intention that it would become part of the premises and owned by Cortez. The court declared that the equipment was not fixtures, and that Cortez and its financiers held no interest in it.
Capital Finance Australia Limited v Clough	**[2015] NSWSC 1327** Rein J	Capital had taken a security interest over a motor vehicle from C&J Concrete Pty Ltd. C&J defaulted, and Capital wanted to sell the vehicle. Meanwhile, Clough claimed to have purchased the motor vehicle and paid at least part of the price, and registered a financing statement, blocking Capital's sale. Capital had the financing statement removed, using an amendment demand and the administrative process (ss179-181). Clough then registered another one. The court ordered the financing statement removed, and that no further financing statements be registered. The court noted that at best Clough had a purchaser's lien, which was excluded from operation of the PPSA by s8(1)(c). Further, in the absence of a written instrument, s20(1) and (2) 'preclude[d] any registrable interest arising' (or, perhaps, precluded an interest enforceable against third parties arising).
Cardinia Nominees Pty Ltd, Re ***Extension of time***	**[2013] NSWSC 32** Black J	Application under *Corporations Act* s588FM to fix a later time for registration in respect of security interests granted by Inika, where registration was made 5 days late for reasons including uncertainty as to which party should make the registration. The court made the order. Unlike *Re Barclays Bank plc* [2012] NSWSC 1095, there was insufficient evidence of the financial strength of Inika to justify dispensing with a condition reserving the right of insolvency administrators to apply to discharge if insolvency occurred within 6 months, and so the order was made subject to that condition. The order was also conditional on it having no effect on the priority of another creditor, BMW Australia Finance Limited, which had made a registration on the same date as Cardinia.
Carpenter International Pty Limited, Re ***When does a security interest 'come into force'; extension of time***	**[2016] VSC 118** Cameron J	Carpenter bought cattle from vendors via an agent, DLS. The vendors held retention of title interests. When DLS paid the vendors, the vendors' retention of title interests were assigned to DLS. DLS registered within 20 business days after the assignment to itself, but outside 20 business days from the original grant of interests to the vendors. Carpenter went into administration. The court held that the security interests vested in Carpenter: under *Corporations Act* s588FL, the security agreements 'came into force' when granted to the vendors, not when subsequently assigned to DLS. Another agent, CS, had made registrations on the same day as, but 1-2 hours before, Carpenter went into administration. This was enough to prevent vesting under s267, because the security interests were not unperfected 'at' the time the administration commenced. However, they vested under *Corporations Act* s588FL, because they had not been perfected within 20 business days of the security agreements coming into force. For this purpose, they

Case	Citation, judges	Comments
		'came into force' when executed, not the later time when the security interests attached under s19 or became enforceable under s20. The agreements were subject to conditions precedent, but these were conditions precedent to performance, not to contract formation, so did not result in a later time of coming into force. The court declined to grant CS an extension of registration time under *Corporations Act* s588FM. CS's reason for not registering was a belief that it was unnecessary because Carpenter would pay in time, not 'inadvertence' or other grounds required under s588FM.
Carter Holt Harvey Woodproducts Australia Pty Ltd v Commonwealth ***Circulating security interests***	**[2019] HCA 20** Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ	Appeal from *Commonwealth v Byrnes and Hewitt* [2018] VSCA 41. Amerind Pty Ltd, acting as trustee, granted security to a bank to secure invoice financing arrangements. The bank's security was perfected. Amerind went into administration. The Commonwealth contended that various trust assets in respect of which the company held a trustee's right of indemnity were subject to a circulating security interest in favour of a secured bank (that is, were circulating assets) and so subject to employee priority under *Corporations Act* s433. Carter Holt Harvey, another secured creditor, disagreed. In three separate judgments, all members of the court held (confirming the results in the court below) that the proceeds of trust assets could be subject to employee priority under s433; and that it was not necessary to ask whether the trustee's right of indemnity was a circulating asset but, rather, to determine whether the trust assets themselves were circulating assets. Neither party had challenged the decisions of the court below as to which particular trust assets were circulating or non-circulating, and so there was no further discussion of that characterisation. However, all members of the court held that after payment of statutory priority creditors, the proceeds of the trust assets should be distributed only to trust creditors, not to general (non-trust) creditors of the company.
Central Cleaning Supplies (Aust) Pty Ltd v Elkerton ***What is a transitional security agreement?***	**[2014] VSC 61** Ferguson J	Central Cleaning supplied cleaning equipment on retention of title terms to Swan Services. Central Cleaning and Swan Services had entered into a master agreement in the form of a credit application before the registration commencement date under the PPSA. Goods were supplied after the registration commencement date, under separate purchase orders, and when delivered were accompanied by invoices containing the retention of title terms. Central Cleaning had not made a PPSA registration. Swan Services went into liquidation (with Elkerton appointed as liquidator). The court held that the retention of title terms were incorporated into the separate contracts made when goods were supplied, not in the master agreement. Accordingly they did not benefit from temporary perfection as transitional security interests. *Industrial Progress Corporation Pty Ltd v Wilson* [2013] WASC 225 was distinguished because there the retention of title terms had clearly been incorporated into the pre-registration commencement date master agreement. This decision was reversed on appeal: see [2015] VSCA 92 below.
Central Cleaning Supplies (Aust) Pty Ltd v Elkerton	**[2015] VSCA 92** Maxwell P, Tate and Beach JJA	On appeal from the first instance decision ([2014] VSC 61 above) the court held that Central Cleaning's security interests were transitional security interests, and accordingly benefited from temporary perfection. The appeal court reversed the first instance decision as it took a different view about the way in which the master agreement governing the supplies had been formed.

Case	Citation, judges	Comments
What is a transitional security agreement?		Swan Services' credit application, signed before the registration commencement date, provided that Central Cleaning's standard terms and conditions applied to all supplies, but the ROT terms (which formed part of the standard terms and conditions) were not made known until supplies were made and invoices bearing the terms were provided. The first instance decision had considered that the credit application was an agreement, but that it did not include the ROT terms as they had not been provided at the time the agreement was formed. Rather, the ROT terms formed part of separate agreements made at the time of each supply; and as the relevant supplies were made after the registration commencement date and no registrations had been made, the security interests created by the separate supply agreements were not perfected. On appeal, the court considered that the credit application was not an agreement. Rather, it was an application, which only became an agreement when accepted by Central Cleaning making its first supply and providing its invoice. This happened a day after the credit application was signed (well before the registration commencement date). So at the point the agreement was formed, the ROT terms had been made known and were incorporated in the agreement. The agreement constituted by acceptance of the credit application was therefore a security agreement which provided for future security interests (by way of ROT) that arose each time a supply was made. Accordingly they were temporarily perfected as transitional security interests.
Central Cleaning Supplies (Aust) Pty Ltd v Elkerton (No 3)	**[2016] VSC 431** Daly AsJ	In earlier proceedings, Central Cleaning had been successful in obtaining orders that it held perfected security interests over equipment provided to Swan Services, but (as it turned out) most of the equipment was no longer in the possession of Swan Services, and Central Cleaning failed to establish that the liquidators of that company were liable to provide compensation for the lost equipment. In a claim for costs, the Central Cleaning had previously argued that it was reasonable for it to have rejected settlement offers of Swan Services due to the uncertainty of the PPSA as new law. In these proceedings, the court allocated costs an issue by issue basis, taking account of each party's mixed success, but did not advert to the 'uncertain law' argument in considering reasonableness.
Chelliah v NSW Police	**[2018] NSWSC 557** Garling J	Mr Hall died and left an unregistered motor vehicle to his wife in his will. Mrs Hall discovered it had been stolen, and notified the police. Chelliah had purchased the stolen vehicle, and was required to surrender it to the police. Before doing so, he registered it with the motor vehicle registry. Later he made a PPSR registration over it in favour of himself. The police applied for orders for disposition of the vehicle. Chelliah argued that (1) s45 allowed him to acquire title free of Mrs Hall's interest, which he said was a security interest; and (2) his registration gave him an ownership interest. The court disagreed. Mrs Hall's interest, acquired under her husband's will, did not secure payment or performance of an obligation and was not a security interest, so s45 was irrelevant. Making a registration, as Chelliah had done, did not give him an ownership interest, even if he was the only person who had done so in respect of the vehicle.
Cirillo v Registrar of Personal Property	**[2013] AATA 733** Deputy President K	Cirillo gave an amendment demand under s178 seeking removal of a registration over a motor vehicle. The Registrar issued an amendment notice under s180 and, after considering the response from the secured party, decided not to remove it under s181(1) on the basis of reasonable grounds of suspicion that the amendment was not

Case	Citation, judges	Comments
Securities ***Amendment demands***	Bean	authorised. Cirillo sought review of that decision, arguing defects in the documents signed by him and that an assignment by the original secured party to the current secured party was not permitted. The Tribunal decided after considering the documents that Cirillo remained indebted for an amount secured over the motor vehicle and so affirmed the Registrar's decision not to remove the registration.
Citadel Financial Corporation Pty Ltd v Elite Highrise Services Pty Ltd (No 3) ***Acceptance of security agreement by conduct***	**[2014] NSWSC 1926** Brereton J	Citadel sold scaffolding to Elite allegedly on retention of title terms. But the sale was agreed orally and the retention of title clause was only contained in an invoice given by Citadel some months after the scaffolding had been delivered. Skyline Apartments Pty Ltd and Pacific Hoardings Pty Ltd also sold scaffolding to Elite, also allegedly on retention of title terms. Those terms were also not set out in writing until after the scaffolding was delivered. Disputes broke out between the parties and the retention of title clause was contained in a settlement offer sent by email from Skyline's lawyers to Elite's lawyers. Citadel, and Skyline and Pacific, registered financing statements under the PPSA. (Interestingly, neither registration claimed PMSI status, and so the court noted that their interests would be considered as if they were not PMSIs.) Elite went into receivership, and the receivers wanted to sell the scaffolding. Citadel, and Skyline and Pacific, sought injunctions restraining the sale. For this purpose they had to demonstrate a sufficiently arguable case that they were entitled to the scaffolding, and that the balance of convenience favoured granting the injunctions. The court granted injunctions to Skyline and Pacific, but not to Citadel. In each case the issue was whether the security agreements, not been signed by Elite as grantor, had been 'adopted or accepted' by Elite so as to satisfy s20(2). Citadel's invoice, containing the retention of title clause, had not been 'adopted or accepted', and so Citadel was not granted an injunction. Elite had replied to the invoice with email correspondence, but none of it affirmed the clause. The court noted the argument that retention of the scaffolding after delivery of terms could constitute acceptance of them, but this could not apply when the invoice was provided months after the scaffolding had been delivered. (Comment: compare *Relux Commercial Pty Ltd v Doka Formwork Pty Ltd* [2014] VSC 570, where accepting and taking delivery of equipment *after* receipt of invoice terms could constitute acceptance.) By contrast, the chain of correspondence between Skyline and Pacific and Citadel, after Skyline made its settlement offer, as well as payments made by Citadel apparently in response to the settlement proposal, was enough to establish a seriously arguable case that Citadel had adopted or accepted the retention of title clause in the offer, and so Skyline and Pacific were granted an injunction.
Close v Beake (No 2) ***Meaning of 'security interest': consensual***	**[2018] FCCA 3373** Judge Lapthorn	In proceedings for division of property between a divorcing couple, the court ordered a payment by the husband to the wife. And the court ordered that, 'by these Orders', the wife be granted a security interest in accordance with s12 of the PPSA over property of several companies controlled by the husband and his father and brother to secure that payment obligation; and that the wife be at liberty to 'perfect the registration of' those security interests. The court did not refer to the requirement of s12 that a security interest be provided for by a 'transaction', or address how the requirement of a security agreement under s20(1)(b)(iii) was satisfied. Nor did the court refer to cases such

Case	Citation, judges	Comments
		as *Dura (Australia) Constructions Pty Ltd v Hue Boutique Living Pty Ltd* [2014] VSCA 326, which have said that a security interest must arise from a consensual transaction, though this security interest does not appear consensual. The orders did however include a requirement for each party to sign and do all documents and things to give effect to the orders; and perhaps this was intended as including a requirement for execution of a security agreement addressing these matters.
Club Capitol Pty Ltd, Re ***Extension of time***	**[2018] NSWSC 398** Rein J	Application by companies in the Firstmac group under s293(1)(a) to extend the 15 business day period under s62(3)(b) for PMSI registrations. Registrations had been incorrectly made in favour of the wrong member of the group as secured party, and against individual grantors' ABNs rather than their names. The court granted the extensions.
Commissioner of the Australian Federal Police v Hart ***The High Court refers to the PPSA … in footnote no 295***	**[2018] HCA 1** Kiefel CJ, Bell, Gageler, Gordon and Edelman JJ	Hart was convicted of criminal offences. Property belonging to Hart and associated companies was forfeited to the Commonwealth under the *Proceeds of Crime Act 2002* (Cth). The associated companies applied for return of property, which was permitted if it was neither used in nor derived from criminal activity and was acquired lawfully. The court found these conditions were largely not satisfied, and the Commonwealth was not required to return the property. However, in some cases the property was subject to a charge that had been granted to Merrell Associates Ltd (one of the associated companies), and that charge had also been forfeited to the Commonwealth. The courts below had considered that this forfeiture transferred to the Commonwealth only a bare security interest in the property, not the secured debt, and thus the Commonwealth was required to account to Merrell for the amount of the debt. The court disagreed: Merrell's interest was an equitable interest in the 'fixed charge' assets – and, once forfeiture caused the floating charge to fix, in the 'floating charge' assets – including a right in equity to restrain dealings in the assets until the secured liability was paid, entitling Merrell (and, through it, the Commonwealth) to be paid the secured debt before any property could be transferred back to the claiming company. In analysing the fixed and floating charges in this way, Gordon J mentioned in a footnote that the parties had not addressed 'the implications, if any' of the PPSA.
Commonwealth v Byrnes and Hewitt ***Circulating security interests***	**[2018] VSCA 41** Ferguson CJ, Whelan, Kyrou, McLeish and Dodds-Streeton JJA	Appeal from *Re Amerind Pty Ltd* [2017] VSC 127. Amerind Pty Ltd, acting as trustee, granted security to a bank to secure invoice financing arrangements. The bank's security was perfected. Amerind went into administration and the bank appointed Byrnes and Hewitt as receivers. The Commonwealth contended that various assets, including the trustee company's right of indemnity against trust assets, were subject to a circulating security interest (that is, were circulating assets) and so subject to employee priority under *Corporations Act* s433. The court held: • overturning the decision in the court below, Amerind's right of indemnity as trustee was property of the company, and so the statutory insolvency distribution regime (including the employee priority rules) applied to it. • contrary to the approach taken in the court below, it was not necessary to decide whether the right of indemnity was a circulating asset. Rather, the question was whether the trust assets to which the right of indemnity applied were circulating assets. If they were, then that was sufficient to attract employee priority, regardless of the categorisation of the right of indemnity through which those assets were obtained. (The Commonwealth had also argued that it was wrong to consider whether the right of indemnity was a

Case	Citation, judges	Comments
		circulating asset, because the right of indemnity was a lien or charge arising under general law, and s8(1)(c) excluded such rights from the operation of the PPSA. But the court rejected that argument: s8(1)(c) was concerned with whether such a right was a security interest subject to the PPSA, not with whether it could be personal property subject to a security interest or whether it could constitute a circulating asset.) • the time for determining when property is a circulating asset is the date of appointment of a receiver, not the date of creation of the security interest. • confirming the decision of the court below - ○ Amerind's 'trade account', into which the bank paid drawdown proceeds that Amerind was then free to spend, was a circulating asset, because Amerind had retained effective control over it, with the bank's consent, in the ordinary course of business. While the trade account was not a circulating asset under s340(1)(a) (because, while it was an ADI account covered by s340(5)(c), it was excluded by registration and control under s340(2)), it was also necessary (as the court below had said) to consider whether it was a circulating asset under s340(1)(b); and it was. ○ drawdown proceeds provided after the appointment of receivers which were the proceeds of stock, and other miscellaneous receipts, were circulating assets.
Commonwealth Bank of Australia v MTC Diesel Pty Ltd ***Priority of general law and statutory liens***	**[2019] VCC 639** Judicial Registrar Burchell	CBA held security over a motor vehicle, which it was entitled to enforce. MTC did repair work on the vehicle, and then when its repair bill was not paid, passed the vehicle to Heavy Haulage Towing Pty Ltd for storage. Heavy Haulage claimed a statutory lien for its storage charges, under the *Warehouseman's Lien Act 1958* (Vic), in priority to CBA's interest. The court held that CBA had priority and was entitled to possession of the vehicle. MTC had held a general law repairer's lien, which would have been entitled to priority over CBA's security under PPSA ss8(1)(c) and 73(1). But its lien was possessory, and had ended when it relinquished possession to Heavy Haulage. Heavy Haulage had failed to give notice to CBA of its statutory warehouseman's lien within the 2-month period required by the statute, and this rendered its lien void under the statute. The court therefore did not need to consider whether the lien would have had priority over CBA's interest. However, the court observed that Heavy Haulage's lien could have had priority as a 'priority interest' under s73(1), if the conditions in s73(1)(a) to (e) were satisfied. CBA had argued that the lien was a 'statutory interest' under s73(2) (but one which, under the terms of s73(2), did not have priority because there was no declaration of the kind required by s73(2)(a)). The court disagreed: characterisation as a 'statutory interest' under s73(2) would not have prevented the interest also being a 'priority interest' under s73(1), and entitled to priority under that subsection if its conditions were satisfied.
Computer Accounting and Tax Pty Ltd v Professional Services of Australia Pty Ltd (No 7)	**[2014] WASC 360** Simmonds J	Mr and Mrs Frigger, the directors of CAT (now in liquidation) sought to be joined as parties to litigation between CAT and PSA. One basis on which they sought joinder was that they were the secured parties under a charge granted by CAT in their favour over judgment sums including costs. One ground on which PSA opposed joinder was an argument that the charge was incapable of creating a security

Case	Citation, judges	Comments
Meaning of 'personal property'		interest in personal property within the meaning of the PPSA, on the basis that it was a security interest in a 'bare personal right of action', which was not 'personal property'. The court found it unnecessary to decide the issue, saying simply that it was not so plainly a charge over a 'bare personal right of action' (which, implicitly, the court appeared to regard as not being personal property) – as opposed to a charge over a 'right of action for costs as finally determined' (which, implicitly, apparently was personal property) – that it could be dismissed on that ground. The court decided, in its discretion, to reject the Friggers' application for joinder which had been made at a very late stage of proceedings.
Conlan v Stone	**[2012] FCA 1359** McKerracher J	Mr Stone was a farmer. Mr Conlan was his trustee in bankruptcy. Conlan, as trustee, sought delivery of some farming equipment. Stone said that the equipment had been transferred by deed to his sons. The deed in question was a bill of sale, assigning the equipment to the sons, to secure payment of amounts including wages owed to the sons for work on the farm. It was apparently not perfected under the PPSA. If the deed had been effective to grant security over the equipment to the sons, it would have become necessary to consider whether, being unperfected, it vested in the trustee under s267. However the court found it unnecessary to consider s267. The deed did not grant effective security over the equipment, as the original equipment had been sold and the procedure contemplated by the deed to make the new equipment how held by Stone subject to its terms had not been followed. And even if it had, the deed would have been ineffective under s121 of the *Bankruptcy Act 1966* as a transfer with intent to defeat creditors.
Connelly v Commonwealth ***Circulating security interests***	**[2018] FCA 1429** Moshinsky J	Australian Road Express Pty Ltd and Jolly's Transport Services Pty Ltd, companies in voluntary administration, granted security to One Corporate Trust Services Pty Ltd over certain receivables, and bank accounts into which the proceeds of the receivables were to be paid, and entered into an account bank deed giving OCT the ability to obtain control over the accounts (and, hence, the receivables). The companies went into default. OCT gave a notice to the account bank directing that the bank accounts be dealt with only in accordance with OCT's directions, and one minute later appointed Connolly and others as receivers of the companies. The receivers contended that their control over the receivables made them non-circulating assets. The Commonwealth, which had paid out claims of Australian Road Express's employees, was entitled (in the employees' shoes) to any priority that the employees would have had in respect of circulating assets The Commonwealth claimed that OCT's actions in entering into the security and account bank agreements and/or taking control of the bank account constituted a scheme, in contravention of *Corporations Act* s596A, to prevent or reduce recovery of employee entitlements. The receivers sought to have the Commonwealth's claim struck out. The court did not consider the Commonwealth's claim unarguable, and declined to strike it out.
Credit Suisse AG v Springsure Property Holdings Pty Ltd	**[2017] QSC 142** Bond J	Springsure granted Credit Suisse a security interest over 'all [its] present and after-acquired property'. By an incorporated definitions clause, the term 'after-acquired property' was defined as having the same meaning as in the PPSA. Springsure argued that the security interest did not cover its after-acquired interests in land, as the PPSA definition of 'after-acquired property' was confined to personal property. The court held that the security interest did cover the land. Interpreting the document as a whole, the parties

Case	Citation, judges	Comments
		intended the definition of 'property' in the security agreement (which extended to all kinds of property) to apply, not the PPSA 'after-acquired property' definition.
Crossmark Asia v Retail Adventures ***Avoiding vesting by cancelling contracts***	**[2013] NSWSC 55** McDougall J	Crossmark sold ovens and fans to Retail. Terms of sale were set out in Crossmark's pro forma invoices, accepted either orally or in writing by Retail: one master pro forma invoice for 2,400 ovens, and one for 110,000 fans. The pro forma invoices contained retention of title terms. Retail placed orders for fans and ovens covered by the master agreements on the terms of its own purchase orders, which incorporated by reference separate terms found on its website. The court held that the terms of sale were those in the pro forma invoices, and they were not varied by the purchase orders. Accordingly the contracts did include the ROT terms. Retail cancelled its current orders, including those where goods had already been shipped but not yet delivered, and Crossmark accepted the cancellation. Retail then went into administration. Crossmark sought a declaration that it was entitled to possession of the goods not yet delivered. The court granted the declaration, noting that s267 did not apply. Although not spelt out in detail, it appears that Crossmark may not have made registrations against Retail, and that the court considered the cancellation of the orders entitled Crossmark to retain possession of its property on the basis that there was no existing contract for its sale, rather than needing to rely on the ROT clause which might have been avoided by s267.
Daswan Australia Pty Ltd v Linacre Developments Pty Ltd	**[2018] VCC 40** Judge Macnamara	Daswan, and Mrs Tonini, made loans to Linacre for development projects, and Linacre granted them security interests. The projects failed, and a deed of compromise was entered into. The effectiveness of the deed to bar future claims was disputed. Linacre went into liquidation. It appeared Linacre held its assets as trustee, but Daswan and Mrs Tonini had not known this, and it was contrary to representations in the security agreement. They therefore failed to make registrations against the trust's ABN. Daswan and Mrs Tonini claimed Linacre's conduct in withholding its trust status was misleading and deceptive. Mr Paul, a guarantor of Linacre's debts to Daswan and Mrs Tonini, claimed that Daswan's failure to register against the ABN (thereby allowing the security interest to vest in Linacre under s267 on its liquidation) had prejudiced his subrogation rights, and that he was discharged from his guarantor's obligations. (The same claim could not be made in respect of Mrs Tonini's equivalent failure, as his guarantee to her excluded such discharge.) The court found it unnecessary to decide these issues, finding that the deed of compromise was effective to bar any further claims by Daswan and Mrs Tonini against either Linacre or Mr Paul. The decision was upheld on appeal (without further discussion of PPSA issues) in *Daswan Australia Pty Ltd v Linacre Developments Pty Ltd* [2018] VSCA 350.
David Brown Gear Industries Pty Ltd, Re ***Extension of time***	**[2017] NSWSC 907** Black J	Application by Sanne Fiduciary Services Pty Ltd under *Corporations Act* s588FM to fix a later time for registration in respect of a security interest granted by David Brown, where registration initially not made against the grantor's ACN. The court was satisfied that the error in the initial registration was made by inadvertence, and granted the order. By consent, liberty was reserved to any liquidator, administrator or deed administrator to apply to discharge or vary the order within 6 months.

Case	Citation, judges	Comments
Davidson v Registrar of Personal Property Securities ***Amendment demands and burden of proof***	**[2015] AATA 549** Deputy President SA Forgie	Ms Burge (formerly Ms Davidson) and Mr Davidson were in partnership. The partnership entered into a subcontracting agreement with Davidsons Blinds & Shutters Pty Ltd, under which Blinds & Shutters fulfilled orders the partnership had taken from its customers, and was entitled to hold goods of the partnership as security for the partnership's payment for the work. Blinds & Shutters made a PPS registration to perfect its security interest. Mr Davidson alone had signed the agreement for the partnership. Ms Burge gave an amendment demand removal of the registration, then initiated the administrative process under PPSA ss179-181 to have the Registrar remove it. The Registrar declined to remove it on the basis of reasonable grounds of suspicion that the amendment was not authorised, and Ms Burge appealed to the AAT. The Tribunal found that the agreement with Blinds & Shutters was not within the business of the partnership, not authorised by the partnership agreement, and not binding under the *Partnership Act 1958* (Vic) when signed by a single partner. Accordingly the Tribunal did not suspect that the amendment was not authorised, and directed that the amendment be made to end the registration. In doing so, the Tribunal considered whether s296 placed on Blinds & Shutters the onus of proving that a security interest had attached and was perfected. The Tribunal held that it did not: review by the Tribunal was not a 'proceeding under the Act' - rather, it was a proceeding under the *Administrative Appeals Tribunal Act 1975* (Cth). The standard was the lesser one of 'reasonable grounds of suspicion' under s181. By contrast, if the judicial process (PPSA s182) was followed to have the Registrar implement an amendment demand, s296 and the higher standard of 'balance of probabilities' would apply. But in this case Blinds & Shutters had not discharged even the lesser standard.
Denbride Pty Ltd v Registrar of Personal Property Securities ***Amendment demands***	**[2015] AATA 938** Senior Member McCabe	Denbride had a franchise agreement with Eagle Boys Dial-A-Pizza Australia Pty Ltd. Denbride granted a security interest to Eagle Boys to secure obligations under the franchise agreement, including the obligation to pay Eagle Boys' legal costs. Eagle Boys perfected its interest by registration. Denbride terminated the franchise, but there were ongoing disputes about the termination arrangements, giving rise to legal costs. Denbride gave an amendment demand seeking to end the registration, and then invoked the administrative process (ss179-181) to have the registration amended. The Registrar declined to make the amendment on the basis of reasonable grounds of suspicion that it was not authorised (s181). The Tribunal upheld the Registrar's decision. There appeared to be ongoing obligations to pay legal costs, which would be covered by the security interest. The Court was critical of Eagle Boys' claims – 'There is certainly a whiff of unconscionability in the air' – but the Registrar's and Tribunal's role was only to determine whether there appeared to be real secured obligations, not to resolve the parties' larger commercial dispute.
Deruniec v McDonald	**[2018] FCA 843** Greenwood J	Deruniec claimed to hold security interests granted by McDonald, and McDonald disputed their validity. McDonald had begun the administrative process under s181 to have the relevant registrations amended. Deruniec began proceedings under s182 relating to the security. McDonald claimed that Deruniec had begun the proceedings to frustrate the administrative process, which was suspended by the court proceedings [s179(2)(b)]. The court struck Deruniec's proceedings out. This was not because of the claimed ulterior purpose; but because the proceedings failed to identify facts that would show the existence of a security interest, or to disclose a cause of action, and thus stood no reasonable prospects of success. The result was to allow the administrative process to

Case	Citation, judges	Comments
		continue, unless and until Deruniec could re-commence proper court proceedings.
Draper v Registrar of Personal Property Securities ***Amendment demands***	**[2017] AATA 817** Deputy President K Bean	Draper took out a car loan and granted a security interest to Esanda, which Esanda perfected by registration. Draper contended that the loan agreement was in some way affected by forgery or fraud, and sought to have the registration removed, using an amendment demand and the administrative process (ss179-181). The tribunal did not accept that there was forgery or fraud; but even if there was, the tribunal was satisfied there was an effective loan agreement (even if only oral). Accordingly the tribunal was satisfied Draper had not discharged the secured loan, and so there were reasonable grounds to suspect the removal of the registration was not authorised.
Duke Contracting Australia Pty Ltd, Re ***Extension of time***	**[2017] NSWSC 767** Brereton J	Application under s293(1)(a) to extend the 15 business day period under s62(3)(b) for PMSI registrations of security interests granted by Duke's trust to Komatsu Australia Corporate Finance Pty Ltd, where registration was originally made against Duke's ACN, but not made against its trust's ABN until more than 15 business days after it had obtained possession of the goods. After registration, Duke went into administration. The administration was more than 6 months after the registration against the ABN, so there was no issue of vesting under *Corporations Act* s588FL. The court granted the extension. The court was satisfied the omission was due to inadvertence. Prejudice to unsecured creditors was not an issue (as the security interest would have priority over them in any event). There was one secured creditor (NAB) with all-assets security, but the court considered that all-assets secured creditors would typically only be interested in other AllPAP (or AllPAP except) registrations, and not concerned by PMSI priority for 'ordinary course of business' transactions such as Komatsu's chattel mortgage. Further, NAB had been joined as a defendant but decided not to appear, which reinforced the court's impression that it did not consider itself prejudiced.
Dura (Australia) Constructions Pty Ltd v Hue Boutique Living Pty Ltd ***Meaning of 'security interest': consensual***	**[2014] VSCA 326** Maxwell, Whelan and Santamaria JJA	In accordance with a court order, a judgment debtor (Dura) placed $1m into an account in the joint name of its solicitors and solicitors for the judgment creditor (Hue). Dura granted a security interest over all its assets to an associated company, which appointed receivers. Dura went into liquidation, and then receivership. Dura's receivers argued that Hue's interest was a security interest and, not being perfected, that it had vested in Dura on liquidation. Hue argued that its interest was not a security interest or, if it was, that it was excluded from the PPSA by s8(1)(b) (charges arising under statute) or (c) (charges arising under law). The court agreed with Hue. Santamaria JA (with Maxwell and Whelan JJA agreeing) said, after an extensive analysis of a chain of cases describing the interest created by a payment by a defendant into court – or a payment to solicitors for the parties to hold on trust for the same purpose – that Hue had acquired an 'equitable charge' over the funds in favour of the plaintiff. But it was a charge arising under the general law, as a result of depositing the funds in accordance with a condition imposed by the court in the proceedings between Dura and Hue, and according under s8(1)(c) the PPSA did not apply to it. Further, following the Canadian case *I Trade Finance Inc v Bank of Montreal* [2011] 2 SCR 360, and the Victorian case *Sandhurst Golf Estates Pty Ltd v Coppersmith Pty Ltd* [2014] VSC 217, a security interest has to arise from a consensual transaction, and this did not.

Case	Citation, judges	Comments
		So, not being a security interest for PPSA purposes, Hue's interest did not vest in Dura. Hue had also argued that by paying the money into the account, Dura had parted with ownership so that it could no longer create a security interest over it in favour of the associated party which had appointed the receivers. But, in view of the finding that Hue's interest was not a security interest for PPSA purposes, it was unnecessary for the court to decide this point.
Elite Sydney Pty Ltd, Re	**[2016] NSWSC 1934** Black J	Elite had entered into agreements under which taxi licence holders 'leased taxi plates' to it. The court interpreted this, consistently with arrangements contemplated by NSW's taxi legislation, as the letting of rights to operate taxis under taxi licences. Elite went into liquidation. The liquidator sought orders that the taxi licences had vested in Elite. The court held that taxi licences were not goods, and so a 'letting' of them was not a PPS lease. Accordingly vesting did not apply. The court also declined to order vesting of the metal taxi plates themselves, considering them merely incidental to the right to operate a taxi under a taxi licence, and seeing no utility in ordering the vesting of the metal plates alone.
Enviro Pallets (NSW) Pty Ltd, Re ***Extension of time***	**[2013] QSC 220** Philippides J	Application under *Corporations Act* s588FM to fix a later time for registration in respect of security interests granted by Enviro to Taurus Trade Finance Pty Ltd, where registration was made 4 months late due to internal administrative error between departments of Taurus. After registration, Enviro went into administration and then liquidation. The court made the order, after considering a number of factors including the fact that registration was made as quickly as possible after the error was discovered; Enviro then continued to trade for several more months before going into administration; Taurus had given considerable value for the security interest; and the liquidator had given unsecured creditors an opportunity to ask him to oppose the application, but none had done so. The court made the order conditional on it having no effect on the priority of other creditors which had made registrations before Taurus, even though noting that it might strictly not be necessary to impose this express condition.
Fabsigns & Designs Pty Ltd v Kunara Tucker Pty Ltd	**[2016] QCATA 115** Senior Member Stilgoe OAM	Fabsigns installed signage at Kunara's premises, but it was the wrong colour. Kunara refused to pay, and Fabsigns repossessed the signs, relying on a retention of title clause. There was no evidence that Fabsigns had perfected its security interest by registration. The tribunal, refusing leave to appeal from the decision of the tribunal below, said the tribunal below was correct in saying that Fabsigns' ROT clause was unenforceable, as 'a security interest is only enforceable if it is 'perfected' by registration', citing *Central Cleaning Supplies (Aust) Pty Ltd v Elkerton* [2015] VSCA 92 as authority. (The tribunal did not advert to the fact that the grantor in *Central Cleaning Services* was in liquidation, while Kunara was not – so that Fabsigns' security interest had not vested in Kunara – or that perfection is not required to make a security interest enforceable as between the parties to it.)
FC Securities Pty Ltd v Menilden Creek Farming Pty Ltd ***Extension of time***	**[2018] NSWSC 1681** Parker J	Application by FC Securities under *Corporations Act* s588FM to fix a later time for registration in respect of security interests granted by Menilden, where registration was made over 12 months late. The court found the reasons given for the delay 'not entirely satisfactory', in the sense of not fully explaining the delay. This was partly because relevant staff had left the company. But, while noting that applicants were expected to provide a full explanation, the court was prepared despite the evidentiary gaps to find that the failure was

Case	Citation, judges	Comments
		'accidental'. Accordingly the court made the order, subject to a condition reserving the right of insolvency administrators to apply to discharge if insolvency occurred within 6 months.
Fearnley v Finlay	**[2014] QCA 155** Holmes and Morrison JJA and Jackson J	Fearnley owned property on which Finlay's cattle were agisted. Finlay didn't pay the fees. Fearnly sought to enforce a storer's lien under a Queensland act providing for a lien where goods were deposited for storage. The court held that agistment was not the deposit of goods for storage. The issues had all arisen before commencement of the PPSA, but passing reference was made to the fact that the PPSA gives statutory priority to a storer's lien under s73(1), and that there is a separate regime for security interests to enable cattle to be fed or developed, which would include a security interest granted on agistment.
Ferla v Perry Bird Pickets Pty Ltd	**[2018] VCAT 51** Deputy President I Lulham	Perry Bird supplied gates to Ferla, which Ferla said were defective. He refused to pay for them, and Perry Bird ultimately removed them, relying on a retention of title provision in the contract. The tribunal found that the gates were not defective, and Perry Bird had been entitled to remove them. In doing so, the tribunal observed that ROT provision accorded with the definition of 'retention of title clause' in the *Corporations Act*. While nothing in the decision turned on that classification, this was a surprising observation, as the *Corporations Act* definition applies only to ROT clauses in contracts which *do not* give rise to PPSA security interests.
Fin One Pty Ltd v Kucharski ***Jurisdiction***	**[2017] QMC 17** Acting Magistrate R Carmody	Fin One sought orders permitting it to seize equipment subject to a security agreement from Kucharski, and to enter onto his property. The court declined to make the orders. The court considered the previous decisions in *Silver Chef Rentals Pty Ltd v The Alliance of Congolese in the Northern Territory* [2017] QMC 8 and *GoGetta Equipment Funding Pty Ltd v Mansour* [2017] QMC 9, which had said the *Magistrates Court Act 1921* (Qld) conferred power only to order an amount claimed, not the value or return of a chattel. The court considered this too narrow: the court did have power to order payment of the value of a chattel, but did not have power to order its return. Nor did the court have power to make an order permitting entry onto land. Conceptually, PPSA s207 could expand the court's jurisdiction, but did not purport to do so. The court noted that in any case, s123 authorised seizure and, if it applied, Fin One did not need a court order to exercise its rights under the section.
Fin One Pty Ltd v Kucharski ***Jurisdiction***	**[2018] QDC 35** Everson DCJ	On appeal from the first instance decision ([2018] QMC 17 above), the court affirmed the decision, holding that the *Magistrates Court Act 1921* (Qld) conferred power only to order payment of an amount claimed, not the value or return of a chattel.
Flow Systems Pty Ltd, Re ***Extension of time***	**[2019] FCA 35** Greenwood J	Administrators of Flow Systems sought orders that they would be justified in entering into agreements for secured loans to provide urgent administration funding. The court granted the orders. The court also agreed to fix a later time for registration under *Corporations Act* s588FM in respect of the security interests, accepting the reasoning in *KJ Renfrey Nominees Pty Ltd v OneSteel Manufacturing Pty Ltd* [2017] FCA 325 and *Re Ten Network Holdings Ltd* [2017] FCA 1144 that this was necessary to avoid security interests granted in administration vesting immediately.
Flown Pty Ltd v	**[2016] WASC 419**	Goldrange, a landlord, had an unperfected security interest over of Flown, its tenant. Flown was in default of rent,

Case	Citation, judges	Comments
Goldrange Pty Ltd ***Possession***	Master Sanderson	and Goldrange tried to re-enter the leased premises (which would terminate the lease), but was physically kept out. Flown went into administration before Goldrange could actually enter. Goldrange argued that it had constructive possession of the equipment, by virtue of its attempted exercise of the right of re-entry, and so had perfected its security by possession before it vested on appointment of the administrators. The court held that Goldrange had not perfected by possession: despite its right to possession, the equipment was in the actual possession of Flown and so by operation of s24(2) could not be in Goldrange's possession.
Forge Group Limited, Re ***Circulating security interests***	**[2017] FCA 170** Gilmour J	Forge granted a security interest to ANZ. Forge defaulted, and ANZ appointed receivers. After the appointment, the Australian Taxation Office issued an amended assessment entitling Forge to a tax refund. The Department of Employment argued that before the appointment, Forge had an entitlement to apply for the amended assessment, and that the entitlement and resulting assessment and refund were subject to a circulating security interest, and therefore available to priority creditors under *Corporations Act* s433. The court disagreed. The entitlement to apply for an amended assessment was not property. Property – the right to receive payment of the amended assessment – only came into existence after appointment of the receivers, and so was not property subject to s433. But even if that were wrong (that is, even if s433 could apply to property coming into the receivers' hands after appointment), when the property came into existence, the receivers had been appointed and Forge's licence to deal with receivables had terminated, so the security interest was not circulating. The court noted that the PPSA did not distinguish between fixed and floating charges or apply any ongoing relevance to the concept of crystallisation, but found it unnecessary to determine whether that distinction and concept had been abolished for all purposes.
Forge Group Power Pty Limited v General Electric International Inc ***PPS leases and 'regularly engaged in business'; fixtures***	**[2016] NSWSC 52** Hammerschlag J	Forge went into voluntary administration, then liquidation. Forge had leased turbines from GE. GE failed to make a PPS registration to perfect its interest as lessor. The Court held the lease was an unperfected security interest, and so vested in Forge on administration. Accordingly Forge acquired title to the turbines. GE argued: (1) that it was not regularly engaged in the business of leasing goods, and so the lease was not a PPS lease, and (2) that the turbines were fixtures, outside the scope of the PPSA. The Court disagreed on both. Leasing business: GE argued that only Australian leasing business should be considered, not worldwide. And that the time for testing business was when the lease attached or when Forge obtained possession of the turbines (which occurred after GE had sold much of its leasing business), not the earlier time when the lease was signed. The Court disagreed on both. Worldwide business should be considered, not just Australian. And the test was when the lease was entered into, not some later time. But even if it had ruled otherwise, the Court considered the scope of GE's activities in Australia was enough to constitute being regularly engaged in leasing business at all relevant times. Fixtures: Forge argued that the PPSA definition of 'fixtures' aligned with the common law meaning, and that the turbines were not fixtures. GE argued that the PPSA meaning was broader. The Court agreed with Forge. The common law meaning of 'fixture' applied. Applying the common law test - intent with which the item was put in place, having regard to degree of annexation and object of annexation – the turbines were not fixtures. They were designed to be moveable (even though demobilisation and relocation would take some

Case	Citation, judges	Comments
		days), and were intended to be relocated after the lease term was expired. The decision was upheld on appeal: *Power Rental Op Co Australia, LLC v Forge Group Power Pty Ltd* [2017] NSWCA 8.
Freestone Auto Sales Pty Ltd v Musulin	**[2015] NSWCA 160** McColl and Ward JJA and Simpson J	Mrs Musulin had obtained a judgment against Freestone for compensation for sale of a defective car. But the judgment was obtained on the basis of a guarantee which, in fact, Mrs Musulin did not contend was in place, and so was overturned. The sale of the car took place before the commencement of the PPSA. The car was sold in NSW, and the seller warranted that the vehicle was not listed on the NSW Register of Encumbered Vehicles. Later, after the car started to show mechanical problems, Mrs Musulin was able to conduct a PPSR search, which showed (under a registration apparently migrated from the Victorian register) that the car had previously been written off in another State. While the outcome did not turn on any PPSA issues, the case is an example of a situation where the national register provides information that was not so readily available under the pre-existing State registration systems.
Frigger v Banning (No 3) ***Meaning of 'personal property'***	**[2017] FCA 221** Barker J	Mr and Mrs Frigger, former directors of Computer Accounting and Tax Pty Ltd (now in liquidation) sought on various grounds to become involved in litigation between CAT and Professional Services of Australia Pty Ltd. One ground - similar to arguments raised by the Friggers, and rejected, in *Computer Accounting and Tax Pty Ltd v Professional Services of Australia Pty Ltd (No 7)* [2014] WASC 360 - was that the Friggers claimed to have a security interest over a judgment obtained by CAT against PSA. The court rejected this ground (and all others). First, any security interest could not have attached to the judgment identified by the Friggers as required by s19, as the judgment had been overturned and so had ceased to exist. Similarly the Friggers could not have obtained possession or control of the non-existent judgment as required by s20. Second, to the extent the Friggers were claiming an interest in a costs order, this was merely a personal right entitling CAT to apply for taxation, and not 'personal property' for PPSA purposes.
Future Revelation Ltd v Medica Radiology & Nuclear Medicine Pty Ltd ***Seriously misleading defects***	**[2013] NSWSC 1741** Brereton J	Registrations were made in favour of Suncorp-Metway Limited as secured party, specifying its ABN rather than its ACN. The court noted that searchers would be likely to be concerned with the identity of the grantor and the collateral, and that the defect in the secured party's details would not prevent the details of the grantor and collateral being discovered. Accordingly the defect was not seriously misleading and the registration was not ineffective. However, the court reserved the right of insolvency administrators to apply to discharge if insolvency occurred within 6 months.
Gallop Reserve Pty Ltd v Matton Developments Pty Ltd ***Duty to act honestly and in commercially reasonable manner***	**[2019] QSC 113** Holmes CJ	Matton owed money to Gallop under two agreements: (1) a litigation funding agreement under which Gallop lent Matton money for litigation purposes, and (2) a secured loan agreement under which Westpac lent Matton money, and which Westpac had subsequently assigned to Gallop. Mr Clark, a director of Matton, had guaranteed Matton's obligations under the Westpac loan. Gallop agreed with Matton to subordinate its rights under the Westpac loan, so that if Matton had insufficient funds to repay both, it would repay the litigation funding loan first. Matton settled its litigation, and the resulting funds were not enough to repay both. Mr Clark contested the priority repayment of the litigation funding loan, which left him

Case	Citation, judges	Comments
		liable on his guarantee of the Westpac loan. He argued (among other things) that Gallop had breached the duty to act honestly and in a commercially reasonable manner under PPSA s111 in subordinating its rights to recover the Westpac loan and in failing to enforce those rights. The court disagreed. Section 111 applied to steps taken to enforce security interests, and Gallop had taken none. It did not apply to a decision not to enforce.
Garrett v Commissioner of Taxation	**[2015] AATA 247** Deputy President SA Forgie	Mr Garrett sought extensions of time to apply for review of tax decisions affecting a trust. He was a former director of the trustee company, but had been disqualified because of a criminal conviction. The trustee had granted a charge over all its assets to The Light Pty Ltd. The Light had enforced its charge, and appointed Mr Garrett as controller. Mr Garrett made his application in relation to the trust in several capacities, including as controller. The Tribunal determined that none of the capacities enabled him to apply on the trust's behalf, but even if they did, it would not grant the extensions. In considering Mr Garrett's capacity as controller, the Tribunal considered the deed of charge granted to The Light, making several interesting (and perhaps surprising) comments about the PPSA. • The Tribunal considered whether the grantor's right under tax legislation to apply for review of tax decisions was 'personal property' subject to a security interest. The Tribunal said the definition of 'personal property' was broad enough to include the right to apply (commenting that this conclusion under the PPSA was contrary to pre-PPSA High Court authority – *Cummings v Claremont Petroleum NL* (1996) 185 CLR 124, 137), but went on to say the right was excluded under s8(1)(b) of the PPSA, as the right was property arising under Commonwealth law and the grantor had not agreed to the PPSA applying to the right. It is perhaps more orthodox to read s8(1)(b) as excluding *security interests* arising under Commonwealth law from the PPSA unless the grantor has consensually granted the *security interest*, not to read it as excluding *property* arising under Commonwealth laws unless the grantor has agreed to the PPSA applying to the *property*. • The Tribunal noted that a security interest must be 'provided for by a transaction' (s12). It reviewed the definition of 'secured money' in the deed, noting that it did not identify any transaction (for example, a specific loan by the secured party). But the Tribunal did not consider whether the grant of the security interest could have constituted the 'transaction'. • The Tribunal doubted that the security interest had *attached*, on the basis that there was no evidence that *value* had been given. The Tribunal did not go on to discuss whether the execution of the deed, as an *act done by the grantor* (s19(2)(b)(ii)), could constitute another method of establishing attachment. There were also non-PPSA reasons for impugning the deed of charge. For example, that Mr Garrett had not validly executed it on behalf of the grantor, having been disqualified from participating in that company's management.
Gas Sensing Technology Corporation v ProX Pty	**[2019] WASC 10** Kenneth Martin J	Welldog Pty Ltd, a subsidiary of GSTC, was in liquidation. . Funds in its name were held by its former lawyers. It had granted a general security agreement to ProX over all its present and after-acquired property. Three parties claimed the funds. (1) Welldog's liquidators claimed the funds were held by Welldog beneficially. (2) GSTC claimed

Case	Citation, judges	Comments
Ltd ***Meaning of 'security interest': consensual***		they had been advanced by GSTC for a purpose which had now failed, and so were held on trust for GSTC. (3) ProX claimed (a) that the funds had been placed in trust as a price for restraining ProX from enforcing its security, resulting in it holding an equitable charge over the funds, which it was now entitled to enforce; or alternatively (b) that it was entitled to them under its security interest. The court dismissed GSTC's claims. As to ProX's claims, the funds were held in the account under consensual undertakings between the parties, not pursuant to court order. Therefore, unlike the position in *Dura (Australia) Constructions Pty Ltd v Hue Boutique Living Pty Ltd* [2014] VSCA 326 (where an equitable charge over funds held pursuant to court order was excluded from vesting under the PPSA because of s8(1)(c)), ProX was not able to rely simply on an equitable charge without consideration of the PPSA. However, ProX would be entitled to the funds under its general security agreement, which had been perfected, assuming it to be valid. Welldog's liquidators argued that they 'might' want to impugn its validity, for example as an uncommercial transaction, and the court agreed to allow them a short period to do so before making final orders in favour of ProX.
Gelpack Enterprises Pty Ltd, Re	**[2015] NSWSC 1558** Brereton J	Primaplas Pty Ltd supplied resin to Gelpack, which Gelpack incorporated into manufactured goods. In 2007, Primaplas' contract with Gelpack had incorporated retention of title terms. In 2012, Primaplas sent through new contract terms, containing an explicit security interest as a PMSI in goods supplied, and also a security interest in all other present and after-acquired property. Primaplas registered a financing statement to perfect its interest. Gelpack's operations manager signed and returned the new terms, and Gelpack continued placing place orders. Gelpack went into liquidation. The liquidator claimed that the operations manager lacked authority, and that Gelpack was not bound. The court considered the operations manager probably had authority but, even if not, Gelpack was bound by the 2012 terms. First, Primaplas had the right under its 2007 terms to change them unilaterally. Second, Gelpack accepted the new terms by placing new orders. Third, even if authority was lacking, Gelpack's act in paying for goods constituted ratification. Any of these was sufficient to constitute signature, acceptance or adoption of a security agreement for purposes of s20. Accordingly, the court declared that Primaplas had a valid and perfected security interest in the goods supplied. Presumably, Primaplas did not seek a declaration that it held a security interest in other property, even though the 2012 terms provided for it (and it is not clear from the judgement whether Primaplas' financing statement extended beyond the goods supplied). The court touched on the question of what 'rights' in collateral are necessary to support attachment of a security interest under s19, saying 'it is not necessary that those rights be of absolute ownership, although it may be necessary that they be more than mere possession'. In this case, Gelpack's rights in the ROT property went beyond mere possession: it had rights as purchaser and equitable owner, subject only to the ROT clause, and these rights were sufficient.
George 218 Pty Ltd v	**[2016] WASCA 56**	George and several guarantors appealed against a first instance decision in favour of BoQ, and BoQ sought security for costs of the appeal. In adducing evidence of the guarantors' inability to meet costs orders, BoQ sought to rely on

Case	Citation, judges	Comments
Bank of Queensland Limited	Murphy JA	the existence of 'all present and after-acquired property' registrations against a guarantor as evidence that the guarantor had charged its real property, even though some of the real property itself was unencumbered by registered mortgages. The court did not agree to infer from the registrations that the real property had been charged, but did order that security for costs be provided.
GoGetta Equipment Funding Pty Ltd v Mansour ***Jurisdiction***	**[2017] QMC 9** Magistrate Hay	GoGetta sought orders permitting it to seize equipment subject to a security agreement. The court said it lacked jurisdiction, as the *Magistrates Court Act 1921* (Qld) only conferred jurisdiction for amounts claimed up to a specified amount, not by reference to property valued up to that amount. PPSA s207 did not expand this, as the PPSA jurisdiction it conferred was subject to the court's existing jurisdictional limits. The decision is consistent with the judgment the same day in *Silver Chef Rentals Pty Ltd v The Alliance of Congolese in the Northern Territory* [2017] QMC 8.
GoGetta Equipment Funding Pty Limited v Putohe	**[2016] QMC 21** Magistrate Simpson	Robert Foster, a commercial agent acting on behalf of several motor vehicle financiers, sought ex parte orders for repossession of vehicles following alleged defaults by the grantors. In seeking orders without service on the grantors, he sought to rely on s144, which dispenses with certain enforcement notices in certain circumstances. The court found that s144 did not provide a basis for a court to hear urgent applications without notice to the respondents.
Grant v YYH Holdings Pty Ltd ***Goods and accessions (and slavery)***	**[2012] NSWCA 360** McColl and Basten JJA and Tobias AJA	YYH brought a claim against the Grants in detinue and conversion seeking return of some sheep, along with their progeny and genetic material such as semen straws. The claim for the original sheep was time barred, but YYH argued that the claim for the progeny and semen was not. The Grants argued that the sheep, progeny and semen should all be treated as the same goods for *Limitation Act 1969* (NSW) purposes. The court held that the progeny and semen were not the same goods as the sheep. Accordingly the claim in respect of the progeny and semen was not time barred. In holding this, the court rejected the applicability of Tennessee authority to the effect that children of slaves were regarded as 'aggregate property' with their mother, and regarded analysis of the law concerning 'accessions' as irrelevant. Basten JA commented that the preferred approach, where the progeny and semen were not treated as the same goods as the parent animals, was consistent with the conceptual underpinning of the PPSA, referring to the PPSA definitions of 'accession' and 'livestock'.
Greenlight Asset Pty Ltd v WBK Ricetti Pty Ltd ***Extension of time***	**[2017] WASC 278** Master Sanderson	Application by Greenlight under *Corporations Act* s588FM to fix a later time for registration in respect of a security interest granted by WBK Ricetti. Greenlight had made apparently defective registrations (with incorrect descriptions of the secured party) relying on advice from solicitors and a PPSR registration company, then further registrations relying on further legal advice. The court granted the order. The court was satisfied that incorrect registrations, relying on incorrect legal advice, were 'inadvertent'. Prejudice to other creditors was unlikely, noting that the defect was merely as to secured party particulars and no-one was likely to have dealt with the company on the assumption that its assets were unencumbered. There was no evidence of likelihood of insolvency of WBK Ricetti, and it seemed the court not find it

Case	Citation, judges	Comments
		necessary to reserve right of insolvency administrators to apply to discharge if insolvency later occurred.
Grounded Construction Group Pty Ltd v Easy Stay Mining Accommodation Pty Ltd ***Execution creditors***	**[2017] WADC 136** Staude DCJ	Grounded Construction held judgment debts against Easy Stay, and obtained debt appropriation orders against Mount Morgans WA Mining Pty Ltd. These directed Mount Morgans to pay to Grounded Construction money that it owed Easy Stay, in satisfaction of the judgment debts. Mount Morgans objected to the orders, on grounds that OCS International Pty Ltd (a related party of Easy Stay) held a security interest over Easy Stay's assets, including the debts. The security interest had not been perfected until after the appropriation orders were made. The court disallowed the objection on grounds that it was filed out of time, but also considered its merits. On the merits, the court said that Grounded Construction was an execution creditor and, under s74, its interest had priority to OCS's, as OCS's security interest had not been perfected when the debt appropriation orders were made. The court also rejected OCS's argument that the meaning of 'execution creditor' in s74 was confined to secured execution creditors.
Hamersley Iron Pty Ltd v Forge Group Power Pty Ltd ***Nature of security interests; set-off***	**[2017] WASC 152** Tottle J	Hamersley owed Forge money for work done under engineering contracts, and possibly also for breach of the contracts. Forge was in liquidation. Hamersley claimed that Forge it owed money for breach of the contracts, exceeding the amounts owed by Hamersley, and sought to set (or net) the relevant amounts off. ANZ held a general security agreement over all Forge's assets. The court held as follows. • Hamersley's contractual rights provided for set-off, under which amounts due by Forge could be offset against amounts due by Hamersley; they were not netting rights under which amounts in excess of the net balance never became due. • *Corporations Act* s553C, providing for set-off of mutual debits and credits in liquidation, displaced contractual and equitable rights of set-off. Accordingly Hamersley could not rely on contractual or equitable set-off. • A PPSA security interest is a statutory interest that is proprietary in nature. ANZ's security interest, being a proprietary interest, was sufficient to destroy mutuality between Hamersley and Forge, and so s553C did not allow set-off by Hamersley. Pre-PPSA arguments that a floating charge might not have destroyed mutuality were not relevant. • PPSA s80(1)(a), under which the rights of a transferee of accounts are subject to equities and defences including set-off, was not relevant. Section 553C covered the field, and s80(1)(a) did not displace it. The decision was overturned on appeal in *Hamersley Iron Pty Ltd v Forge Group Power Pty Ltd* [2018] WASCA 163.
Hamersley Iron Pty Ltd v Forge Group Power Pty Ltd ***Nature of security interests; set-off;***	**[2018] WASCA 163** Murphy and Mitchell JJA and Allanson J	Appeal from *Hamersley Iron Pty Ltd v Forge Group Power Pty Ltd* [2017] WASC 152. Hamersley owed Forge money for work done under engineering contracts, and possibly also (Forge claimed) for making demand on performance securities in breach of the contracts. Forge was in liquidation. Hamersley claimed that Forge it owed money for breach of the contracts, exceeding the amounts owed by Hamersley, and sought to set the relevant amounts off. ANZ held a general security agreement over all Forge's assets.

Case	Citation, judges	Comments
accounts		The court held as follows. • Contrary to the finding in the court below, *Corporations Act* s553C allowed Hamersley to set off. ANZ's security agreement did not destroy mutuality so as to prevent set-off. The critical question in determining whether a security interest destroyed mutuality was whether it prevented the company in liquidation using funds paid to it in respect of the debts for its own benefit. Here, ANZ's security interest allowed Forge to deal with payments from Hamersley in its business (it attached to them as circulating assets), and so did not destroy mutuality. • This conclusion was not affected by the security interest attaching under s19, or by the characterisation (which the court below had adopted) of the attachment as giving rise to a proprietary interest. These factors did not affect Forge's entitlement to deal with payments for its own benefit. • Even if the nature of a PPSA security interest was seen (as the court below had said) as akin to a fixed charge, it differed from a general law fixed charge in that by its terms it allowed Forge to continue to deal with payments for its own benefit, so as not to destroy mutuality. • Alternatively, if (contrary to the above findings) *Corporations Act* s553C did not apply so as to allow set-off, then (contrary to the findings in the court below) s553C would: o not preclude the operation of set-off that might apply at general law, and o not displace s80(1)(a), which would require Forge's receivers to take the debts owed by Hamersley subject to any equities, including Hamersley's right of set-off. In so finding, the court considered that the reference to a transfer of accounts in s80(1) included an assignment by way of security, not merely an outright transfer. • Contrary to the funding in the court below, Hamersley's obligations to Forge for wrongful demands under performance securities (if substantiated) were 'accounts', being sufficiently connected to the Forge's provision of building services under the contracts.
Hastie Group Limited (No 3), Re	**[2012] FCA 719** Yates J	The administrators of the Hastie Group sought orders for dealing with property subject to security interests perfected by registration. There were 995 registrations, many of which did not describe the collateral in much detail. The administrators had written to the secured parties asking them to identify their collateral, but over 80% had not responded. The court agreed to the orders proposed by the administrators, allowing a process of further advertising followed by auction of the unclaimed property. The proceeds would be placed into an account for 3 months than then, if not claimed by the secured parties, could be distributed to other creditors.
Heard v Alleasing Pty Ltd ***Taking free of security interests***	**[2013] FCA 913** Mansfield J	Heard, as administrator of Mondello Farms Pty Ltd, sought an order under s442C(2)(c) of the *Corporations Act* allowing disposal of a potato washing and cooling line and other property subject to security interests. The court, after satisfying itself that arrangements had been made to pay out or otherwise protect the interests of the known secured parties, granted the order. The terms of the order included a provision that on disposal, any security interest within the meaning of the PPSA would be extinguished and the purchaser would take the property free of it.

Case	Citation, judges	Comments
		While this is an unexceptional outcome –s442C(7) expressly provides that a disposal permitted under s442C will extinguish the security interests – it is a reminder that part 2.5 of the PPSA is not a complete code of the circumstances in which a purchaser will take free of security interests.
Hughes v Pluton Resources Ltd ***Meaning of 'security interest': consensual***	**[2017] WASCA 213** **Buss P**	Under a Deed of Company Arrangement for Pluton, a fund had been created to be applied for specified purposes. On termination of the DOCA, some of the fund remained. Pluton had granted security over all its assets to General Nice Recursos Comercial Offshore De Macau Limitada, which appointed receivers. GNR's receivers argued that the fund was subject to the security interest. In *Re Pluton Resources Ltd* [2017] WASC 142, the court had held that the fund arose by operation of law and not by a consensual transaction, and so under s8(1)(c) GNR's security interest did not apply to it. The court overturned that decision. The question was not whether the fund (that is, the collateral subject to the security interest) arose by operation of law. Rather, s8(1)(c) required consideration of whether a security interest arose by operation of law. GNR's security interest did not. It was created consensually, was perfected, and applied to Pluton's assets, including the fund.
Hussain v CSR Building Products Limited ***Unfair preferences and 'unsecured debts'***	**[2016] FCA 392** Edelman J	FPJ Group Pty Ltd bought goods on retention of title terms from CSR. The liquidators of FPJ claimed payments made to CSR for the goods were unfair preferences 'in respect of an unsecured debt': *Corporations Act*, s588FA. The retention of title agreement arose before commencement of the PPSA, and so was a transitional security interest. 'Security interest' is defined in the *Corporations Act* as (a) a security interest to which the PPSA applies, *other than a transitional security interest*, or (b) a charge, lien or pledge. The court held that even in pre-PPSA circumstances, a debt secured by retention of title was not 'unsecured': that is, for s588FA purposes, a retention of title clause operated as security. The court considered 'unsecured' did not take its meaning from 'security interest' (if it had, the retention of title could not have been security, as it was a transitional security interest and not a charge pledge or lien), but considered its conclusion was 'consistent' with the definition. . The court's position is the opposite of that reached by the Victorian Supreme Court in *Blakeley v Yamaha Music Australia Pty Ltd* [2016] VSC 231 a week later.
IBM Global Financing Australia v Applied Business Technology Pty Ltd ***Extension of time***	**[2018] NSWSC 1984** Parker J	Application by IBM under *Corporations Act* s588FM to fix a later time for registration, and under s293(1)(a) to extend the 15 business day period under s62(3)(b) for PMSI registrations, in respect of multiple registrations that had inadvertently been made using the ABN of IBM (as secured party) instead of its ACN, and 9 registrations that had inadvertently used the grantor's ABN instead of its ACN. The court noted that nine months had elapsed since the errors were discovered. This delay was considered acceptable, noting that IBM required time to review around 3000 registrations to locate those affected by the errors and that remained current, and to obtain legal advice. The court noted that the errors involving use of the secured party's ABN were less serious than for the grantor's ABN, as a search by correct grantor identifier would still have identified the registration. In considering issues of prejudice to other secured parties, the court generally approved and adopted the approach used in *Re Accolade Wines Australia Limited* [2016] NSWSC 1023. In relation to 19 secured parties holding non-

Case	Citation, judges	Comments
		AllPaP securities, which might cover collateral overlapping with IBM's collateral, the court noted that IBM had used s275 procedures to seek details of the secured party's security, also offering an opportunity to consent to IBM's application; and that the secured parties had either consented, confirmed no objection, withdrawn their own registrations, or not replied. The court initially had reservations that this might have imposed an unreasonable forensic burden on the secured parties, but was ultimately satisfied that it did not. The court made the orders, reserving the rights of any other secured party with a perfected security interest who had not already been joined as a defendant to apply to set aside or vary the orders.
Industrial Progress Corporation Pty Ltd v Wilson ***What is a transitional security agreement?***	**[2013] WASC 225** Beech J	Industrial Progress supplied goods on retention of title terms to Lowrie Constructions. The Wilsons guaranteed the obligations of Lowrie Constructions to Industrial Progress. The guarantee also contained a charge over land, and Industrial Progress had lodged a caveat to protect its charge. The retention of title terms were contained in a credit account application signed before the registration commencement date under the PPSA. However goods were supplied after the registration commencement date. Industrial Progress had not made a PPSA registration. The Wilsons argued that their guarantee was abrogated by Industrial Progress's failure to register under the PPSA. The court held there was a 'seriously arguable case' that the credit account application, rather than individual contracts made at the time of each supply of goods, was the security agreement that provided for the security interests, and therefore that they were transitional security agreements which were temporarily perfected for 24 months under s322(1). This would mean Industrial Progress was not in breach of an obligation to register. Accordingly, as a seriously arguable case had been demonstrated, the court ordered the extension of Industrial Progress's caveat to allow it to commence proceedings to sustain its claim to the land.
Interleasing (Australia) Limited v Tieman Industries Pty Ltd	**[2015] FCA 1120** Gleeson J	Interlink claimed a security interest over motor vehicles of Tieman, granted by Tieman in its capacity as trustee of the Tieman Unit Trust. Interlink's financing statement specified the ACN of the company, not the ABN of the trust. Tiernan was in administration and liquidation, and the liquidators claimed the security interest was unperfected and so had vested in Tiernan under s267. Interlink sought transfer of proceedings from the court's NSW registry to the Victorian registry. The court refused. The security agreement was governed by Victorian law. There was submission to the exclusive jurisdiction of the courts of Victoria and the Federal Court – and the court said this meant the Federal Court generally, not specifically the Victorian registry. There were connections with both States, but Interlink had not selected NSW capriciously, and the links with Victoria were not sufficient to justify transfer when Interlink had chosen, 'no doubt for sound commercial reasons', to commence in NSW.
Jacobs v Hughes ***Voluntary subordination***	**[2018] WASC 414** Acting Justice Strk	Jacobs was a current receiver of Pluton Resources Ltd, and Hughes a former receiver. No distributions had yet been made to the secured creditor, or to priority employee creditors, but the receivers had expended money in the course of their receiverships.. The former receivers were holding funds of Pluton, to cover any possible indemnity due to themselves if they were found to have breached *Corporations Act* s433 in respect of their duties to priority creditors. The current receivers sought to have the funds transferred to themselves. The court held that the former receivers could have incurred liability despite no distributions having been made, for which they were entitled to an indemnity, and so were entitled to continue to hold the funds pursuant to their

Case	Citation, judges	Comments
		equitable lien. The court also considered the position of the former receivers' equitable lien as against the security of the secured creditor that had appointed them. It was questionable whether a receiver's equitable lien would normally prevail, but in this case the secured creditor had voluntarily subordinated its interest, effective under s61.
Kaizen Global Investments Limited v Australia New Agribusiness & Chemical Group Limited ***Extension of time***	**[2017] FCA 431** Moshinsky J	Application by Kaizen under *Corporations Act* s588FM to fix a later time for registration in respect of a security interest granted by Australia New Agribusiness, where Kaizen was initially unaware of the need for registration, then became aware but took a further month to complete the registration. Australia New Agribusiness went into administration a few days after registration, and then into liquidation. The court noted that commencement of administration or liquidation was not a bar to making an order fixing a later time; and that while the court would have to consider whether the factors justifying relief were sufficient to outweigh the adverse impact on unsecured creditors, there was no requirement of 'exceptional circumstances' before an order could be made for a company in administration or liquidation. But in this case, Kaizen's delay even after becoming aware of the need for registration disentitled it to relief.
KBL Mining Limited v Kidman Resources Limited	**[2015] NSWSC 515** White J	Kidman, through its subsidiary RIKID511 Pty Limited, had become the holder of secured notes issued by KBL, a competitor. The case concerned a series of notices of default issued by RIKID. The main issue was whether a term in the general security agreement imposing interest on all secured money applied to the secured obligation to pay the face value of the notes on maturity when that particular obligation did not, by its terms, bear interest. The court held that it did not, and that all the default notices were invalid. Of interest from a PPSA perspective is that the general security agreement followed the common drafting practice of providing for the grantor to grant 'a PPSA Security Interest' over all 'PPSA Secured Property'. While no argument was directed to this, the case does represent at least judicial acquiescence to the acceptability of creating a security interest by using the term 'security interest' rather than needing to refer to a mortgage, charge or any of the other traditional categories of security interest
Kimberley Diamond Company Pty Ltd, Re ***Circulating assets***	**[2017] NSWSC 538** Gleeson JA	KDC was in creditors' voluntary liquidation. It had granted security to its parent company, Kimberley Diamond Limited. The liquidators applied to convert the liquidation to a winding up in insolvency, so that they could challenge the security under *Corporations Act* s588FJ, as a circulating security interest. The security interest applied to diamonds recovered by KDC. The liquidators argued that these were circulating assets, as inventory. KDL contended that the diamonds were not inventory or, if they were, that it had either control over or possession of the diamonds (s340(2) and (3)). The court found it was not necessary to resolve the PPSA or s588FJ issues at this stage. The court granted the order, converting the liquidation to a winding up in insolvency, which would allow the liquidators to bring the s588FJ claim.
Kimberley Diamonds Limited, Re	**[2018] NSWSC 1106** Black J	Kimberley had granted security over its shares in a subsidiary, Mantle Diamonds Limited, but not its shares in another subsidiary, Alto Minerals SL. The secured party had made an 'AllPAP' registration (that is, specifying collateral as all assets, without exception). Kimberley went into liquidation. The liquidators sought orders that they

Case	Citation, judges	Comments
		were justified in selling the shares in Alto. The court considered the security and its registration, and did not consider it an impediment to approving the sale of the shares, as the security agreement did not in fact cover the Alto shares. The court, agreeing with the reasoning in *Auburn Shopping Village Pty Ltd v Nelmeer Hoteliers Pty Ltd* [2017] NSWSC 1230, held that the scope of the security interest had to be determined by considering the terms of the security agreement, not the registration. In doing so, the court used the 'defective' in connection with the registration, though without definitively labelling it as such.
Kirman v RWE Robinson & Sons Pty Ltd ***Meaning of 'security interest': consensual; liens arising at general law***	**[2019] FCA 372** Banks-Smith J	RWE Robinson granted security to ANZ Bank and defaulted. ANZ appointed Kirman and another as receivers. RWE Robinson went into liquidation. The receivers held funds from enforcement of the security over circulating assets, which were to be paid to the Commonwealth under *Corporations Act* s561 in repayment of priority employee claims that had been met by the Commonwealth. The receivers wished to pay the Commonwealth directly, while the liquidators wished the funds to be paid to them, for on-payment to the Commonwealth, after deducting amounts secured by the liquidators' lien. The court preferred the receivers' approach: s561 required direct payment to the Commonwealth. The court also addressed whether the receivers were entitled to deduct amounts secured by their own equitable lien, and held that they were. Funds received by the receivers under their equitable lien were not subject to s561. First, because s561 only applied to funds received under security interests 'created by the company', and the lien was not so created. Second (though, given the first reason, the court found it unnecessary to express a concluded view on this), because the equitable lien was not a circulating security interest, as it was not created by a 'transaction' as required by PPSA s12, and as it was excluded from the operation of the PPSA as a general law lien under s8.
KJ Renfrey Nominees Pty Ltd v OneSteel Manufacturing Pty Ltd ***Extension of time***	**[2017] FCA 325** Davies J	OneSteel granted Renfrey a security interest, but Renfrey mistakenly registered against OneSteel's parent company, Arrium Limited. OneSteel went into administration, and then deed of company arrangement. OneSteel agreed to grant a replacement security interest to Renfrey, and Renfrey sought an order under *Corporations Act* s588FM to fix a later time for registration, to prevent the security interest immediately vesting. OneSteel submitted that vesting under s588FL should only apply to a security interest granted before the 'critical time' when liquidation, administration of deed of company arrangement began, not after. Alternatively, considering the words of s588FL(2)(a)(i), that vesting could only apply if a registration was already in place when the security interest arose. The court disagreed. Section 588FL(2) showed a clear intent to apply to security interests granted after the critical time, and should be interpreted as applying whether the registration was made before or after the security interest arose. The court granted the extension.
KJ Renfrey Nominees Pty Ltd v OneSteel Manufacturing Pty Ltd (No 2)	**[2017] FCA 1034** Davies J	In *KJ Renfrey Nominees Pty Ltd v OneSteel Manufacturing Pty Ltd* [2017] FCA 325, the court had granted Renfrey an extension of time under *Corporations Act* s588FM, to prevent vesting of a security interest granted after OneSteel had gone into administration. Renfrey sought a further order under s293(1) to extend the 15 business day period under s62(3)(b) for PMSI registrations. The court granted the order. The question to be considered was whether the grant of the order,

Case	Citation, judges	Comments
Extension of time		conferring PMSI priority, would prejudice the prior registered AllPAP holders. There were two, and one had agreed that Renfrey's collateral fell outside its security interest, while the other had advised Renfrey that it did not object to the relief sought, so there was no prejudice.
Knauf Plasterboard Pty Ltd v Plasterboard West Pty Ltd ***Possession***	**[2017] FCA 866** Markovic J	Plasterboard granted security to Knauf. Knauf did not immediately make a PPSR registration. Then, in quick succession, Knauf made a registration and appointed receivers and managers to Plasterboard, and the members of Plasterboard purported to appoint a liquidator. Plasterboard said the security interest vested in it. The court found the resolution to appoint a liquidator was not properly passed (because proper notice had not been given), and accordingly *Corporations Act* s588FL could not apply to vest the late-perfected security interest. Although not necessary, the court went on to consider whether appointment of the receivers perfected the security interest by possession. The court said 'possession' had its common law meaning, but (because of the definition in s9) as expanded or contracted by s24, which excluded constructive possession. Possession could apply to tangible assets and some, but not all, intangibles. The receivers had taken possession of the collateral that was susceptible to possession (they had entered the premises and changed the locks, even though their efforts were being resisted by management), and the fact that the receivers were deemed to be agent of the grantor did not prevent their possession being imputed to the secured party who appointed them. However, the receivers' possession was as a result of seizure, and therefore did not perfect the security interest: s21(2)(b).
Lefkas Builders Pty Ltd v Hargale Investments Pty Ltd	**[2018] VCAT 935** Deputy President I Lulham	Lefkas sought return of goods held by Hargale as bailee. The basis on which Hargale held the goods was uncertain, but the tribunal thought it likely Lefkas had simply left them in premises that it had sold to Hargale, in order to obtain free storage for them. Hargale argued (among other things) that Lefkas was not entitled to return of the goods because (1) Lefkas had not registered an interest in them under the PPSA and therefore had failed to establish title to them, or (2) other secured creditors held security interests in them. The tribunal dismissed these arguments as misconceived. Lefkas was asserting ownership of the goods, not a security interest in them, and Hargale had not granted Lefkas a security interest. The security interests granted by Lefkas to third parties, which the tribunal described as floating charges, were irrelevant as the charges had not crystallised and Lefkas remained free to deal with its own assets.
Li v F Vitale & Sons Pty Ltd	**[2014] VSC 326** Macaulay J	Vitale, an ROT supplier, sought to claim an interest arising under a mortgage granted to NAB by Li, who was the guarantor of the ROT customer. The claim was made on grounds of both subrogation and marshalling. The court noted there was a question whether an ROT interest, although a 'security interest' under the PPSA, could be subject to doctrines of subrogation and marshalling, but found it unnecessary to decide as Vitale had failed to establish the basic requirements of either doctrine.
LTDC Pty Ltd v Cashlow Finance Australia Pty Ltd	**[2019] NSWSC 150** Darke J	Priority dispute over real property. Cashlow provided invoice financing to Madebra Enterprises Pty Ltd, took general security over all real and personal property of Madebra and its guarantors, and made a PPSR registration against Madebra, but did not lodge a caveat over any real property. Then, LTDC made a loan secured over real property of the guarantors, as well as personal property of the guarantors and Madebra. LTDC lodged a caveat (but did not register its mortgage), and also made PPSR registrations. LTDC had not searched the PPSR before making the loan. The real property was sold, with insufficient proceeds to pay out all loans.

Case	Citation, judges	Comments
		The court held that LTDC had priority to the sales proceeds. Cashlow, although having the prior equitable interest, had prejudiced its position by failing to lodge a caveat. Cashlow argued that LTDC had prejudiced its position by failing to conduct PPSR searches, which would have revealed the existence of security granted by Madebra, and opened the door to enquiries about Madebra's financial position and creditors, including Cashlow. The court disagreed: it was reasonable, in the circumstances of LTDC's loan, for it to focus on the adequacy of the real property as security, rather than enquire generally as to Madebra's financial position.
Macquarie Leasing Pty Ltd v DEQMO Pty Ltd ***Can't give security interests to yourself***	**[2014] NSWSC 1466** Rein J	Macquarie leased a truck to Elite Grains Pty Ltd, a company associated with Mr Culleton. Elite defaulted, and Macquarie repossessed the truck and tried to sell it. Elite went into liquidation. Macquarie's sale of the truck was delayed by a new registration on the PPSR made by DEQMO, another company associated with Mr Culleton. The court held that DEQMO did not have a valid security interest over the truck. First, DEQMO appeared to have made a registration with itself as both grantor and secured party, and the court held that a person or company could not give a security interest to itself. Second, DEQMO had adduced no evidence of a security interest granted to it by Elite, and Mr Culleton would not have been in a position to procure Elite to grant a security interest after it had gone into liquidation. The court granted the relief requested by Macquarie, including orders directing DEMQO and Mr Culleton not to make further registrations.
Macquarie Leasing Pty Ltd v Registrar of Personal Property Securities	**[2014] NSWSC 1677** Stevenson J	In earlier proceedings, Rein J of the NSWSC had declared a security interest claimed by a bankrupt individual in a truck to be void, and ordered him not to make further registrations in respect of the truck, for himself or on behalf of others, without leave of the court. Moments before judgment in those earlier proceedings was delivered, two companies associated with him made further registrations in respect of the truck. Stevenson J found that the companies had no security interest, and that the individual had no reasonable belief that they had one. He declared that the registered security interests [not 'the registrations'] were void, and ordered the Registrar to remove them under s182(4)(a) and 184(1)(e)(ii) and reg 5.10(2).
Macquarie Leasing Pty Ltd v Registrar of Personal Property Securities	**[2015] NSWSC 94** McDougall J	Despite previous orders in *Macquarie Leasing Pty Ltd v Registrar of Personal Property* Securities [2014] NSWSC 1677 and other proceedings, entities associated with the grantor of a security interest in a truck held by Macquarie Leasing continued to make unjustified registrations in an attempt to frustrate enforcement by Macquarie Leasing. The court ordered the Registrar to remove the further registrations that had been made, and also made orders (in terms agreed between Macquarie Leasing and the Registrar) for removal of any further registrations that might be made in relation to the truck.
Maiden Civil (P&E) Pty Ltd, Re ***Attachment; transitional security interests; not***	**[2013] NSWSC 852** Brereton J	Maiden leased earth moving vehicles from QES, and granted a general security deed to Fast. QES did not make a registration; Fast did. Fast appointed receivers, who claimed possession of the vehicles in priority of QES, their owner. Maiden also went into administration and liquidation. The court upheld Fast's claim. The court noted s19(5) and held that Fast's interest was a security interest which attached to the vehicles, not merely

Case	Citation, judges	Comments
registered on pre-PPSA register		to Maiden's leasehold interest in them. As Fast's interest was perfected while Maiden's was not, Fast's interest had priority under s55(3). Further, upon Maiden's administration and liquidation, QES's unperfected security interest vested in Maiden. Even though the lease of the vehicles to Maiden had been terminated, s112 (which provides that a secured party may deal with collateral only to the same extent as the grantor) did not, properly construed in the context of the PPSA as a whole, affect the position that Fast's security interest entitled it to possession. Section 112 is not intended, as between competing security interests, to reinstate the *nemo dat* rule. In any case, s112 only limits exercise of rights and remedies under Chapter 4, and Fast was exercising rights and remedies under the security agreement rather than Chapter 4. Even though QES's security interests arose before the registration commencement date under the PPSA, they were not temporarily perfected as transitional security interests, because they could have been but had not been registered on the NT motor vehicle securities register: s322(3). Finally, QES sought to argue in reliance on s238(3) that the vehicles were 'goods of a kind normally used in more than one jurisdiction' and accordingly the relevant place for considering whether there had been an appropriate registration on a pre-PPSA register was not the NT (where the vehicles were used) but rather Queensland (where Maiden was located). The court rejected this argument for several reasons. including: • that 'jurisdiction' in s238 did not refer to State or Territory jurisdictions, but rather to Australian or foreign jurisdictions; and • that earth moving vehicles were not goods of a kind *normally* used in more than one State or Territory, even if these particular ones may have been used in that way. This was the first major reported PPSA case. It is important for several reasons, including demonstrating a complete acceptance of the fundamental PPSA principle that priority is determined in accordance with the PPSA rules regardless of title.
Malt Supper Club Pty Ltd, Re	**[2017] FCA 837** Gilmour J	The liquidator of Malt Supper Club entered into a contract for sale of its business. The agreement was subject to a condition precedent that Zhenya Holdings Pty Ltd, a secured creditor, removed its PPS registration. Zhenya was unwilling to do so without assurance that it would be paid as a secured creditor in the liquidation. The court declared that Zhenya was entitled to be paid as a secured creditor, and ordered it to remove the registration and not make another one.
Manormay Investments Pty Ltd, Re	**[2013] VSC 260** Robson J	Two directors of Manormay procured it to grant security interests in favour of another company associated with themselves, in breach of their duties as directors. The court declared the security interests to be void, and ordered the Registrar to remove the registrations of the security interests under s184(1)(e)(ii) and reg 5.10(2).
Maroni v Reid	**[2016] WADC 88** Principal Registrar Melville	Maroni leased a farm to the Reids. He claimed that the Reids had encumbered their crop in breach of the lease, producing as evidence PPSR search certificates bearing statements that they were provided under s174. The court considered that the search certificates, representing themselves as issued under s174, 'purported to be' issued by the Registrar for the purposes of s174(3), and accordingly were admissible as proof that the secured parties had an

Case	Citation, judges	Comments
		interest secured by the stated collateral. (Interestingly, the court did not use narrower language of accepting them merely as proof that a registration had been made, in respect of a security interest that might or might not exist.)
Matrix Group Ltd v Oates	**[2018] FCA 22** Gleeson J	Oates had provided litigation funding to the liquidator of Matrix, to pursue claims against a former director. The litigation funding agreement provided for assignment of proceeds of resolution of claims to Oates 'as Consideration for the financing of the Claims'. The funding ran out without claims having been resolved. Oates sought leave under *Corporations Act* s471B to proceed against Matrix and its liquidator on various grounds. The court refused leave. Oates also argued that leave was not required under s471C, which provides an exception for a secured creditor's right to realise or otherwise deal with a security interest. The court found it unnecessary to decide whether the assignment provision in the litigation funding agreement created a security interest under the PPSA. Even if it did, the court said, Oates was not seeking to 'realise or otherwise deal with' the security interest.
MCCA Asset Management Limited v Kamata Homes Pty Ltd	**[2019] VSC 512** McDonald J	Kamata, a company in administration, proposed to enter into a Deed of Company Arrangement. MCCA, a creditor, objected to the DOCA, and sought to restrain its implementation, pending a full hearing at which it could seek its termination. One of MCCA's objections concerned security to be granted to creditors by two companies. Creditors had been told they would be granted real property security, but the DOCA itself referred to security over fixed and floating assets in a form registrable on the PPSR. MCCA argued these statements were inconsistent, as real property security was not capable of supporting a PPSR registration. Creditors had also not been told that the companies were in the process of selling all their real property. The court agreed to restrain implementation of the DOCA to allow full consideration of whether the statement about real property security (among others) was misleading, both because the DOCA terms referring to PPSR-registrable security arguably did not contemplate real property security, and because of lack of disclosure about the proposed sales.
McCann v QHT Investments Pty Ltd	**[2018] FCA 1986** Derrington J	QHT and Walton Construction (Qld) Pty Ltd, of which McCann and others were liquidators, had entered into a deed of assignment under which Walton Qld assigned a debt to QHT for less than its value. The court held this to be a voidable transaction. The deed of assignment contained a condition subsequent that required a release from the holder of any perfected security interest over the assigned debt. QHT had paid the purchase price for the debt to a stakeholder who then, on request from the administrator of Walton Qld, paid it to Walton Qld. QHT argued that National Australia Bank Limited held a perfected security interest over the debt; that the administrator of Walton Qld, by requesting payment from the stakeholder, had waived the condition subsequent; and that this was an act by an administrator in good faith which, under *Corporations Act* s451C, meant the transaction could not be avoided. The court disagreed. Among other reasons, NAB's perfection of its security interest had occurred more than 20 business days after the grant of the security interest and less than 6 months before administration, and so the security interest had vested in Walton Qld under *Corporations Act* s588FL by virtue of the administration. Accordingly there was no perfected security interest in the debt, and thus no room for the condition subsequent to operate.

Case	Citation, judges	Comments
Mehajer Brothers Pty Limited, Re ***Extension of time***	**[2017] NSWSC 1852** Brereton J	Application by BMW Australia Finance Limited under s293(1)(a) to extend the 15 business day period under s62(3)(b) for PMSI registrations for four security interests granted by Mehajer, and also under *Corporations Act* s588FM to fix a later time for registration. There had been errors both in failure to make PMSI registrations, and in registration against trust company ACNs rather than trust ABNs. The court noted that different tests applied. Under s293(1), the court had to be satisfied that an extension was just and equitable, taking into account three factors: (1) whether the need to extend arose from accident or inadvertence; (2) whether the extension would prejudice other secured parties or creditors; and (3) whether any person had acted in reliance on the end of the period for registration. Whereas s588FM allowed the court to grant an extension if any one of three grounds were satisfied: (1) failure to register was accidental or inadvertent; (2) the failure (as opposed to the extension) would not prejudice creditors or shareholders; or (3) it was otherwise just and equitable. Under s293(1)(a), the court was satisfied that it was just and equitable to extend the period for two of the security interests (and so made the requested order), but not the two. The court took into account that it had not received evidence (and therefore was not satisfied) that the failure to make proper registrations for those two security interests was due to inadvertence; and that another secured creditor (who opposed the extension) would be prejudiced by the extensions and had relied on the end of the period for registration. 'Reliance' did not require the secured creditor to show that but for the state of the register it would not have extended credit; it was sufficient to establish a general practice of reviewing and considering registrations. Whereas under s588FM, the court was prepared to grant the order for all four security interests. In the case of two, inadvertence had been established. For the other two, the court was satisfied that other creditors were unlikely to be prejudiced.
Momcilovic v The Queen ***The High Court refers to the PPSA … in footnote no 708***	**[2011] HCA 34** French CJ, Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ	For at least the first 5 years after enactment of the PPSA, including the first 3 years of full operation, this case was still, perhaps, the only reported High Court case referring to the PPSA. Unfortunately the reference is inconsequential The case concerned an appeal by Ms Momcilovic against a conviction for drug trafficking. She had been convicted under a Victorian law which reversed the onus of proof on questions of possession. She argued that this was contrary to the *Charter of Human Rights and Responsibilities Act 2006* (Vic), and also inconsistent with the *Criminal Code 1995* (Cth) and therefore rendered inoperative by s109 of the *Constitution*. The court by majority allowed Ms Momcilovic's appeal, finding – as a matter of interpretation of the Victorian law – that the provision reversing the onus of proof did not apply to the offence of which she had been convicted. The majority of the court, including French CH, *rejected* the argument that the Victorian law was inconsistent with the Commonwealth *Criminal Code*, for a variety of reasons. The reference to the PPSA is found in French CJ's judgment, in a passage dealing with the inconsistency argument. French CJ first found that the Victorian law was not *directly* inconsistent with the Commonwealth law, and then had to consider whether it was inconsistent on grounds that the Commonwealth law *covered the field*. For this purpose he considered whether a provision in the Commonwealth law stating that it 'is not intended to exclude or limit the operation of' a State law was effective to prevent the implication that the Commonwealth law covered the field.

Case	Citation, judges	Comments
		He held that it was, noting that a similar provision had previously been found effective for that purpose in *R v Credit Tribunal* (1977) 137 CLR 545, and also that it was a common formulation used in numerous current Commonwealth statutes listed in a footnote – including s254 of the PPSA.
Morris Finance Ltd v Free	**[2017] NSWSC 1417** Ward CJ in Eq	Mr Brown leased goods from Morris Finance. The lease contained an ambiguous charging clause which Morris Finance argued applied to land owned by Brown. Free (Brown's trustee in bankruptcy) argued (among other things) that the charging clause only applied to the goods. The court agreed with Morris Finance. Free's argument that the clause applied only to the goods was dismissed mainly on textual grounds. Free had argued that the PPSA (presumably, the concept of a lessor being a secured party) helped overcome arguments that it was 'absurd' to treat Morris Fletcher as taking a charge over goods owned by itself. The court did not find that submission helpful.
National Australia Bank Ltd v Garrett	**[2016] FCA 714** Beach J	In court proceedings between companies associated with Mr Garrett and NAB, NAB gave an undertaking as to damages (that is, an undertaking to abide by any order as to damages that the court may make). Mr Garrett then drew up a deed of security in his favour for the undertaking, and emailed it to NAB. NAB did not sign it, but Mr Garrett registered a financing statement claiming a security interest over all NAB's assets, and also purported to appoint himself 'managing controller' of NAB pursuant to his security interest. The court held that an undertaking as to damages was not a security interest, and (unsurprisingly) NAB was not bound by the security deed it had not signed. The court ordered the removal of the financing statement, and also that Mr Garrett be restrained from acting as 'managing controller' of NAB. See also *Treasury Wine Estates Vintners Ltd v Garrett* [2016] FCA 715, a case with similar facts.
NCO Finance Australia Pty Ltd v Australian Pacific Airports (Melbourne) Pty Ltd	**[2013] FCCA 2274** Judge O'Dwyer	NCO Finance had a security interest, perfected by registration, over a motor vehicle. The vehicle had been left in the Melbourne Airport car park, and the parking terms expressly gave Melbourne Airport a possessory lien over the vehicle to secure accrued parking fees. This was a consensual lien (not a general law lien which would have been excluded from the PPSA by s8(1)(c)), and was perfected by possession. Both security interests were transitional, and so priority was to be determined under pre-PPSA law: s323. Melbourne Airport's lien prevailed, under former s10(4) of the *Chattel Securities Act 1987* (Vic), which gave priority to a 'repairer's lien' ahead of an interest registered on the vehicle securities register. 'Repairer's lien' was broadly defined to include security for payment for services or materials furnished in respect of goods: this was broad enough to capture a lien for parking charges.
NFT Specialized in Tower Cranes LLC v Machforce Pty Ltd ***PPS leases; extension of time***	**[2017] WASC 95** Acting Master Strk	NFT leased cranes to Machforce, but failed to make PPSR registrations. Machforce went into liquidation. The rental agreements provided for 12 month rental periods but, if measured from the date of the agreements, had extended for more than 12 months. NFT argued that the leases only commenced from the date specified for first payment of rent (which was after the date of the agreements), but the court disagreed, considering that the leases began at the date of the agreements even though rent did not become payable until later, and found them to be PPS leases under s13(1)(d). NFT also argued that it had terminated the leases before liquidation, but the court found that NFT's behaviour had not amounted to a termination. As NFT had not perfected its security interests, they vested in

Case	Citation, judges	Comments
		the liquidator. NFT further applied under *Corporations Act* s588FM to fix a later time for registration. The court declined, noting that the security interests vested under s267, not *Corporations Act* s588FL, and so vesting could not be avoided under s588FM. Even if it could, the court would not be satisfied that failure to register arose from inadvertence, noting that NFT had been advised of the need to register
O'Keeffe Heneghan Pty Ltd, Re ***Perfection by control over ADI account***	**[2018] NSWSC 1958** Black J	O'Keeffe Heneghan, Aus Life Pty Ltd and Rocky Neill Construction Pty Ltd carried on business as a partnership. The partnership transferred funds from its partnership account with Commonwealth Bank of Australia to an account in Rocky Neill's name, and then to an offshore account. The companies went into liquidation, and the offshore money was recovered, and held by the liquidators of Rocky Neill. IFG Network Australia Pty Ltd held security over all assets of the partnership and its constituent companies, and had perfected that security by registration. CBA also held security over all assets of the partnership and its constituent companies, and had perfected its security by registration against the companies, but not the partnership. The court held that the funds transfer from the partnership to Rocky Neill was in breach of the fiduciary duties owed by the companies to the partnership, and by the directors of the partnership. Accordingly, the funds in Rocky Neill's hands were held on constructive trust for the partnership. Both IFG and CBA claimed priority over the partnership's entitlements to the funds. The court held that CBA prevailed. CBA's security subsisted over funds in a bank account with itself: s12(4). When funds were in the bank account, CBA's security had priority by virtue of CBA's control under s25, despite its lack of registration against the partnership. The definition of 'control' in s341A was irrelevant for determining that control subsisted under s25. The funds had been withdrawn from the CBA account, but this was in breach of CBA's security, and CBA's security continued in the funds in Rocky Neill's hands as proceeds: ss 31 and 32. The court rejected arguments that the existence of a constructive trust over the funds meant that s8(1)(c) disapplied the PPSA: that section meant that the constructive trust did not require perfection to be effective, but did not prevent it being collateral that was subject to a security interest. And, said the court, CBA's perfection by control over the funds in the partnership's CBA account, and resulting priority, continued despite the transfer of funds out of the account, at least in the present circumstances where the funds were held on trust for the partnership and the court could order their repayment to the partnership. In *Re O'Keeffe Heneghan Pty Ltd* [2019] NSWSC 106, the court discussed the appropriate form of order to give effect to CBA's priority, and made the order, but without further discussion of the PPSA issues.
O'Keeffe Heneghan Pty Ltd, Re ***Perfection by control over ADI account***	**[2018] NSWSC 1958** Black J	O'Keeffe Heneghan, Aus Life Pty Ltd and Rocky Neill Construction Pty Ltd carried on business as a partnership. The partnership transferred funds from its partnership account with Commonwealth Bank of Australia to an account in Rocky Neill's name, and then to an offshore account. The companies went into liquidation, and the offshore money was recovered, and held by the liquidators of Rocky Neill. IFG Network Australia Pty Ltd held security over all assets of the partnership and its constituent companies, and had perfected that security by registration. CBA also held security over all assets of the partnership and its constituent

Case	Citation, judges	Comments
		companies, and had perfected its security by registration against the companies, but not the partnership. The court held that the funds transfer from the partnership to Rocky Neill was in breach of the fiduciary duties owed by the companies to the partnership, and by the directors of the partnership. Accordingly, the funds in Rocky Neill's hands were held on constructive trust for the partnership. Both IFG and CBA claimed priority over the partnership's entitlements to the funds. The court held that CBA prevailed. CBA's security subsisted over funds in a bank account with itself: s12(4). When funds were in the bank account, CBA's security had priority by virtue of CBA's control under s25, despite its lack of registration against the partnership. The definition of 'control' in s341A was irrelevant for determining that control subsisted under s25. The funds had been withdrawn from the CBA account, but this was in breach of CBA's security, and CBA's security continued in the funds in Rocky Neill's hands as proceeds: ss 31 and 32. The court rejected arguments that the existence of a constructive trust over the funds meant that s8(1)(c) disapplied the PPSA: that section meant that the constructive trust did not require perfection to be effective, but did not prevent it being collateral that was subject to a security interest. And, said the court, CBA's perfection by control over the funds in the partnership's CBA account, and resulting priority, continued despite the transfer of funds out of the account, at least in the present circumstances where the funds were held on trust for the partnership and the court could order their repayment to the partnership.
OneSteel Manufacturing Pty Limited, Re ***Defective registrations – ABNs*** ***Extension of time*** ***Constitutional validity***	**[2017] NSWSC 21** Brereton J	Alleasing Pty Limited leased equipment to OneSteel, and made PPSR registrations by reference to OneSteel's ABN rather than its ACN. OneSteel went into administration. The court held that Alleasing's interests had vested in OneSteel. The registrations were defective as they were not made against the ACN, and the defect rendered the registrations ineffective under s165(b), as they could not have been discovered by a search against the ACN. The court also considered them ineffective as 'seriously misleading' under s164(1)(a). It was irrelevant that the administrators in fact had discovered them by a search against the ABN. The court also dismissed Alleasing's arguments that vesting gave rise to an acquisition of property other than on just terms contrary to s51(xxxi) of the Constitution, consistently with *White v Spiers Earthworks Pty Ltd* [2014] WASC 139, and also noting that vesting under s267 did not involve the grantor taking property of the secured party but, rather, the consequence of an incident to which all PPS leases were subject. Finally, Alleasing applied under *Corporations Act* s588FM to fix a later time for registration. The court refused. An extension under s 588FM could only save a security interest from vesting under s588FL where registration occurred after the time required by s588FL(2)(b) but before the 'critical time' at which administrators were appointed, not (as had occurred here) where registration had not occurred at all by the critical time. And it could only save a security interest from vesting under s588FL, not (as had occurred here) from vesting under s267 of the PPSA.
Overflow FNQ Pty Ltd, Re	**[2017] QSC 76** Henry J	Austwide Consumer Products Pty Ltd made a PPSR registration, in respect of a security interest granted by Overflow, at 5.18pm on 10 November 2015. Overflow went into administration at 8am on 10 May 2016, and then into liquidation. The court had to consider whether the registration was made after the time 6 months before the commencement of

Case	Citation, judges	Comments
		administration. Considering provisions in both the *Corporations Act* and *Acts Interpretation Act 1901 (Cth)*, which said that the final day of a time period was not counted, the court found that the 6 month period began at midnight at the beginning of 10 November 2015. Thus, the registration was too late; and the security interest vested in the liquidator under *Corporations Act* s588FL. Alternatively (though the parties did not argue this), the time period could be calculated by reference to the precise time of day (having regard to the 'registration time' referred to in s160(1)). On that basis, because registration occurred after 8am on 10 November 2015 (that is, 6 months before 8am on 10 May 2016), it was still out of time.
P Twin Holdings Pty Ltd v SG Old Pty Ltd ***Professional negligence***	**[2017] WADC 77** Goetze DCJ	Foxrov Pty Ltd borrowed money from P Twin to purchase equipment, and agreed to grant security over it. SG Old (lawyers, trading as Capital Legal) acted for P Twin in preparing the security agreement. After preparing the documents (but more than 15 days after Foxrov obtained possession) Capital Legal sought instructions, several times, about registration, but did not receive them. Foxrov delayed in signing the security agreement for some months, then finally signed and promptly on-sold the equipment. Capital Legal then made a registration. Later Foxrov went into liquidation. P Twin claimed against Capital Legal for negligence and breach of contract, in not making a registration before the agreement was signed. Because the registration was not made within 15 days of Foxrov obtaining possession, P Twin could not obtain PMSI priority. And because it was not made before Foxrov on-sold the equipment, the purchaser took free of the security. The court held that Capital Legal had been negligent and/or in breach of its contractual duty, in failing to make a registration or advise of the urgent need to do so. Capital Legal argued that P Twin had been contributorily negligent in failing to make a registration itself or instructing Capital Legal to do so. The court rejected this, noting that P Twin had been led by Capital Legal into believing, wrongly, that the registration could not be made until the agreement had been signed.
Paladin Energy Ltd, Re ***Extension of time for security granted in administration***	**[2017] FCA 836** Barker J	Application by administrators of Paladin and related companies under *Corporations Act* s588FM to fix a later time for registration in respect of security interests granted by Paladin to Deutsche Bank AG, where the security interests were granted after administration had commenced. The court granted the order, noting that securities granted after administration would vest automatically under s588FL in the absence of an order, and finding it just and equitable (s588FM(1)(b)) to do so and accepting that it was in the best interests of the companies.
Parbery v QNI Metals Pty Ltd	**[2018] QSC 107** Bond J	Application by Parbery, as liquidator of Queensland Nickel Pty Ltd, for freezing orders against QNI Metals, other companies controlled by Clive Palmer, and Mr Palmer himself. The court granted the orders, being satisfied that there was a 'real risk' that defendants could take action to frustrate a judgment by disposing of assets. Among many other arguments, the defendants contended that the existence of security interests over their assets, with PPSR Registrations, would prevent an improper disposal of assets (and so there was no need for the orders). The court did not accept the contention. Alternatively, if the contention were correct, then there should be no objection to granting the orders as they would only be restricting actions that the defendants contended they were unable to take.

Case	Citation, judges	Comments
Perdaman Chemicals and Fertilisers Pty Ltd v The Griffin Coal Mining Company Pty Ltd (No 7)	**[2012] WASC 502** Edelman J	Perdaman was suing Griffin Coal because, it said, Griffin Coal had breached a coal supply agreement between them, causing the collapse of Perdaman's proposed project for construction of a fertiliser plant. The Griffin companies were in financial difficulties. Griffin Coal proposed to grant security over its assets to ICICI Bank Limited, which ICICI required as a condition to consenting to a sale of power stations by other Griffin companies. Griffin Coal had previously granted security to Perdaman, to secure step-in obligations under the coal supply agreement. The step-in security had been perfected by registration under the PPSA Perdaman sought an injunction to prevent the grant of the new security to ICICI on two grounds: • interference with its rights as a 'contingent creditor' as a result of the litigation, and • interference with its rights under the security Griffin Coal had granted to it. The court was not willing to grant an injunction preventing the grant of security altogether. Perdaman had not established that the security, considered together with the benefits that the power sale transaction would bring, would prejudice its position in respect of the litigation, even if it were ultimately to be successful. Nor had Perdaman established interference with its rights under the security held by it – in particular, the court noted that Perdaman was protected by its registration under the PPSA. And the balance of convenience did not favour the injunction, noting the prejudice that would be suffered by various parties if the power station sale did not proceed. Griffin Coal offered a limited injunction on terms which capped the secured obligation due to ICICI, and expressly preserved Perdaman's rights (if any) under its security. The court agreed to grant that injunction.
Plantation Outdoor Kitchens Pty Ltd, Re ***Taking free of security interests***	**[2019] NSWSC 925** Ward CJ in Eq	Plantation went into voluntary administration, and then liquidation. Plantation's warehouse held goods that had been paid for but not yet delivered. Some were subject to suppliers' retention of title security interests. The warehouse owner claimed a lien for storage costs. The liquidator claimed a lien for costs incurred in identifying, preserving and distributing the goods. The court held that stock in the warehouse labelled with customers' details had been appropriated to those customers in a manner sufficient for property to pass under the *Sale of Goods Act 1923* (NSW). Title to this stock passed to the customers free of the suppliers' security interests under s46 (the court noting that the sales had taken place before Plantation's administration and so no question arose whether they had been in the ordinary course of business) or alternatively, in the case of sales for $5000 or less, under s47. That title was, however, subject to the warehouse owner's and liquidator's liens, for which the liquidator was entitled to require payment of a levy as a precondition to delivery.
Pluton Resources Ltd, Re ***Meaning of 'security interest': consensual***	**[2017] WASC 142** Master Sanderson	Under a Deed of Company Arrangement for Pluton, a fund had been created to be applied for specified purposes. On termination of the DOCA, some of the fund remained. Pluton had granted security over all its assets to General Nice Recursos Comercial Offshore De Macau Limitada, which appointed receivers. GNR's receivers argued that the fund was subject to the security interest. The court held, relying on *Dura (Australia) Constructions Pty Ltd v Hue Boutique Living Pty Ltd* [2014] VSCA 326 (where the court held that a security interest arising by deposit of funds into court arose under general law, and so under s8(1)(c) the PPSA did not apply), that the fund arose by operation of law and not by a consensual transaction,

Case	Citation, judges	Comments
		and so GNR's security interest did not apply to it. This decision was overturned in *Hughes v Pluton Resources Ltd* [2017] WASCA 213.
Porter Equipment Australia Pty Ltd v Barton Ventures Pty Ltd	**[2017] QDC 299** McGill SC DCJ	Porter sold equipment on retention of title terms to Tyremil Pty Ltd, and registered its interest under the PPSA. The equipment was on land owned by Barton, and was in the possession of Di Carlo, a person associated with Tyremil. Tyremil failed to pay the purchase price for the equipment and went in liquidation. The liquidator did not oppose return of the equipment, but Di Carlo refused to return it. The court ordered Di Carlo to return the equipment. There was no written contract for the sale. Porter had sent Tyremil an unexecuted contract, containing a term providing that it would not bind Porter until signed by it. But the court was prepared to construe this as an offer by Porter, accepted by Tyremil's conduct in accepting delivery of the equipment. Alternatively, Porter had made it clear that it was only prepared to deal on retention of title terms. In either case, there was sufficient evidence of intention to displace the prima facie *Sale of Goods Act* implication of immediate transfer of title. Not having transferred title to Tyremil, Porter was entitled to possession of the equipment as against a third party such as Di Carlo. And, said the court, Porter was entitled to seize the equipment under s123, on the basis of Tyremil's default.
Porter Equipment Australia Pty Ltd v Barton Ventures Pty Ltd	**[2018] QDC 87** Moynihan QC DCJ	In *Porter Equipment Australia Pty Ltd v Barton Ventures Pty Ltd* [2017] QDC 299, Porter had sought and obtained orders that it was entitled to possession of equipment subject to a security interest, and entitled to seize it under s123. Porter had sold the equipment on retention of title terms to Tyremil Pty Ltd, and registered its interest under the PPSA. The equipment was on land owned by Barton, and was in the possession of Di Carlo, a person associated with Tyremil. Tyremil had failed to pay the purchase price for the equipment and gone in liquidation. The liquidator had not opposed return of the equipment, but Di Carlo refused to return it. The court had ordered Di Carlo to do so. Due to the (undescribed) fault of Porter, those orders were set aside. By new orders, the court again declared that Porter was entitled to the equipment, and that Di Carlo must return it, or alternatively that Porter was entitled to seize it under s123.
Power Rental Op Co Australia, LLC v Forge Group Power Pty Ltd ***Fixtures***	**[2017] NSWCA 8** Bathurst CJ, Beazley P and Ward JA	GE leased turbines to Forge, and GE failed to perfect its interest by making a registration under the PPSA. Power Rental later replaced GE as lessor. Forge went into voluntary administration, then liquidation. At first instance the court held that the lease vested in Forge on administration under s267, and so it acquired title to the turbines: *Forge Group Power Pty Limited v General Electric International Inc* [2016] NSWSC 52. Power Rental (in GE's place) appealed, arguing that the turbines were 'fixtures' and so outside the scope of the PPSA. The court rejected the appeal, holding that: • the first instance decision was correct in holding that the definition of 'fixtures' in the PPSA aligned with the common law meaning of 'fixtures', requiring a determination of both the *degree* of annexation of an item to the land, and the *purpose* of annexation; and • the first instance decision also correctly applied the common law test, finding that the turbines were not

Case	Citation, judges	Comments
		fixtures.
Pozzebon v Australian Gaming and Entertainment Ltd	**[2014] FCA 1034** Collier J	Pozzebon took a general security agreement from Australian Gaming and Entertainment, but did not make a registration until after the 20 business day period in s588FL of the *Corporations Act* had expired. Australian Gaming and Entertainment went into voluntary administration a week after the registration was made, and then a few weeks later into liquidation. The liquidator contended that the security interest had vested under s588FL. Pozzebon argued that the security interest had not been 'perfected by registration, and by no other means' as required by s588FL: rather, it had been perfected by a combination of attachment, enforceability and effective registration. The court said that Pozzebon's argument was obviously misconceived, and that the reference in s588FL to registration as the means of perfection meant registration as opposed to possession, control or temporary perfection. Pozzebon's application for a declaration that the security interest had not vested was refused.
Prentice v Pitt ***Possible charge claim not pursued because unperfected – but did PPSA actually apply?***	**[2015] NSWSC 262** Rein J	Nicole Marjoribanks bought a property with her parents, Mr and Mrs Pitt, Nicole holding a 50% interest and the parents jointly holding the other 50%. Nicole borrowed her half of the purchase price from a bank, while her parents paid cash for their half. But the bank required a mortgage over the whole property, and the parents agreed to join in granting it. Nicole and the Pitts entered into a co-owners Deed, in which they agreed that if the property was sold, the mortgage should be discharged from Nicole's half of the sale proceeds. Nicole went into bankruptcy. Prentice, her trustee in bankruptcy, sought to sell the property. Prentice said that full sale proceeds should be applied to pay out the mortgage, and he (as trustee) would take half of the balance, leaving the Pitts to claim against the bankrupt estate. The Pitts said that the mortgage should be discharged from Nicole's half of the proceeds. The court agreed with the Pitts. They were effectively sureties for Nicole's debt, and as such were entitled to a right of exoneration, meaning amounts received by Prentice were subject to the Pitts' equity and should be paid over to them, with the mortgage debt being discharged first from Nicole's half share of the proceeds. From a PPSA perspective, the court noted that the Pitts might also have had a claim based on a charge arising under the Deed, but had not pursued this claim as it would have been defeated by the PPSA. Although the argument was not pursued (and didn't need to be, as the Pitts won on the exoneration point), it might be queried whether the Pitts needed to concede this point. Presumably it would have been argued that the Deed created a charge over the sale proceeds, to secure the promise to apply them in discharge of the mortgage debt. Would this really have been a charge that vested in Prentice for want of perfection? Possibly the Pitts could have argued that it was outside the scope of the PPSA under s8(1)(f)(ii): 'the creation of an interest in a right to payment [the sale proceeds] … in connection with an interest in land'.
Production Printing (Aust) Pty Ltd, Re ***Extension of time***	**[2017] NSWSC 505** Black J	Application by HP Financial Services (Australia) Pty Ltd under *Corporations Act* s588FM to fix a later time for registration in respect of a security interest granted by Production Printing, where HP had incorrectly registered against Production Printing's ABN rather than its ACN. In addition to the arguments raised in *Re OneSteel Manufacturing Pty Ltd* [2017] NSWSC 21 (which were rejected,

Case	Citation, judges	Comments
		following that case), HP argued that its defective registration was temporarily perfected under s166 until 5 business days after it became aware of the defect. The court disagreed. Section 166 provided protection where defects that arose after an initially correct registration, not for registrations that were always defective. And the requirement of s166(b) – that the defect was attributable to something other than the defective registration itself – was not satisfied.
Psyche Holdings Pty Limited, Re ***Extension of time***	**[2018] NSWSC 1254** Ward CJ in Eq	Application by Ridgeway Finance Pty Limited under *Corporations Act* s588FM to fix a later time for registration in respect of a security interest granted by Psyche as trustee of a trust. When the security interest was granted, no ABN had been issued for the trust, and a registration was made against Psyche's ACN. Later, an ABN was issued, but Psyche did not update the registration within 5 business days (as required by s166) due to not being aware of the significance of the ABN. The court was satisfied that the failure was due to accident or inadvertence, and granted the order, but reserving the right of insolvency administrators to apply to discharge if insolvency occurred within 6 months.
Quality Blended Liquor Pty Ltd, Re ***Extension of time***	**[2014] QSC 234** Alan Wilson J	Quality Blended Liquor granted a security interest to Toyco Australia Pty Ltd, which very quickly enforced it by appointing a controller. QBL challenged various matters concerning the execution of the documents and their validity and enforcement, and the case report is mostly concerned with setting directions for trial. There was also an application under *Corporations Act* s588FM to fix a later time for registration in respect of the security interests, as registration had been made 11 days late due to lawyer error. The court granted the order, noting the short period of delay and that no evidence had been brought suggesting any creditor would suffer hardship. Unlike many of the other cases under s588FM, no conditions were imposed. The court also considered, but rejected, an argument that s588FM was only applicable where s588FL (vesting due to late registration) applied, and said the sections operated independently.
Queensland v David Oriel Industries Pty Ltd	**[2019] QSC 191** Lyons SJA	The State of Queensland sought liquidation of David Oriel, a company in administration. The administrators sought more time to continue investigations, and to consider a proposed DOCA. David Oriel's assets were subject to a general security agreement in favour of a secured creditor. Under the proposed DOCA, the secured creditor would provide funds towards unsecured claims, but its practical ability to do so arguably depended on its recoveries under its security agreement. One of the State's grounds was that the administrators were wrongly including a mining lease, and a stockpile of sand, in the assets available to the secured creditor. The State said the mining lease was outside the security agreement because under s3C of the *Mineral Resources Act 1989* (Qld) the mining lease was not 'personal property' for PPSA purposes, and that the sand was also outside the security agreement's scope as it was not a mineral that the mining lease authorised the holder to take. The court found it unnecessary to express a concluded view on these points, but agreed to allow the administrator time to continue investigations.
Reliance Financial Services Pty Ltd v Allyma Express Holdings Pty Ltd	**[2018] NSWSC 1163** McDougall J	Reliance sought orders against Allyma and other defendants for delivery of motor vehicles subject to security interests perfected by registration. The court was satisfied that the relevant secured loans were in default, and granted the orders. In doing so, the court noted that there was power to order delivery of personal property in aid of both legal rights and equitable rights. The relevant security interests in this case appeared to create equitable rights.

Case	Citation, judges	Comments
Relux Commercial Pty Ltd v Doka Formwork Pty Ltd ***Attachment; acceptance of security agreement by conduct***	**[2014] VSC 570** Sifris J	Doka leased formwork equipment to Relux for an indefinite period, continuing until the equipment was returned. Some of the leases commenced more than 20 business days before registration occurred. Relux went into liquidation, and the liquidators sought a declaration that vesting had occurred under s588 FL of the *Corporations Act*. Doka agreed to abide by the outcome of the proceedings but did not significantly participate. The court held that the leases were PPS leases and those that commenced outside the 20 business day period vested in Relux. The court examined each step of attachment, enforceability and perfection. For purposes of attachment, the court held that Doka gave 'value' when it gave the equipment to Relux, and further that Relux 'performed an act giving rise to the lease' by accepting and retaining possession of the equipment. The relevant security agreements were constituted by orders placed by Relux, and invoices issued by Doka with terms and conditions printed on the back. The court held that the order forms constituted writing signed by the grantor (Relux), or alternatively that Relux had accepted the security agreement by its conduct of taking delivery of, using and retaining the equipment. (Comment: although the court found two methods of satisfying the requirement for a security agreement, the case may serve as an example of printed invoice terms being acceptable to satisfy the requirement, even where nothing has been signed by the grantor.)
Renovation Boys Pty Ltd, Re ***Taking free of security interests; interaction with sale of goods laws***	**[2014] NSWSC 340** Black J	Administrators of Renovation Boys sought directions on how to deal with stock in the company's warehouse. The stock which raised a PPSA question had been: • supplied to Renovation Boys on retention of title terms, with the suppliers having perfected their interests by registration; • contracted to be sold by Renovation Boys to customers, and paid for in full by the customers; and • allocated by description to the customers in the Renovation Boys computer system, but not yet delivered to them. The court held that the allocation of goods on the computer system, coupled with the customers' payment for them and the terms of the sale contracts, was enough for property to have passed under ss21-23 of the *Sale of Goods Act 1923* (NSW). Under s46 (sales in ordinary course of business), or alternatively s47 (sales under $5,000), the customers took free of the retention of title suppliers' security interests. The court also held that the administrators were entitled to exercise an equitable lien over the goods to recover their costs in identifying or preserving them, and so could require a contribution from customers collecting their goods (even though they had already been paid for).
Renovation Boys Pty Ltd, Re (No 2)	**[2014] NSWSC 354** Black J	In *Re Renovation Boys Pty Ltd* [2014] NSWSC 340, the court had held that the administrators had an equitable lien over goods sold by Renovation Boys to customers but not yet delivered to them, to meet costs in identifying and preserving the goods. The court clarified that the administrators' equitable lien also applied to goods supplied on retention of title terms and not sold to customers, which were to be reclaimed by the ROT suppliers. The equitable lien had priority over the

Case	Citation, judges	Comments
		retention of title claims, as it would be unconscientious of the ROT suppliers to take property without recognising the efforts of the administrators in identifying and preserving the property to enable them to do so. The court did not refer to the PPSA in determining the priority of the lien.
RG Murch Nominees Pty Ltd v Annesley	**[2019] VSC 107** Sloss J	RG Murch bought land from ANZ, which sold as mortgagee in possession from a company controlled by Mr Annesley. Mr Annesley arranged for another company controlled by him to register a financing statement claiming a security interest in all property of RG Murch, including the land, and purported to appoint himself controller over all its property. There was no evidence before the court that RG Murch had granted a security interest (or entered into any other consensual transaction with the Annesley parties). The court ordered removal of the registration under s182(4)(a), and restrained the Annesley parties from making further registrations without the court's leave.
Rubis v Garrett	**[2018] FCA 1760** Rares J	Garrett, a declared vexatious litigant, had registered financing statements against Rubis and numerous others, who applied for declarations that he held no security interests granted by them. Garrett then issued a notice to produce against the applicants , seeking production of a wide range of documents, and also sought to cross-claim against over 270 others, including various High Court judges. He also argued that the court had no jurisdiction over him. The court found that the notice to produce was an abuse of process, and set it aside. The court also rejected Garrett's 'incoherent view' that there was no jurisdiction, noting that PPSA s207 conferred jurisdiction in all matters under the PPSA.
Rubis v Garrett (No 2) ***Mere equity is not security interest; Registrar's initiative to remove data***	**[2018] FCA 2011** Rares J	Garrett, a declared vexatious litigant, had registered financing statements against Rubis and numerous others, including the Federal Court. Rubis and other applied for declarations that he held no security interests granted by them. Garrett's claim arose out of a previous dispute in which he had executed a deed of settlement. The court noted that Garrett bore the onus of proving that he held a security interest: s296(a). He had not discharged it. The only basis for his interests appeared to be a claimed right to apply to a court to have the deed of settlement set aside. This was a mere equity, which did not confer any right or interest in any property, whether a security interest or otherwise. The court considered Garrett's registrations 'baseless', made to compel others to commence proceedings against him, in which he could appear without needing to obtain the court's leave as a vexatious litigant. The court ordered that the financing statements be removed, that Garrett be restrained from registering any new financing statements in respect of personal property of the applicants without court approval, and that the Registrar remove any such statements upon becoming aware of them. The court also discussed the Registrar's power to refuse to register a financing statement under s150(3)(c)(i) where satisfied that it was frivolous, vexatious or contrary to the public interest. The court found it difficult to comprehend how the Registrar could have allowed the financing statements naming the Federal Court and various other public bodies to be registered (which occurred after commencement of these proceedings, in which the Registrar had been named as a respondent), and noted that the Registrar could have removed them on his own initiative under s184(1)(a).

Case	Citation, judges	Comments
		Finally, the court referred Garrett's conduct to the Director of Public Prosecutions.
Samwise Holdings Pty Limited, Re	**[2016] NSWSC 1610** Brereton J	Application for transfer of proceedings to the Supreme Court of South Australia. The proceedings largely concerned a priority dispute between holders of securities over two motorcycles in South Australia, with relief sought under the PPSA. The court held that, even though notions of a 'natural' forum may carry less weight than otherwise in the case of federal statutes such as the PPSA, and even though 'one can understand a party seeking to invoke the expedition and expertise that a specialist court such as [the NSW Supreme Court's] Corporations list claims to offer', the location of the property and the company in question in South Australia still meant that it was a more appropriate forum than NSW, and so the court ordered the transfer.
Samwise Holdings Pty Ltd v Allied Distribution Pty Ltd	**[2018] SASCFC 95** Kourakis CJ, Parker and Doyle JJ	Appeal from *Allied Distribution Finance Pty Ltd v Samwise Holdings Pty Ltd* [2017] SASC 163. Commercial Distribution Finance Pty Ltd provided floorplan finance over motorbikes to Bill's Motorcycles. It retained ownership of the motorbikes and registered a PMSI. Then, Bill's Motorcycles granted an all assets security interest to Samwise, which perfected its interest by registration. Then, Allied entered into a floorplan finance agreement with Bill's Motorcycles, Allied registered a PMSI, and CDC transferred the motorcycles to Allied. Allied claimed its PMSI had priority over Samwise's interest. The court upheld the finding in the court below, holding that Allied had priority for its PMSI, as it had already perfected its interest by registration at the time Samwise obtained possession of the inventory within the meaning of s62(2)(b)(i): 'obtains possession of the inventory' here referred to the time when Samwise obtained possession as grantor of the security interest to Allied, not when it obtained possession *simpliciter*.
Sandhurst Golf Estates Pty Ltd v Coppersmith Pty Ltd ***Meaning of 'security interest': consensual, independent obligation***	**[2014] VSC 217** Robson J	Coppersmith and two affiliates, the Popplestones, claimed to hold a security interest over shares in Sandhurst, and registered financing statements in respect of it. The claim arose out of an alleged breach of an agreement to transfer the shares to Coppersmith and the Popplestones. The court held that even if Coppersmith and the Popplestones had an equitable interest in the shares, it did not amount to a security interest as: • following the Canadian case *I Trade Finance Inc v Bank of Montreal* [2011] 2 SCR 360, a security interest has to arise from a consensual transaction, and this did not; and • the interest did not secure payment of any sum or the performance of any obligation (and also did not fall within any of the 3 categories of deemed security interests under s12(3)). In making the second point, the court quoted with approval the comments in the NZ case *Stiassny v North Shore Council* [2008] NSCA 522 that the proprietary interest of a beneficiary under a trust alone did not amount to a security interest, as a security interest must secure payment or performance of an obligation, and the interest held by a beneficiary did not secure any obligation independent of those arising pursuant to the trust. The initial financing statements having been removed by the Registrar, the Coppersmith and the Popplestones were asked to undertake not to register new ones. They declined to give the undertaking, so the court ordered them not to

Case	Citation, judges	Comments
		and ordered the Registrar to remove any financing statement if they did, under s182(4)(b)(i) and (c).
Scottish Pacific (BFS) Pty Ltd v Registrar of Personal Property Securities ***Registrar's obligation to reinstate registrations; jurisdiction***	**[2017] FCA 1378** Farrell J	Phoenix Shutdown Services Pty Ltd granted security to Scottish Pacific, which registered financing statements. Phoenix agreed to transfer the security interest and registrations to Rush Corporation Pty Ltd, but instead the end time of the registrations was amended so that they were discharged. Phoenix went into liquidation. Several months later, Rush applied to the Registrar under s186 to restore the registrations. Phoenix's liquidator opposed the application. The Registrar declined to restore the registrations, and Scottish Pacific sought an order requiring the Registrar to do so. The court declined to make the order. The court accepted, on the basis of *SFS Project Australia Pty Ltd v Registrar of Personal Property Securities* [2014] FCA 846, that s186 could extend to restoration of data incorrectly removed by a secured party as well as by the Registrar. But, disagreeing with the reasoning in *SFS*, the court considered it did not have jurisdiction under the PPSA to make the order. The matter concerned the Registrar's discretion and was properly a subject for an application under the *Administrative Decisions (Judicial Review) Act 1977 (Cth)*. As such, it could not be the subject of an application under the PPSA: s206(1)(b). That is, the Federal Court would have had jurisdiction to entertain the application if it had been brought under the ADJR rather than the PPSA. The effect of s206(1)(b) was that such matters would *not* fall within the jurisdiction of State or Territory courts.
SFS Project Australia Pty Ltd v Registrar of Personal Property Securities ***Registrar's obligation to reinstate registrations***	**[2014] FCA 846** Gleeson J	Assignor agreed to assign security interests to SFS, and agreed to register amendments to show the assignments, but accidentally registered releases instead. The effect of the amendment was to change the 'end time' to the date of the amendment (so that the registrations remained on the register, but with a past end time and couldn't be discovered by grantor search). The parties applied to the Registrar to have the registrations reinstated under s186, on the basis that the data had been incorrectly removed. The court agreed that the registrations could be reinstated. 'Incorrectly removed' in s186 was not confined to errors made by the Registrar (cf s188, which is).
SFS Projects Australia Pty Ltd v Registrar of Personal Property Securities (No 2)	**[2014] FCA 987** Gleeson J	In *SFS Project Australia Pty Ltd v Registrar of Personal Property Securities* [2014] FCA 846, orders had been made for restoration of security interests that had been incorrectly removed from the register. SFS now sought further orders to make it more clear that the end dates for the registrations should be restored as if the registrations had never removed. There was also debate about the making of orders that might not be capable of being implemented due to constraints on the functionality of the register. The court disallowed the affidavit material about functionality on grounds of hearsay, but observed that orders should be framed in a way that would enable the Registrar to comply with them in a reasonable time.
Ship 'Sam Hawk' v Reiter Petroleum Inc	**[2016] FCAFC 26** AllsopCJ, Kenny, Rares, Besanko and Edelman JJ	A time charterer of the ship 'Sam Hawk' bought bunker fuel from Reiter. Under the contract between Reiter and the time charterer (to which the ship's owner was not party) this arguably encumbered the ship with a US law maritime lien securing payment for the fuel. No such maritime lien would be recognised under domestic Australian law. Reiter arrested the ship in Western Australia, to enforce the lien.

Case	Citation, judges	Comments
		The majority held that the existence and priority of such a maritime law must be recognised by the law of the forum (Australia) and, as Australian law (disregarding private international law) would not recognise a maritime law in these circumstances, it could not be relied on in Australian proceedings. In so holding, Allsop CJ and Edelman J noted that the PPSA was not relevant: maritime liens arising by operation of law were outside its scope (s8(1)(c)), and there was no priority issue of the kind contemplated in s73(1). But they commented that their holding was consistent with the main PPSA choice of law rule applying to consensual security interests – 'the law of the jurisdiction (other than the law relating to the conflict of laws) in which the goods are located at that time' in s238(1A), while also noting that this rule was subject to exceptions (including s238(4) in relation to ships).
Silver Chef Rentals Pty Ltd v The Alliance of Congolese in the Northern Territory ***Jurisdiction***	**[2017] QMC 8** Magistrate B Springer	Silver Chef (and other applicants) sought orders permitting them to seize equipment subject to security agreements. The court said it lacked jurisdiction, as the *Magistrates Court Act 1921* (Qld) only conferred jurisdiction for amounts claimed up to a specified amount, not by reference to property valued up to that amount. PPSA s207 did not expand this, as the PPSA jurisdiction it conferred was subject to the court's existing jurisdictional limits. The decision is consistent with the judgment the same day in *GoGetta Equipment Funding Pty Ltd v Mansour* [2017] QMC 9.
Simjanovska v Sentumar Pty Ltd	**[2017] FCA 736** Farrell J	Ms Simjanovska and her former partner had stored goods with Sentumur (trading as Storage King Rockdale). There was default under the storage agreement. She sought orders restraining Storage King from disposing of the stored property. The court refused the orders (noting that Storage King had agreed to allow her a period to remove the property). Ms Simjanovska made a number of claims against Storage King, including that they were in breach of PPSA s130 obligations to give notice of disposal of collateral. The court said that as Storage King was not claiming a security interest over any of the property, the claim had no merit.
Skypac Aviation Pty Ltd, Re	**[2019] NSWSC 291** Rees J	Administrators were appointed to Skypac. The court had to decide whether transactions which occurred on the appointment day should be avoided as dispositions made after the commencement of winding up for the purposes of *Corporations Act* s468, and this depended on the interpretation of *Corporations Act* ss 513A and 513C, which said that the winding up commenced on the day when the administration commenced. The court held that the transactions on the day of commencement of winding up were not made 'after' that commencement. In doing so, the court considered *Re Carpenter International Pty Limited* [2016] VSC 118, which had held that security interests perfected on the day of administration, but before the time of administration, were not unperfected at the time of administration for the purposes of the vesting provisions in PPSA s267. The court agreed with that analysis of s267, but held that it did not apply to the different wording in *Corporations Act* s468.
Smith v Quasar Constructions Pty Ltd ***Attachment; stamp duty***	**[2016] NSWLC 1** Curran LCM	Smith obtained a garnishee order in respect of a debt owed by AAI Limited to Quasar Constructions. Quasar Constructions Commercial Pty Ltd (a related company of Quasar Constructions) claimed a security interest under a security deed over the assets of Quasar Constructions, including the debt. The court held that the security interest was perfected when the garnishee order was made, and so had priority over

Case	Citation, judges	Comments
		it under s74. In doing so, the court considered the time of the security interest's attachment, enforceability against third parties and registration. When examining attachment, the court said that the grantor had 'done an act by which the security interest arises' (s19(b)(ii)) by failing to pay amounts due under and committing other breaches of the security deed, which constituted events of default under the security deed. Interestingly, the court did not seem to consider, or discuss the proposition, that the simple execution of the security deed constituted 'doing an act' by which the security interest arose. The security deed was subject to stamp duty under NSW law as then in force. That duty was not paid until after the garnishee order was made, and the *Duties Act 1997* rendered the unstamped deed unenforceable. The court noted s254 preserved the operation of the *Duties Act* despite enactment of the PPSA, but found that subsequent stamping of the deed rendered it retrospectively enforceable as from its execution.
Southern Engineering Services Pty Ltd, Re ***Extension of time***	**[2014] NSWSC 1882** Brereton J	The owners of consignment stock claimed security interests, which had not been perfected when Southern Engineering went into administration. Southern Engineering then went into liquidation. The owners proposed seeking an order under *Corporations Act* s588FM to fix a later time for registration in respect of their security interests and, in the meantime, sought an injunction to restrain disposal of the stock by the liquidators. The court granted the injunction. There was a sufficiently arguable case that the owners should be entitled to the extension of time, and the balance of convenience favoured giving the owners the opportunity to preserve their collateral from a possible fire sale by the liquidators.
Squadron Resources Pty Ltd v Highlake Resources Pty Ltd ***Extension of time***	**[2018] FCA 1292** McKerracher J	Application by Squadron under *Corporations Act* s588FM to fix a later time for registration in respect of security interests granted by Highlake and others, where registration had not occurred due to misunderstandings or miscommunications between the secured party and its lawyers. The court granted the order. In doing so, the court noted that it was satisfied that the failure to registration was due to inadvertence; that while the period of delay could be relevant to a decision, the delay of 2 years in registration was not an impediment to granting the order in the circumstances of this case; that the grantors had been notified of the application and had not opposed it; and that other registered secured parties were not prejudiced as their security interests were all either PMSIs, or benefited from s75, and so had priority in any event.
Steel Tigers Pty Ltd, Re	**[2014] NSWSC 1748** Black J	Application by the liquidator of Steel Tigers for warrants to search for and seize cars which had been sold on retention of title terms to OSM Transport Pty Ltd. Steel Tigers had perfected its security interests by registration. The court issued the warrants.
Stenson v Osmund (No 3)	**[2016] FCCA 1533** Judge Phipps	Family law dispute over division of property. The parties tended conflicting search certificates as to security interests granted by a company: one conducted by reference to company name (showing no security interests) and the other by reference to ACN. While the court was able to resolve the discrepancy, the case illustrates the confusion that can arise from register search methodology.
Swan Services Pty Limited, Re	**[2016] NSWSC 1724** Black J	Claim by liquidator under *Corporations Act* s588M against directors to recover loss or damage sustained by unsecured creditors due to insolvent trading. Some trade creditors with retention of title claims had failed to perfect their security interests. The court held that they were 'unsecured debts', even if they had been secured before the

Case	Citation, judges	Comments
		security vested in the liquidator under s267A.
Symbion Pty Ltd v Lopes	**[2015] VCC 1758** Judge Anderson	Lopes, a guarantor under a supply agreement with Symbion containing ROT terms, argued that Symbion's failure to register under the PPSA vitiated his guarantee. The court rejected the argument, on the basis that Symbion was under no obligation to register.
Tankstream Rail (SW-2) Pty Limited, Re	**[2015] NSWSC 2069** Brereton J	Perpetual Trustee Company Ltd (as trustee) held charges, granted before commencement of the PPSA, which had not been properly registered under the *Corporations Act*. This would have made the charges void if the chargors had gone into liquidation or administration; but they had not. Financing statements were later registered under the PPSA. Perpetual sought judicial advice on the effect of s1504, providing that a charge void for non-registration under the *Corporations Act* would remain void despite repeal of the *Corporations Act* registration provisions. The court held that 'void' meant 'void', not 'contingently void'. As the chargors had not gone into liquidation or administration while the *Corporations Act* provisions were on foot, the charges were not void under those provisions; and Perpetual did not need to seek court orders for relief from the consequences of non-registration.
Tasmanian Bluefin Pty Ltd v Bald ***Liens arising at general law***	**[2013] QDC 297** Long SC DCJ	Tasmanian Bluefin sold a boat to Mr Bald and Ms Montgomery, on terms that: • the purchase price was payable in instalments; • title passed on payment of the first instalment; Mr Bald and Ms Montgomery granted a lien to Tasmanian Bluefin to secure payment of the unpaid instalments. The court held that the 'lien' constituted an equitable charge, and Tasmanian Bluefin was entitled to have the court order sale of the boat, under s99(2) of the *Property Law Act 1974* (Qld). When ordering such a sale, the court had discretion to order it on such terms as the caught saw fit. The court held that it was appropriate to order the sale by reference to the methodology and some duties in the PPSA, even though the PPSA 'may not' apply to the charge because of s8(1)(b) and (c) (liens arising under statutory or general law). (This was perhaps a surprising conclusion, as the lien was expressly conferred by a term in the contract between the parties.) Accordingly, the court ordered that Tasmanian Bluefin give a notice containing the information in s130(2), that it act in accordance with s131, and that it distribute the sale proceeds in accordance with s140(2).
Ten Network Holdings Ltd, Re ***Extension of time***	**[2017] FCA 1144** Markovic J	Application by administrators of Ten under *Corporations Act* s588FM to fix a later time for registration in respect of security interests granted by Ten while in administration as part of a recapitalisation transaction, to avoid those security interests vesting immediately. The court agreed, consistently with *KJ Renfrey Nominees Pty Ltd v OneSteel Manufacturing Pty Ltd* [2017] FCA 325, that the security interests would vest unless the order was granted. The court noted the importance of the recapitalisation transaction to Ten's viability and any return to unsecured creditors, the fact that secured creditors and ASIC (but not unsecured creditors) had been notified and had not objected, and that there had been no delay in registration, and granted the order.

Case	Citation, judges	Comments
THC Holding Pty Ltd v CMA Recycling Pty Ltd ***Meaning of 'security interest': independent obligation***	**[2014] NSWSC 1136** Stevenson J	CMA sold scrap to THC but it remained in CMA's yard. CMA went into administration and the administrators sold it to a third party. THC argued that (a) it owned the scrap or alternatively (b) it had a security interest over the scrap. The court held that THC owned the scrap, so it was not strictly necessary to consider the PPSA issue. However, the court said that there was no security interest; CMA's only obligation was to deliver the goods, as bailee; and the interest of an owner/bailor in the goods is not an interest that 'in substance' secures the bailee's obligation to deliver them. (Comment: while the NZ case *Stiassny v North Shore Council* [2008] NSCA 522 was not cited, this case perhaps reflects a similar principle. The court in *Stiassny* observed that the interest of a beneficiary under a trust did not amount to a security interest, as the interest held by the beneficiary did not secure any obligation independent of those arising pursuant to the trust.)
Thomson v Golden Destiny Investments Pty Limited (No 2) ***Liens arising at general law***	**[2015] NSWSC 1929** Sackar J	Funds had been paid into court pending resolution of litigation. NGI, a trustee, claimed that the funds in court were trust property, and were subject to a security interest in its favour to secure its rights of indemnity, recoupment and exoneration. It had not made a registration in respect of its security interest. The court found it was premature to release funds as there remained outstanding issues. NGI's non-registration for its security interest was irrelevant, as the interest arose by operation of general law and so the PPSA did not apply to it: s8(1)(c). But the funds in court were not trust property, as NGI had paid them to a third party, which then paid them into court, and they had ceased to be trust property when paid to the third party.
TLK Transport Pty Ltd v Thornthwaite Pty Ltd ***Liens arising at general law***	**[2014] NSWCATCD 147** A Anforth, General Member	TLK got Thornwaite to repair its Nissan truck. There was a dispute about the repairs, and TLK (with the help of police) took the truck from Thornwaite's premises without paying one of the invoices. Thornwaite registered a financing statement under the PPSA, claiming a security interest by way of repairer's lien. The tribunal found various failures to exercise due care and skill, and breaches of other consumer law requirements, on the part of Thornwaite, for which TLK was entitled to compensation. The tribunal said that a repairer's lien is not usually a registrable interest under the PPSA due to s8(1)(c), and appears to have considered that it was not in this instance. The tribunal noted that TLK had not complied with s157(1) as it had not notified Thornwaite of its registration, and Thornwaite had not waived its right to be notified. However, given TLK's ignorance of the law concerning repairer's liens, and the fact that TLK had not enforced its interest, the tribunal did not regard the failure to notify as a serious breach on this occasion. TLK was ordered to remove its registration.
Toll Energy and Marine Logistics Pty Ltd v Conlon Murphy Pty Ltd ***Extension of time***	**[2019] FCA 532** Gleeson J	Application by Toll under *Corporations Act* s588FM to fix a later time for registration in respect of a security interest granted by Conlon Murphy, and under s293(1)(a) to extend the 15 business day period under s62(3)(b) for PMSI registration. Toll had chartered a vessel to Conlon Murphy for 12 months, renewable for successive 12 month periods at Conlon Murphy's option. The options made the charter a PPS lease under s13(1)(c). Toll was generally aware of the PPSA, but did not have systems in place to identify security interests and make timely registrations. The court was satisfied that failure to register was due to accident or inadvertence, and that competing secured parties had either consented or acquiesced. The court made the order under s588FM, subject to a condition reserving the right of insolvency administrators to apply to discharge if insolvency occurred within 6 months, and also

Case	Citation, judges	Comments
		allowed the extension of time for PMSI registration.
Transurban CCT Pty Ltd, Re ***Extension of time***	**[2014] NSWSC 1909** Brereton J	Roads and Maritime Services of NSW applied under *Corporations Act* s588FM to fix a later time for registration in respect of security interests granted by the Cross City Tunnel entities. Registrations had already been made, but RMS was concerned by two things: • registration against a trust entity had been made against its ACN rather than ABN; and • a single registration had been made against company and trust entities as 'grantor', rather than two separate registrations, even though they did not own the collateral jointly. The court said it was unnecessary to decide whether there were in fact defects in the registrations (but, it may be noted, said nothing at all which lent support to the idea that there is a problem with listing two grantors in a single registration). The court made the order, noting that a 'dominant factor' and 'telling consideration' was that even if there were some defect, a search of the register would have disclosed the security interests and no one could have dealt with the companies on the faith of the register believing that the security interests did not exist. The court imposed a condition reserving the right of insolvency administrators to apply to discharge if insolvency occurred within 6 months, noting that there was insufficient evidence of the solvency of the companies to dispense with it: all the court had been told was that they were in a 'positive net asset position', which could mean anything from a large surplus to a surplus of $1 or, for that matter, 1 cent.
Treasury Wine Estates Vintners Ltd v Garrett	**[2016] FCA 715** Beach J	Mr Garrett and Treasury Wine Estates were parties to a Settlement Deed under which TWE agreed to indemnify him against certain costs and expenses. He registered a financing statement claiming a security interest over TWE's assets, and also purported to appoint himself 'managing controller' of TWE pursuant to his security interest. The court held that a contractual indemnity was not a security interest, and ordered the removal of the financing statement. The court also ordered that he be restrained from acting as 'managing controller' of TWE. See also *National Australia Bank Ltd v Garrett* [2016] FCA 714, a case with similar facts.
Trenfield v HAG Import Corporation (Australia) Pty Ltd ***What is a transitional security agreement?***	**[2018] QDC 107** McGill SC, DCJ	HAG supplied goods to Lineville Pty Ltd on retention of title terms. Lineville had signed a credit application in 2011 (before the PPSA registration commencement date) providing that goods would be supplied on attached terms (which included the ROT security interest), or as amended by HAG from time to time. HAG made a PPSA registration specifying the security interest as 'transitional'. Goods were supplied after the registration commencement date. Lineville paid HAG for goods, then went into liquidation. Trenfield, Lineville's liquidator, sought to recover payments made to HAG as preferential payments in respect of an unsecured debt, contending that that the transitional registration was ineffective to perfect the security interests in the goods. The court found, unlike the position in *Central Cleaning Supplies (Aust) Pty Ltd v Elkerton* [2015] VSCA 92, that the credit application was not a contract providing for security interests. Rather, it was a non-contractual document containing terms that would later apply, if not changed. Accordingly the transitional registration was ineffective to perfect the security interests that were created when goods were supplied after the registration commencement date.

Case	Citation, judges	Comments
		But the payments made had not been made in respect of an unsecured debt, and so were not preferential. Whether security existed had to be tested at the time the payment was made, not when liquidation later occurred. At the point of payment, despite not being perfected, the security was effective between its parties. (And even on liquidation, the security interest did not become void; rather, it vested in the grantor.) However, HAG had received payments exceeding the value of its security, and was required to refund the excess.
Volkswagen Financial Services Australia Pty Ltd v Mandalavi	**[2018] FCCA 752** Judge Cameron	Application by Volkswagen under the *National Credit Code* for orders to provide information about location, and deliver possession, of a vehicle subject to a security interest. The court made orders requiring Mandalavi and another named respondent Ajjawi to deliver possession, but declined to make broader orders entitling Volkswagen to possession as against third parties. Apart from general principles concerning the right of affected parties to be heard, the court noted that while Volkswagen had a PPSR registration, there had not been sufficient analysis of the PPSA to reach a conclusion that its security interest would prevail against third parties in all circumstances.

Warehouse Sales Pty Ltd v LG Electronics Australia Pty Ltd
 	
Taking free of security interests
	[2014] VSC 644
	
	Sifris J
		LG and other suppliers sold goods to WHS on retention of title terms. Their security interests were perfected by registration. WHS on-sold some of the goods to a subsidiary, WHS2. Both WHS and WHS2 had sold some of the goods to customers.
		
		WHS and WHS2 went into liquidation. The liquidators sought directions as to whether the goods sold to WHS2, and to customers, had passed free of the suppliers' security interests under s32 and/or s46.
		
		The court resolved the issues as follows.
		
		• Sales by WHS to customers
		  ○ Where paid for in full – suppliers do not retain a security interest, because the disposal was authorised by the suppliers: s32.
		  ○ Where sold on lay-by and not yet collected – having regard to the *Goods Act 1958* (Vic), no sale had occurred, and suppliers retained their security interest.
		  ○ Where sold on instalment terms – having regard to the *Goods Act*, a sale had occurred, and the buyer took free under s46; also, the same result would apply because the disposal had been authorised under s32.
		• In reaching the above conclusions, the court emphasised that the *Goods Act* was to be used to determine interpretation of 'sale' and 'buyer', noting that these terms were not defined in the PPSA, and that use of the sale of goods definitions was consistent with Canadian and NZ authority.
		• Sales by WHS to its subsidiary WHS2
		  ○ Suppliers other than Panasonic did not retain a security interest, both (1) under s32, because their terms authorised sales in the ordinary course of business, and this was such a sale (there being evidence that WHS regularly on-sold to WHS2); and (2) because it was a sale in the ordinary course of business under s46.

Case	Citation, judges	Comments
		○ Panasonic, whose terms only authorised sales to 'bona fide consumers for value', did retain a security interest. It had not authorised the sale so s32 did not apply; and s46(2)(b) (knowledge of breach) precluded WHS2 taking free under s46. • Sales by WHS2 to customers ○ Customers of suppliers other than Panasonic took free, because the goods had not been subject to a security interest in WHS2's hands. ○ Customers of Panasonic took free under s46 (though the court was willing to hear further argument on this point if the parties wished to offer it).
Welldog Pty Ltd, Re ***Bailments***	**[2017] FCA 1065** Barker J	Gas Sensing Technology Corporation, a US company, left equipment with its Australian subsidiary Welldog. The equipment was stored, and at times used by both GSTC and Welldog for various purposes. Welldog went into administration and then receivership. The receivers argued that the equipment was subject to PPS leases which, not having been perfected, vested in Welldog. The court disagreed. The court found the arrangements were 'bailments', rejecting the receivers' argument that a possessory arrangement had to be exclusive to constitute a bailment. And they were 'indefinite' (under s13(1)(b), which was in force at the time the administrators were appointed, though subsequently repealed). However the bailments were not made by a bailor regularly engaged in the business of bailing goods (s13(2)(b)), and value was not given for them (s13(3)). As to 'business', the court did not consider it enough that the equipment might occasionally be used by Welldog to derive income from which GSTC, as its ultimate parent, might benefit. There was no 'business model' under which GSTC made money by placing the equipment with its subsidiary. As to 'value', the court acknowledged that there might be value 'at large' or 'globally' in the relationship between Welldog and GSTC; for example, Welldog paid it a management fee, and GSTC would ultimately benefit from successful trading by its subsidiary. But, while not suggesting that indirect financial benefit could never constitute value, in this case there was no direct payment or other sufficiently connected financial benefit flowing from Welldog to GSTC to constitute value for the bailment.
West Tankers Pty Ltd v Scottish Pacific Business Finance Limited	**[2017] NSWSC 621** Hammerschlag J	Priority contest between two assignments of a receivable. The McConnell Dowell OHL Joint Venture owed money to Ealwin Pty Ltd. Under an invoice discounting facility, Ealwin Pty Ltd assigned the receivable to Allianz Pty Ltd. Allianz assigned it to GE Commercial Corporation Australia Pty Ltd. GE assigned it to Scottish Pacific. After the assignment to Allianz, West Tankers obtained a judgment debt against Ealwin under the *Building and Construction Industry Security of Payment Act 1999* (NSW), and served a notice of claim on the Joint Venture. Under that Act, the notice of claim operated as an assignment (up to the amount of the claim) of debts owed by the Joint Venture to Ealwin. The court held that the interest of Scottish Pacific prevailed, as once the debt had been assigned to Allianz, there was nothing on which the assignment under the security of payment legislation could operate. The court did not discuss the priority provisions in the PPSA dealing with transfers of account, except to record that

Case	Citation, judges	Comments
		the parties were agreed that the PPSA had no possible effect on the outcome of their contest.
White v Spiers Earthworks Pty Ltd ***Transitional security interests; not registered on pre-PPSA register*** ***Constitutional validity: PPSA meets The Castle***	**[2014] WASC 139** Le Miere J	Spiers sold its business to BEM Equipment Pty Ltd, and hired equipment to BEM under a hire purchase agreement. BEM then granted an all assets charge to NAB. BEM then when into administration, and NAB appointed White as receiver under its charge. The court held that the hire purchase agreement was an 'in substance' security interest, with transfer of title being deferred pending payment of the full value of the equipment by way of rental instalments. It was also a PPS lease, as Spiers regularly engaged in the business of leasing goods. Spiers' security interest was not perfected by registration. It was a transitional security interest which could have been, but was not, registered on the transitional register under the *Chattel Securities Act 1987* (WA). Therefore it was not temporarily perfected: s322(3). Accordingly, on administration, it vested in BEM under s276. Spiers argued that vesting would result in an acquisition of property on unjust terms, contrary to s51(xxxi) of the Constitution. The court held that it was not as, consistently with cases such as *Australian Tape Manufacturers Association Limited v The Commonwealth* [1993] HCA 10, the vesting provisions were part of an incidental to a general regulatory scheme aimed at the adjustment of competing rights and liabilities.
Wickham Hill Investment Pty Ltd v Ding	**[2019] NSWSC 631** Parker J	Mr Ding and others lent money for the acquisition of a winery by Wickham Hill. Mr Ding registered a financing statement claiming a security interest over Wickham Hill's assets. Wickham Hill issued an amendment demand, but Mr Ding did not comply. Wickham Hill invoked the administrative process to have the Registrar remove the financing statement, but the Registrar did not remove it. Wickham Hill then invoked the judicial process, asking the court to order removal of the financing statement under s182. The court held the onus of proof was on Wickham Hill, as grantor, to establish that no security interest was in place (rather than on Mr Ding, as secured party, to establish that he held a security interest). And Wickham Hill needed to establish positively that there was no security interest, rather than merely that there was a serious question to be tried. This followed *National Australia Bank Ltd v Garrett* [2016] FCA 714, and not *Toyota Finance New Zealand Ltd v Christie* [2009] NZHC 827, *Macquarie Leasing Pty Ltd v DEQMO Pty Ltd* [2014] NSWSC 1466 and *Capital Finance Australia Ltd v Clough* [2015] NSWSC 1327. The court came to this conclusion after considering (among other things) the wording of s178, requiring a conclusion that there was no collateral securing an obligation in order to justify an amendment demand. The court did *not* consider the onus of proof provisions in s296 relevant, and in particular, considered that that s296(a) dealing with 'the fact that a security interest attaches to personal property' did not apply to the dispute in this case over 'whether a security agreement exists'. (Although not stated expressly, it seems to follow from this finding that the court did not consider 'the fact that a security interest attaches to personal property' (s296(a)) to cover the same issue as whether 'collateral … secures any obligation…' (s178), even though 'collateral' is defined as including 'personal property to which a security interest is attached'). The agreements dealing with the loan were primarily between Mr Ding and others as lenders, and various shareholders in Wickham Hill as borrowers. While they referred to security, the court found these references should be interpreted as agreements by the shareholders to grant security over their ownership interests, or (perhaps, though less likely) as unfulfilled undertakings by the shareholders to procure Wickham Hill to grant security. The court found Wickham Hill itself discharged its onus of establishing that it had not granted security, and so ordered removal of the registration, and also that no new registration be made.

Case	Citation, judges	Comments
Wine National Pty Ltd, Re ***Bailments and consignments***	**[2014] NSWSC 1516** Black J	This case required decisions as to which party, liquidators or court-appointed receivers, should deal with wine stocks held by Wine National and related companies in liquidation. In making the decisions, the court touched on the position of stocks of wine held by Wine National for investors, who had placed it with Wine National by way of bailment. The court noted that no party had suggested that the bailment was of a kind which would constitute a PPS lease, or a consignment that would constitute a security interest. The court considered this approach justified, noting that the position was broadly similar to that considered in *Re Arcabi Pty Ltd* [2014] WASC 310.
Work Health Authority v Outback Ballooning Pty Ltd ***The High Court again refers to the PPSA in a footnote***	**[2019] HCA 2** Kiefel CJ, Bell, Gageler, Keene, Nettle, Gordon and Edelman JJ	The WHA brought proceedings against Outback Ballooning, under Northern Territory workplace safety legislation, over an incident where a passenger died in a ballooning accident. Outback Ballooning argued that the NT legislation was ineffective, as indirectly inconsistent with Commonwealth aviation legislation that covered the field. The court, by majority, disagreed, finding that the legislation was not inconsistent. Edelman J, dissenting, considered that the workplace legislation was inconsistent in its application to an aircraft workplace. In doing so, he noted that some Commonwealth legislation contained 'anti-exclusivity' clauses such as PPSA s254, designed to show an intention not to cover the field. But the aviation legislation, properly interpreted, did not include an 'anti-exclusivity' clause of this type.
Yamaha Music Australia Pty Ltd v Blakeley	**[2016] VSC 391** Elliott J	Australian Music Pty Ltd bought goods on retention of title terms from Yamaha. The liquidators of Australian Music claimed payments made to Yamaha for the goods were unfair preferences 'in respect of an unsecured debt': *Corporations Act*, s588FA. Yamaha sought to have the liquidators' proceedings struck out on grounds that its retention of title debt was not 'unsecured', but failed at first instance, as a pre-PPSA ROT claim was held to be 'unsecured': *Blakeley v Yamaha Music Australia Pty Ltd* [2016] VSC 231 The court refused the appeal. The court noted the difference of opinion between the first instance decision, and the decision in *Hussain v CSR Building Products Limited* [2016] FCA 392 where a pre-PPSA ROT claim was held to be 'secured'. But it made no difference to the outcome, because, regardless of which interpretation of 'unsecured' was adopted, Yamaha had not provided enough information about stock values to establish that it was a 'secured' creditor and so was not entitled to summary strike-out.