

Article Information

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I've accidentally discharged a registration from the PPSR, what should I do?

The recent decision of the Federal Court in *Curo Capital Pty Ltd v Registrar of Personal Property Securities* [2020] FCA 1515 has confirmed the view that the Registrar's power under section 186 of the PPSA extends to restoring a registration that has been incorrectly removed by the secured party, as well as the Registrar himself.

The circumstances of *Curo Capital*, are similar to those in *SFS Projects Australia v Registrar of Personal Property Securities* [2014] FCA 846 in that, in both cases, a mistake was made in the course of assigning a security interest which led to the accidental removal of registrations from the Personal Property Securities Register (PPSR).

In the present case, the secured party mistakenly registered financing change statements, discharging nine registrations from the PPSR instead of transferring them to a third party assignee of the underlying security interest. The secured party, on realising its mistake, immediately applied to the Registrar of Personal Property Securities for the restoration of the registrations under section 186 of the *Personal Property Securities Act 2009* (PPSA). At the same time, it re-registered its security interest on the PPSR so as to avoid any prejudice being suffered by third party searchers of the PPSR who might otherwise be unaware of the secured party's interest.

Section 186 of the PPSA (relevantly) provides that the Registrar may, at his or her discretion, restore data to the PPSR (including an entire registration), so that the data is taken never to have been removed, if it appears to the Registrar that the data was incorrectly removed from the PPSR. In the past, it was unclear whether this section applied to all data incorrectly removed from the PPSR, or just data that was incorrectly removed by the Registrar directly. This was cleared up in *SFS Projects*, where the Federal Court held that the power under section 186 of the PPSA extends to the restoration of data where its removal does not correctly reflect the intentions of the person making the application (not just the Registrar incorrectly giving effect to a financing change statement).

In *Curo Capital*, a delegate of the Registrar refused the secured party's application under section 186 of the PPSA to restore the registrations because it was not clear that the registrations had been incorrectly removed. The Court disagreed with this analysis, finding that the Registrar need not look into the question of whether the data was incorrectly removed from the PPSR to the extent required for him to reach the view *with certainty*. The Registrar's discretion under section 186 of the PPSA may be exercised where there is information before him which leads him to form the view that, *on the face of that information*, the data was removed from the PPSR due to the lodgement of an application which did not correctly reflect the intentions of the person making the application.

This decision broadens the circumstances in which the Registrar may exercise his power to restore incorrectly removed data to the PPSR. It means that he need not be certain (or indeed reach the view to any definite standard) that the data was removed incorrectly in order to exercise this power, although the power is, of course, still discretionary.

Where a registration is discharged incorrectly, we recommend that businesses and practitioners take a proactive approach, notifying the Registrar as soon as possible of the error, immediately re-registering identical financing statements and, where possible, providing written confirmation from the relevant grantor(s) that the underlying security interest(s) remain effective and that they have no objection to the restoration of the data. For more information about the restoration of data to the PPSR, read Registrar's Practice Statement No 8 [here](#).

Given the technical and sometimes complex nature of the PPSR, businesses and practitioners should have procedures in place to minimise the chance of mistakes occurring. Please contact one of our team if you would like more information about such procedures, or the operation of the PPSR more generally.

Key takeaways

- If a registration has been mistakenly discharged, the following steps should be taken immediately:
 1. lodgement of a 'Request to remove, restore or correct data' form; and
 2. re-registration of the security interest(s) on the PPSR (this will not fix any issues in respect of priority, but will mitigate prejudice to third party searchers of the PPSR).
- This request to restore data should be accompanied by all relevant information, including an explanation as to why the registration was removed incorrectly, a statement from the grantor which confirms that the security interest is still effective and that they have no objection to the restoration, and copies of search certificates for any searches conducted during the period between deregistration and re-registration of the security interest(s).
- Do not delay - case law suggests that the Registrar will be less inclined to exercise his discretion under section 186 of the PPSA where an extensive period has elapsed between the discharge of the registrations and the request for restoration.
- The Registrar needs to form the view on the face of the information provided (not with certainty) that the data was removed incorrectly.