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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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Contents

Case	Citation, judges	Comments
0 Love 0 Pty Ltd v Registrar of Personal Property Securities	**[2021] AATA 397** Deputy President Britten-Jones	Love was trustee of the Cooley Trust 1. Love granted security interests over motor vehicles to Volkswagen Financial Services Australia Pty Ltd, which registered security interests specifying the ACN of Love, not the ABN of the Trust. Love went into liquidation, and its liquidator sought removal of the registrations, on grounds that as the grantor was the corporate trustee of a trust that had an ABN, clause 1.5 of schedule 1 of the *Personal Property Security Regulations 2010* required the registrations to specify the ABN. The Registrar refused to remove the registrations. The tribunal affirmed the Registrar's decision not to remove the registrations. Clause 1.5 required specification of the ABN where the grantor was acting as trustee of the trust. Here, the security agreements showed that Love was acting in its own capacity, not as trustee, and so specification of the ACN was correct.
100% Plumbing Maintenance Pty Ltd, Re ***Extension of time***	**[2021] NSWSC 103** Black J	Applications by Toyota Finance Australia Ltd and a subsidiary 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 failed to specify ABNs of trustees or partners, and/or had incorrectly specified PMSIs as not being PMSIs. The ABN issues arose from problems with Toyota's automated systems, which took some time to be recognised, and then some further months to be analysed and understood. The PMSI issues arose because of inadvertent modifications of computer code, which again took some tome to be recognised and corrected. The court accepted that the failures constituted inadvertence, noted that grantors and other secured parties had been properly joined and none had objected. The court granted the requested orders under *Corporations Act* s588FM, noting that they would not affect the priority of other already-registered secured parties, and reserving the right of insolvency administrators to apply to discharge if insolvency occurred within 6 months. The court also granted the requested orders under s293(1), noting that they could prejudice other secured parties holding 'AllPAP' or 'AllPAP except' registrations, but that those parties bore the forensic burden of demonstrating why they had been demonstrated, and that none had attempted to do so; and reserving the right of any secured party who had not been joined to apply to discharge.
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,	**[2017] NSWSC 407**	Applications by Northern Managed Finance Pty Ltd under *Corporations Act* s588FM to fix a later time for registration,

Case	Citation, judges	Comments
Re ***Extension of time***	Gleeson JA	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.
6100 Pty Ltd v Ferngrove Pharmaceuticals Australia Pty Ltd ***Retention of title and statutory liens***	**[2023] NSWSC 251** Hammerschlag CJ in Eq	6100 claimed to own a quantity of denatured alcohol. 6100 agreed to sell it to Medispec Pty Ltd, but was not paid. Medispec (or its related party Pegasus Australia Developments Pty Limited) agreed to supply the alcohol delivered it to Ferngrove to manufacture hand sanitiser. Ferngrove made some sanitiser, and kept the rest of the alcohol in its storage facility. 6100 claimed ownership of the alcohol on the basis that its agreement with Medispec contained a retention of title clause (and that it had perfected that interest by registration), while Ferngrove claimed a storer's lien for storage charges. The parties agreed to sell the alcohol, and the proceeds were paid into court pending determination of their respective claims. While this appeared to be a priority dispute between a security interest (the retention of title claim) and a statutory lien, the court found neither party had established its claim, and retained the money pending further better-founded claims from the parties or anyone else. The court found 6100 had not established that Medispec had ever agreed to the purported contract containing the retention of title clause, and 6100 had not established any other basis of ownership. Accordingly it did not have the collateral described in its PPSA registration. Ferngrove claimed that it held a storer's lien under the *Storage Liens Act 1935* (NSW), which under s3(3) of that Act was a declared lien for the purpose of s73(2) of the PPSA. However the court held that Ferngrove did not satisfy the statutory criteria for creation of a storer's lien, as it was not in the business of storing goods as a bailee (rather, it was in the business of manufacturing goods, and storage was incidental), and that the goods were not delivered to Ferngrove for storage (but rather for manufacture).
A40 Construction and Maintenance Group Pty Ltd v Smith and Goulsbra ***Security for costs***	**[2022] VSC 72** Ierodiaconou AsJ	A40 brought proceedings against Smith and Goulsbra in relation to a building dispute. Smith and Goulsbra sought security for costs. In providing evidence of A40's lack of ability to satisfy a costs order, Smith and Goulsbra relied on PPSR searches as evidence that A40 was indebted to 20 separate companies. The court noted that the PPSR searches did not disclose amounts owed, and that it was instead necessary to rely on A40's financial accounts for evidence of the amount of indebtedness. The court ordered that security for costs be given.
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.

Case	Citation, judges	Comments
		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.
ABHG Contracting Pty Ltd, Re ***Extension of time***	**[2023] VSC 263** Attiwill J	Application by Scania Finance Australia 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 Scania later corrected this by new registrations. Scania did not join either the affected grantors or the affected holders of AllPAP security interests, but did serve them with notices of the proceedings. All grantors except ABHG confirmed that they would not attend the hearing. All AllPAP holders either confirmed that they would not attend, or did not respond. Subsequently, Scania conceded that it would be appropriate to join the grantors and AllPAP holders , and sought orders for their joinder. The court granted the orders under s588FM and s293(1), subject to reserving the rights of holders of perfected security interest, or anyone else adversely affected by the orders, to apply to set them aside. The court also granted the orders for joinder of the grantors and holders of AllPAP security interests. The court considered it was necessary for grantors to be joined, and appropriate for the secured creditors to be joined; and that it was reasonable for the joinder orders to be made ex parte, as the joined parties were protected by the reservation of their rights to apply to set the orders aside. No specific reservation of the rights of insolvency adminstrators to apply to discharge if insolvency occurred within 6 months was made, noting that Scania had made the corrected new registrations more than 6 months previously.
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 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

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		considered this a valid reason for allowing the extension.
Acumen Finance Pty Ltd v Larapinta Project Pty Ltd	**[2023] VCC 2039** Judicial Registrar Muller	Acumen had made false claims for broking fees against Larapinta and other defendants. In support of its false claims, it had lodged caveats and made PPSR registrations against the defendants, and brought proceedings to enforce its claimed security interests. In earlier proceedings, those claims had been dismissed and it had been ordered to remove the registrations. Acumen had then been ordered to be wound up. The defendants sought costs orders against Daly, the sole director of Acumen, on an indemnity basis. The court granted the order. Daly was the sole controlling mind of Acumen, and had caused it to breach various court orders and otherwise behave deplorably in the litigation.
A&H Natoli Pty Ltd v Teen Entertainment Enterprise Network Pty Ltd ***Jurisdiction***	**[2023] VCAT 576** Vice President Judge Marks	Natoli and related parties claimed that Teen had wrongly made a PPSR registration, and sought to have it set aside. In *Teen Entertainment Enterprise Network Pty Ltd v A&H Natoli Pty Ltd* [2022] VCAT 1500, the tribunal had noted that relief sought by Natoli under the *Australian Consumer Law*, and possibly also under the PPSA, were federal matters outside the tribunal's jurisdiction, and referred the matter to a judicial member of the tribunal to consider whether to make an order under s77 of the *Victorian Civil and Administrative Tribunal Act 1988* (Vic) transferring the proceedings to a court with jurisdiction (noting that only a judicial member had power to make such an order). On the referral, the tribunal confirmed that the issue concerning the PPSR registration was a dispute arising under a federal law, and so outside the tribunal's jurisdiction. As the Natoli parties had not sought an order under s77 transferring the proceedings to another court, the tribunal struck the proceedings out (leaving the parties free to commence new court proceedings if they wished to do so).
Alamin v Islam	**[2023] NSWSC 701** Slattery J	Alamin and Islam carried out property development activities together, fell into dispute, and entered into a settlement deed which settled the proceedings by requiring Alamin to pay a settlement sum to Islam, and charging various assets of Alamin and related parties as security for payment of the sum. Islam made PPSR registrations in respect of the security interests. Alamin defaulted in making the payment, and commenced proceedings to declare the charges void by reason of common mistake, the 'mistake' being that the charges were not permissible under the Alamin parties' external financing arrangements. Pending resolution of the proceedings, Alamin sought interlocutory orders requiring Islam to remove the PPSR registrations. The court declined to make the orders for removal of the registrations. The claim for mistake was not strong; the balance of convenience did not favour depriving Islam of security for the unpaid debt; and Alamin had failed to behave equitably in not offering to pay the disputed settlement sum into court, or to offer any replacement security. Alamin's offer of an unsecured undertaking as to damages was not considered an adequate substitute for the security interest. An application for leave to appeal against the costs order in the decision (which involved contending that the decision was wrongly made) was refused in *Alamin v Islam* [2023] NSWCA 326, without further discussion of PPSA issues.
Alleasing Pty Ltd v OneSteel Manufacturing Pty Ltd	**[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

Case	Citation, judges	Comments
Extension of time		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.
Allianz Australia Insurance Limited v Probuild Constructions (Aust) Pty Limited ***Meaning of 'security interest' – trust, independent arrangement***	**[2022] NSWSC 1601** Stevenson J	May21 Pty Limited engaged Probuild as builder. The construction contract required Probuild to provide a performance bond. Allianz issued performance bonds, and Probuild agreed under an indemnity agreement to indemnify Probuild in respect of them. The agreement also required Probuild to hold any 'surplus bond moneys' on trust for Allianz. Probuild went into administration. May21 called on the bonds, and Allianz paid out. May21 and Probuild each had claims against each other, which they settled with the payment of a settlement sum by May21 to Probuild. Allianz claimed that (1) the settlement sum was 'surplus bond moneys', and (2) the trust arrangement was a security interest which had not been perfected, and so vested in Allianz. 'Surplus bond moneys' was defined as money paid by Allianz in excess of the amount required by May21 to meet the obligations which the bonds supported. The court found that the settlement sum did not fall within this definition. As the settlement sum did not fall within the trust arrangement, It was unnecessary to consider whether the trust arrangement was a security interest. However, the court expressed the view that it was. If Allianz's only interest had been as beneficiary of the trust, this would not amount to a security interest, as a mere interest held by a beneficiary does not secure any obligation independent of those arising under the trust (citing *Stiassny v North Shore Council* [2008] NSCA 522). But the court preferred the interpretation that Probuild had two obligations, first to hold the 'surplus bond moneys' on trust, and secondly to pay them to Allianz, and that the trust secured the payment obligation. The decision was overturned on appeal in *Allianz Australia Insurance Limited v Probuild Constructions (Aust) Pty Ltd* [2023] NSWCA 56, where the court held that the settlement sum did fall within the definition of 'surplus bond moneys', and the trust was not a security interest.
Allianz Australia Insurance Limited v Probuild Constructions (Aust) Pty Ltd ***Meaning of 'security interest' – trust, independent arrangement***	**[2023] NSWCA 56** Leeming, Mitchelmore and Adamson JJA	Appeal from *Allianz Australia Insurance Limited v Probuild Constructions (Aust) Pty Limited* [2022] NSWSC 1601 May21 Pty Limited had engaged Probuild as builder. The construction contract required Probuild to provide a performance bond. Allianz had issued performance bonds, and Probuild had agreed under an indemnity agreement to indemnify Probuild in respect of them. The agreement also required Probuild to hold any 'surplus bond moneys' on trust for Allianz. Probuild went into administration. May21 called on the bonds, and Allianz paid out. May21 and Probuild each had claims against each other, which they settled with the payment of a settlement sum by May21 to Probuild. Allianz claimed that (1) the settlement sum was 'surplus bond moneys', and (2) the trust arrangement was a security interest which had not been perfected, and so vested in Allianz. The court below had held that the settlement sum did not fall within the definition of 'surplus bond moneys', and so it was unnecessary to determine whether the trust arrangement was a security interest. However, the court below had expressed the view that it was. On appeal, the court adopted a different view of the definition of 'surplus bond moneys', and held that the trust

Case	Citation, judges	Comments
		arrangement applied to the settlement sum. Accordingly it became necessary to determine whether it was a security interest. The court held that it was not. Contrary to the view taken in the court below, Probuild's obligation to pay the money to Allianz was not an obligation separate from, and secured by, Allianz's beneficial interest in the money; rather, they were incidents of the same trust, and accordingly not a security interest, consistently with the approach in *Stiassny v North Shore Council* [2008] NSCA 522. Leeming JA also noted that references in the parties' contract to 'security' did not imply the existence of a PPSA security interest. 'Security' had a range of meanings, including for example a personal guarantee which was not a PPSA security interest. Subsequently, the High Court refused special leave to appeal from the decision, observing that there was insufficient reason to doubt the correctness of the decision to justify granting special leave: *Probuild Constructions (Aust) Pty Ltd v Allianz Australia Insurance Limited* [2023] HCATrans 163.
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.
Allied Master Chemists of Australia Limited, Re ***Extension of time***	**[2020] NSWSC 291** Rees J	Application by Westpac Banking Corporation under *Corporations Act* s588FM to fix a later time for registration in respect of security granted by Allied Master Chemists and other members of the listed Sigma Healthcare group, where registrations had originally been made against grantors' ABNs rather than ACNs, and Westpac sought to correct this by new registrations. The court granted the order.

Case	Citation, judges	Comments
		Other secured creditors had made registrations had been made between the date of Westpac's original incorrect registrations and the new ones, and the court noted that the s588FM order did not adversely affect their priority. Westpac asked, and the court agreed, *not* to impose a *Guardian* condition reserving the right of unsecured creditors to apply to discharge or vary the order. The court noted that such conditions, intended to protect unsecured creditors, were appropriate where there was a lack of evidence of solvency. Here, there was strong evidence of the Sigma Healthcare group's solvency and profitability. The court also considered it relevant to note that Westpac, which had been a substantial lender for a significant period, should be entitled to have uncertainty removed, and also (though 'of far less relevance') that the solicitors involved in the original error should be relieved of potential substantial contingent liability where there was no good reason for it.
Amerind Pty Ltd, Re ***Circulating security interests***	**[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. 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.

Case	Citation, judges	Comments
		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. 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.
Antqip Hire Pty Ltd, Re ***Extension of time***	**[2021] NSWSC 1122** Brereton JA	Application by National Funding Group Pty Ltd under *Corporations Act* s588FM to fix a later time for registration in respect of security interests granted by Antqip and related companies. The Antqip companies went into administration in 2014, and when subject to deeds of company arrangement in that year, granted security interests to National. National made registrations in 2014, but only for a period of 3 years. Those registrations lapsed. On discovering this in 2019, National made further registrations, and the Antqip companies went into liquidation a month later. The court held that s588FL did not apply to the security interests, and accordingly no relief under s588FL was needed. The 'critical time' under s588FL(7) for a company that had been subject to deed of company arrangement and then proceeded to liquidation was the commencement of the administration, not the commencement of liquidation, and for the Antqip companies this had occurred in 2014. In 2014, the security interests had been granted after the companies had gone into administration. The court held thar s588FL did not apply to security interests granted after the 'critical time', electing not to follow *KJ Renfrey Nominees Pty Ltd v OneSteel Manufacturing Pty Ltd* [2017] FCA 325 or any of the subsequent cases that had followed that case. The references in s588FL to a security interest which 'arises after the critical time' were not references to a security interested *granted* after the critical time, but rather to a security interest granted before the critical time that attached to after-acquired property (and therefore 'arose' in respect of that property) after the critical time. If the finding that s588FL did not apply were wrong, the court would have made the order fixing a later time.
APR Detailed Joinery Pty Ltd, Re	**[2024] FCA 798** Jackman J	Liquidators of APR sought appointment as receivers of property of a trust, of which APR was trustee. The liquidators sought the appointment as receivers on the basis that all the company's business was carried on as trustee of the trust, and because their appointment as liquidators had, under the terms of the trust deed, disqualified them from exercising the company's powers as trustee. The court made the appointment.

Case	Citation, judges	Comments
		Several PPSR registrations were in place against APR, some specifying its ACN rather than its ABN. While this could have tended to suggest that the company carried on business in its own capacity rather than (or rather than solely as) trustee, the court was satisfied in the weight of other evidence suggested that these were registration errors rather than an genuine indication that the company carried on business in its own right.
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.

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Assta Labels Pty Ltd, Re ***Extension of time***	**[2018] NSWSC 1094** Kunc J	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. 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.
Atlas CTL Pty Ltd and PJM Fleet Management Pty Ltd, Re	**[2019] VSC 866** Sifris J	Atlas had leased around 1,600 vehicles from PJM. PJM, in turn, held around 2,500 vehicles on lease or financed purchase terms from around 10 financiers, including some or all of the vehicles leased to Atlas. Both Atlas and PJM were in receivership and liquidation. Many of the vehicles held by Atlas were subject to priority disputes between PJM and the financiers. The receivers of Atlas applied, under *Corporations Act* s419A, for relief from personal liability for rental payments on the vehicles, to allow them a period to work through the disputes affecting the vehicles. Some of the financiers opposed the application. The court granted the order, noting the complexity of the priority disputes, as evidenced for example by the existence of 1,860 PPSR registrations against Atlas.
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

Case	Citation, judges	Comments
		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 Pty Ltd v SMP Solutions Pty Ltd	**[2013] NSWSC 1403** Stevenson J	Auto Moto agreed to provide finance to Simon Wakim, who said he represented Haberfield Automotive Pty Ltd. Auto 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.
AWE Perth Pty Ltd v Clough Projects Australia Pty Ltd ***Meaning of 'security interest' – step-in rights, project bank accounts, unpaid seller's reservation of title; extension of time***	**[2023] WASC 203** Hill J	Application by AWE under *Corporations Act* s588FM to fix a later time for registration in respect of security interests arguably granted by Clough under an engineering, procurement and construction (EPC) contract, which provided for Clough to undertake EPC works for AWE. AWE and Clough entered into an EPC contract, containing 5 provisions which AWE argued could give rise to security interests: (1) transfer of title in works to AWE as and when paid for, (2) requirement for insurance proceeds for damage to be paid into a joint bank account, (3) step-in rights exercisable by AWE on an event of default or certain other circumstances, (4) appointment of AWE as attorney for Clough to execute novations of subcontracts if the EPC contract was terminated, and (5) obligations for Clough to permit AWE to take possession of assets and assign rights of Clough to AWE or a nominee on termination of the contract. About 18 months later, AWE made registrations (the 'first registrations') to perfect these security interests.

Case	Citation, judges	Comments
		Less than 6 months after the first registrations were made, Clough went into administration. Clough and the administrators restated the EPC contract on terms which: (1) retained the transfer of title provisions, (2) did not contain the provision for insurance proceeds to be paid into a joint bank account, but instead contained an expanded project account provision, under which AWE would pay project cashflows into a bank account established by Clough, to be held on trust for AWE until Clough became entitled to receive progress payments; (3) retained the step-in rights, with expanded triggers, (4) retained the attorney provisions; and (5) retained the obligations providing for AWE to take possession of assets and assignments of rights on termination, with additional provisions to apply on insolvency. AWE made further registrations (the 'second registrations') to perfect these security interests. Clough then executed a Deed of Company Arrangement. AWE then made further registrations (the 'third registrations') covering the same ground as the second registrations. AWE sought orders under s588FM in respect of (a) the first registrations (other than for the insurance proceeds provisions, which had not been continued in the restated EPC contract), which had been made out of time, and (b) the second and third registrations, which had been made after Clough had gone into administration. The court made the orders in respect of all registrations other than those for the transfer of title provisions. In doing so, the court noted that a person was entitled to make a registration if they believed on reasonable grounds that they were or would become a secured party (s151(1)), and therefore the court only needed to be satisfied that it was reasonably arguable that the claimed interests were security interests. The court considered that: (1) the transfer of title provisions were simply an unpaid seller's reservation of title for the benefit of Clough (as unpaid seller), and it was not reasonably arguable that they created a security interest in AWE's favour. (2) it was reasonably arguable that the project account provisions created an arrangement where the money in the account was personal property, not held under AWE's legal title once paid into the account, and set up to secure future performance of the contract, and that this was a security interest. (3) the step-in rights allowed AWE to take possession of property to remedy step-in events including default and insolvency events, thereby securing performance of CPA's obligations, and so arguably gave rise to a security interest. (4) it was reasonably arguable that the attorney provisions gave rise to a security interest, securing Clough's obligations to execute the relevant documents on termination. (5) it was reasonably arguable that the obligations relating to the termination provisions gave rise to a security interest, allowing AWE to take possession of property to secure Clough's obligations to enable AWE or its nominee to take over possession of the works. In considering whether the second and third registrations were need in addition to the first registrations, the court said it was at least arguable that further registrations were required for the security interests that had been amended by the terms of the restatement of the EPC as the restatement may have created new security interests. It was not clear whether this was because the terms of the first registrations were strictly constrained to the explicit terms of the pre-restatement security interest clauses, or whether the court considered (despite s21(4), stating that a single registration may perfect multiple security interests) that a new registration was always required for any new security

Case	Citation, judges	Comments
		interest. in relation to the second and third registrations made after Clough had gone into administration and then a DOCA, the court adverted to the differences between *KJ Renfrey Nominees Pty Ltd v OneSteel Manufacturing Pty Ltd* [2017] FCA 325 and other cases which had proceeded on the basis that an order under s588FM was necessary to prevent a security interest granted in administration vesting immediately, and *Re Antqip Hire Pty Ltd* [2021] NSWSC 1122, where the NSW Supreme Court had held that s588FL did not apply to security interests granted after the appointment of administrators. However, the court found it unnecessary to express an opinion on which approach was preferable, and declined to do so. The court considered it was at least arguable that the security interests whose terms were amended by the restatement were new security interests created by the restatement and requiring new registrations to perfect them, but also that the security agreement which gave rise to them was the original EPC contract; and therefore that they were at risk of vesting (unless the orders under s488FM were made) if Clough again went into external administration within 6 months of the registrations being made.. The court was also satisfied that the making of the orders would not prejudice the position of unsecured creditors, noting that (1) while the first registrations themselves were made late, other 'AllPAP except' registrations were in place shortly after the time at which AWE should have made the first registrations, so unsecured creditors were unlikely to have dealt with Clough on the basis that its assets were unencumbered; and (2) the second and third registrations had been made promptly, creditors were unlikely to have assumed Clough's assets were unencumbered once it was subject to a DOCA, and AWE had provided funding to Clough and agreed to change the basis of its contract from fixed price to cost-plus.
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.
Bank of Queensland Limited v Star Trek Pty Ltd ***Jurisdiction; entry on land to seize***	**[2019] NSWSC 1712** Adamson J	Star Trek was in default under a security interest granted to Bank of Queensland. The Bank sought orders entitling it to enter property owned by the trustee in bankruptcy of the director of Star Trek and his wife, and to seize Star Trek's property there. The court considered the proceedings concerned a 'PPS matter', and that PPSA s206 and s207, read with the jurisdictional limits in s23 of the *Supreme Court Act 1970* (NSW), gave it jurisdiction. The court granted the orders, finding that the seizure of the property was authorised by the security agreement, and that the order authorising entry to the real property was an appropriate ancillary order to permit enforcement of the security. The court noted that the Bank had been prudent in seeking the orders, but found it unnecessary to express a view on whether the Bank could have entered the real property and seized the collateral without needing to obtain them.

Case	Citation, judges	Comments
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 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.
BCA National Training Group Pty Ltd, Re ***Circulating assets***	**[2023] NSWSC 366** Black J	The liquidator of BCA sought directions as to the application of funds as between his remuneration, and the Commonwealth as a preferred creditor (by right of subrogation, having paid off employee creditors) under *Corporations Act* s561. That section provides for preferred creditors to be paid in priority to the claims of a secured creditor out of circulating assets. Westpac Banking Corporation had held perfected security over circulating and non-circulating assets of BCA, but had been paid in full out of the proceeds of non-circulating assets, and had discharged its PPSR registration. The Commonwealth argued that s561 still operated to give it priority, as the circulating assets had been subject to Westpac's 'claim' (even though not ultimately required to discharge the debt to Westpac). The court disagreed, holding that the Commonwealth did not have priority. Among other reasons, the court said the Commonwealth's argument disregarded the right of redemption under PPSA s142. A 'claim' on circulating assets under s561 did not extend to a 'claim' that would never be made because the debt was satisfied from other assets and the security extinguished in accordance with s142.

Case	Citation, judges	Comments
		The decision was upheld on appeal: see *Commonwealth of Australia v Tonks* [2023] NSWCA 285.
BCNCulinary Arts Pty Ltd, Re	**[2024] FCA 752** Derrington J	BCN and several related companies, as trustees of various trusts, went into liquidation. The liquidators found that the companies held perishable goods, some of which had been commingled into new items. The liquidators found 35 PPSR registrations, many of which were over all present and after-acquired property, and some of which were PMSIs. The liquidators had inadequate time to notify all potential claimants and determine which property was subject to which security interest before the goods deteriorated, and sought orders allowing them to sell the goods and later determine the interests of the secured parties. The court granted considered it was apporpriate to allow the liquidators to sell the goods, following the similar decision in *Re Luxtown Pty Ltd* [2019] FCA 1861. The court ordered the appointment of the liquidators as receivers of the trust property, permitting them to sell the goods and subsequently distribute the proceeds to secured parties.
Beechworth Land Estates Pty Ltd, Re ***Is a 'security interest' a new species of property?***	**[2015] NSWSC 336** Robb J	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.
Beechworth Land Estates Pty Ltd, Re ***Circulating security interests***	**[2019] NSWSC 1129** Parker J	Beechworth held a mortgage over several lots of land, and granted a general security agreement over its assets to secured creditors. Beechworth went into administration. The administrators enforced the mortgage, selling the lots and receiving the sales proceeds. The administrators claimed priority over the sales proceeds under *Corporations Act* s443E, contending that the secured creditors' security was a circulating security interest. If that argument had not succeeded, the administrators would also have claimed priority on the basis of an equitable lien. The secured creditors initially argued that their security interest was not circulating security interest as the PPSA did

Case	Citation, judges	Comments
		not apply to it, either because it covered a mortgage which was not personal property, or because (as security over a mortgage) it created an interest in land and so was outside the scope of the PPSA because of s8(1)(f). The administrators then argued that while the PPSA might not have applied to the security interest when originally granted, the sales proceeds were cash which was personal property subject to the PPSA, and that the cash was a circulating asset. The secured creditors accepted this argument, and the court made a declaration acknowledging the administrators' priority. However, the secured creditors flagged that they might bring further proceedings against the administrators under *Corporations Act* s442C, which prohibits administrators disposing of secured property without consent, arguing that the administrators' sale of the mortgaged lots had breached that provision.
Bellaire Pty Ltd v Roselink Enterprises Pty Ltd ***Meaning of 'security interest'***	**[2020] WASC 390** Master Sanderson	Roselink leased premises from Slamdunk Holdings Pty Ltd. The lease contained a 'make good' clause, requiring the tenant (Roselink) to remove all fittings and stock in trade on termination of the lease. Any not removed as required by the make good clause would be deemed abandoned and become property of the landlord (Slamdumk). Roselink went into liquidation, and the liquidators disclaimed the lease. Slamdunk argued that it was entitled to the goods under the abandonment clause. The liquidators argued that the abandonment clause created a security interest, securing the obligation to make good the premises; that the security had not been perfected; and therefore that the abandoned goods vested in Roselink. The court rejected this argument: the abandonment clause was not security for any payment or performance of an obligation; rather, it was simply a contractual mechanism to enable the goods to become property of the landlord if they had not been removed, so the landlord could immediately re-enter the premises, make good, and re-lease to a new tenant. However, the liquidators also argued that any abandonment was a void disposition under *Corporations Act* s468. The court accepted that argument, and so Slamdunk's claim to the goods failed.
Bellerine Heights Pty Ltd, Re ***Extension of time***	**[2020] VSC 874** Sloss J	Application by Austin Finance Pty Ltd under *Corporations Act* s588FM to fix a later time for registration in respect of a security interest granted by Bellerine and related entities, where registration was delayed for 12 months as a result of being overlooked by Austin's lawyers. The court noted that the grantors, and the grantors' other secured creditors, had been served with the proceedings and had either consented or opted not to appear. The court considered that the oversights and errors of the solicitors constituted 'inadvertence', and granted the order. The court reserved the right of insolvency administrators and unsecured creditors to apply to discharge if insolvency occurred within 6 months, noting that it was appropriate to make such a reservation where (as here) the court could not be satisfied there was no risk that unsecured creditors could be adversely affected.
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.

Case	Citation, judges	Comments
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

Case	Citation, judges	Comments
		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.
Bizcap AU Pty Ltd, Re	**[2024] NSWSC 588** Hmelnitsky J	Mr Zhao, Bizcap and FundIT had all lent money to Mr Simmons, secured over real property. The case concerned a priority dispute between them over the proceeds of sale of the properties. Zhao had lent money first, followed by Bizcap and FundIT. Zhao had not lodged caveats until after the other loans had been made. Bizcap had lodged caveats in respect of its security interest; FundIT had made a PPSR registration and, at a later stage, lodged caveats. Bizcap and FundIT had agreed to share the proceeds equally, so the only priority dispute was between them and Zhao. The case largely on equitable principles of priority between equitable interests in real property. Zhao was found to have engaged in postponing conduct, including failure to lodge caveats, and thus ranked after Bizcap and FundIT. However, in noting that Bizcap and FundIT had *not* engaged in postponing conduct, the court mentioned not only the caveats they had lodged, but also the PPSR registrations made by FundIT.
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

Case	Citation, judges	Comments
		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.
Bluewaters Power 1 Pty Ltd v The Griffin Coal Mining Company Pty Ltd ***Meaning of 'security interest' – step-in rights; extension of time***	**[2019] WASC 438** Vaughan J	Bluewaters and a related company were parties to a coal supply agreement with Griffin, under which Griffin supplied them with coal for their power station. The agreement contained a step-in clause, under which the Bluewaters companies were entitled to enter on and take possession of plant, equipment and other assets, to operate the mine, if certain defaults (such as failure to deliver coal) occurred. No PPSR registration had been made. The Bluewaters companies applied under *Corporations Act* s588FM to fix a later time for registration. Griffin did not contest the application. The court was reluctant, in the absence of full argument in contradiction, to determine authoritatively whether the step-in rights gave rise to a security interest. But, noting *McCloy v Manukau Institute of Technology* [2013] 3 NZLR 390 where step-in rights were held to constitute security, the court considered there was a reasonably arguable case that they did. Being so satisfied, and also being satisfied that non-registration had resulted from inadvertence, the court granted the order.
BMW Australia Finance Limited v @Civic Park Medical Centre Pty Ltd ***Extension of time***	**[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 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.
BMW Australia Finance Limited v Mehajer Vision Pty Ltd (No 2)	**[2021] NSWSC 1379** Schmidt AJ	The court was asked to make orders, by consent, concerning a motor vehicle repossessed by BMW. The orders declared that BMW was entitled to possess and sell the vehicle; ordered the Registrar of Personal Property Securities to remove a registration made by Mehajer Vision; and restrained Mehajer Vision from making further registrations. The court required BMW to bring evidence to establish its entitlement to the declaratory relief, and found that BMW had done so. The court made the orders. The court noted that Mr Mehajer (a person presumably associated with Mehajer Vision) had also claimed an entitlement to the vehicle. As Mr Mehajer was not a party, the orders would not prevent him subsequently pursuing any claim; though the court thought it unlikely he would do so, noting that any unregistered or later-registered security interest he might claim would rank after BMW's perfected interest.
BMW Australia Finance Limited v Rodrigues	**[2021] FCCA 1393** Judge Manousaridis	Rodrigues granted BMW a security interest in a motor vehicle, and defaulted. BMW made an *ex parte* application for a declaration that it had a security interest in the vehicle, and for orders under s100 of the *National Credit Code* to

Case	Citation, judges	Comments
Jurisdiction; enforcement		authorise entry to premises to seize the vehicle. The court considered it had jurisdiction to hear the matter as a 'PPS matter' under s207 of the PPSA, and in relation to the *National Credit Code* under s187 of the *National Consumer Credit Protection Act 2009* (Cth). The court noted that BMW did not require court approval to seize the vehicle under s123 of the PPSA, but did require a court order under the NCC to enter residential premises (where the vehicle was stored) without consent. In the circumstances, where Rodrigues was likely to move the vehicle if given notice, the court was prepared to make the order without prior notice to Rodrigues. The court was not prepared to make a declaration that BMW held a security interest, saying that an interlocutory declaration was not a form of order known to law.
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'.
Bombardier Transportation Australia Pty Ltd v Alstom Transport Australia Pty Limited ***Transferred collateral***	**[2022] FCA 816** Jackson J	First court hearing for scheme of arrangement for the transfer of the business and undertaking of Bombadier to another subsidiary of the same parent company. In ordering the meetings for the scheme, the court noted that assets would be transferred subject to security interests; that several entities held security interests perfected by PPSR registrations; that Bombadier had given notice of the scheme and court hearings to the registered secured parties, suggesting that they may wish to register further financing statements before the scheme is implemented; that the interest of secured creditors could be considered further at the second hearing; and that there was no reason at this stage to think that the secured creditors' interests would be affected in a way that would make it unlikely for the court to approve the scheme after the second hearing.
Bombardier Transportation Australia Pty Ltd v Alstom Transport Australia Pty Limited (No 2) ***Transferred collateral***	**[2022] FCA 880** Jackson J	Second court hearing for scheme of arrangement for the transfer of the business and undertaking of Bombadier to another subsidiary of the same parent company. In approving the scheme, the court adopted the summary of the protections available to secured creditors on a scheme of arrangement set out in *Re Chevron (TAPL) Pty Ltd* [2022] FCA 220, and noted that Bombadier had given the holders of PPSR registrations a fair opportunity to preserve their position, by giving them notice of the scheme and court hearings.
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

Case	Citation, judges	Comments
		entitled to seize it.
Boreline Pty Ltd v Romteck Australia Pty Ltd	**[2021] WADC 135** Russell DCJ	Boreline's primary business was supplying probes and cameras for drilling. Boreline entered into a technology development agreement with Romteck Pty Ltd ('old Romteck') for development of probes and cameras, and supplied some equipment to old Romteck for the purposes of old Romteck's development work. Old Romteck went into administration, receivership and liquidation, and the receivers sold its assets to Romteck Australia Pty Ltd ('Romteck'). As part of that arrangement, Romteck also obtained possession of the equipment obtained from Boreline. Romteck also provided maintenance services to Boreline. Boreline sought the return of the equipment which had passed into Romteck's possession. Pending trial, Boreline sought interlocutory injunctions restraining dealings with the equipment, and requiring its delivery to Boreline. The court granted the injunctions restraining dealings with the equipment, but found the balance of convenience did not justify ordering delivery of the equipment to Boreline. As part of its argument, Romteck argued that the delivery of the equipment by Boreline to old Romteck constituted a security interest, which had not been perfected at the time of old Romteck's administration, and accordingly had vested in old Romteck. Romteck argued that it was a security interest either (1) as a consignment or assignment under s12(2)(h) or (j), or (2) as a PPS lease by way of bailment under s13(2)(b). The court: • was not satisfied that there was a security interest under s12(2)(h) or (j), finding that there was no evidence of any consignment, and no evidence that any assignment was a transaction which secured payment or performance of any obligation. • found that issues regarding the existence of a PPS lease would require further evidence at trial. The PPS lease issues were later dealt with by the court *in Boreline Pty Ltd v Romteck Australia Pty Ltd [No 2]* [2023] WADC 33 (which found that there was no PPS lease).
Boreline Pty Ltd v Romteck Australia Pty Ltd [No 2] ***Bailments, PPS leases and 'regularly engaged in business'***	**[2023] WADC 33** Russell DCJ	Boreline's primary business was supplying probes and cameras for drilling. Boreline entered into a technology development agreement with Romteck Pty Ltd ('old Romteck') for development of probes and cameras, and supplied some equipment to old Romteck for the purposes of old Romteck's development work. Old Romteck went into administration, receivership and liquidation, and the receivers sold its assets to Romteck Australia Pty Ltd ('Romteck'). As part of that arrangement, Romteck also obtained possession of the equipment obtained from Boreline. Romteck also provided maintenance services to Boreline. Boreline sought the return of the equipment which had passed into Romteck's possession. The court found that Boreline had supplied the equipment to old Romteck by way of bailment, and was entitled to its return (though not to the return of certain materials developed from the equipment). Romteck argued that the bailment was a PPS lease, which had not been perfected at the time of old Romteck's administration, and accordingly had vested in old Romteck. The court rejected this argument. The court found that Boreline was not regularly engaged in the business of bailing goods as required by s13(2)(b). Drawing on *Forge Group Power Pty Limited v General Electric International Inc* [2016] NSWSC 52, the court said that the test would only be met if (1) Boreline was in the business of bailing goods, and the bailment was a normal, proper component of

Case	Citation, judges	Comments
		Boreline's business and not merely incidental to it, and (2) Boreline was regularly engaged in the business of bailing goods. Here, there was evidence that Boreline had sometimes leased out drilling equipment, but the court was not satisfied that this amounted to 'regularly engaging' in the business of bailing goods, or that it had occurred at the time of the bailment to old Romteck. Even if this were wrong, the specific bailment under the technology development agreement was of a different character to the other supplies of equipment by Boreline, and did not constitute part of any 'general business of bailing' that Boreline might carry on. The parties also disagreed on whether value was provided for the bailment, as required by s13(3). But having found that s13(2)(b) was not satisfied, the court found it unnecessary to decide on the application of s13(3). The alternative argument which Romteck had raised in earlier proceedings, that a security interest had arisen under s12(2)(h) (consignment) or (j) (assignment), was not pursued in these proceedings.
Boulos Holdings Pty Ltd v Edwin Davey Pty Ltd ***Interests in land; enforcement***	**[2021] NSWSC 689** Ward CJ in Eq	Boulos Holdings sold land to Edwin Davey. Under a condition of the sale contract, if Edwin Davey made a development application, and received a credit or allowance under the *Environmental Planning and Assessment Act 1979* (NSW) in respect of a development contribution paid by Boulos Holdings' predecessor in title (Microage Australia Pty Ltd) in respect of a previous development application, Edwin Davey was to pay Boulos Holdings an amount equal to the credit or allowance. Boulos Holdings' land had been mortgaged to Perpetual Nominees Ltd by Microage, in terms which arguably covered the sale contract to Edwin Davey and the right to receive the payment in respect of the development application credit or allowance. Boulos Holdings went into receivership. Perpetual discharged the mortgage over the land, but did not release its other rights. Perpetual assigned to Benjamin and Brandon Boulos any rights it had as mortgagee to receive the relevant payment. Edwin Davey made the application and received credit for the previous contribution. Boulos Holdings accordingly claimed payment under the sale contract. Edwin Davey resisted payment on various grounds, including that Perpetual had assigned the right to any payment to Benjamin and Brandon Boulos, in exercise of a right to dispose of collateral under PPSA s128, and that any right of Boulos Holdings was extinguished by that assignment as a result of s133. Further, Edwin Davey claimed the right of Benjamin and Brandon Boulos had subsequently been extinguished by a compromise agreement. Boulos Holdings argued that Perpetual's mortgage did not cover a right to receive the relevant payment; and therefore Perpetual had no rights as mortgagee over the payment, and so had not (as mortgagee) assigned any rights in respect of the payment; and therefore the rights to the payment remained with Boulos Holdings. The court held as follows. • The right to receive the payment had been subject to a security interest in favour of Perpetual. The mortgage had been granted to Perpetual by Microage, not Boulos Holdings; but the court was prepared to interpret a statement in the loan agreement between Boulos Holdings and Perpetual (under which Boulos Holdings acknowledged that the loan would be secured by the Microage mortgage) as establishing an equitable assignment of the payment rights. • Perpetual's discharge of the mortgage discharged its security over all assets, including the payment right. All Perpetual retained was the personal covenants to pay the amounts that had been secured. As the

Case	Citation, judges	Comments
		security over the payment right had been discharged, Perpetual had nothing to transfer to Benjamin and Brandon Boulos, and accordingly the payment right remained with Boulos Holdings. While this conclusion was sufficient to dispose of Edwin Davey's arguments regarding any assignment by Perpetual, the court went on to deal with various PPSA issues that could have arisen if Perpetual had continued to hold security over the payment right. • If Perpetual had continued to hold security over the payment right, then the PPSA did not apply to it. Operation of the PPSA was excluded by s8(1)(f)(ii), as the security interest over the payment right was provided for by the Perpetual loan agreement, which specifically identified the relevant land. The court considered operation of the PPSA might also be excluded by s8(1)(f)(i) (noting that s8(1)(f)(i) and (ii) were not mutually exclusive), but did not find it necessary to decide. • Chapter 4 of the PPSA would not apply because Boulos Holdings was in receivership at the relevant time: s116. The receivers had been appointed by a creditor other than Perpetual, and Edwin Davey argued that s116 did not prevent a secured party relying on chapter 4 if the receivers had been appointed by another secured party with lesser priority; but the court rejected this interpretation. • Therefore Perpetual could not have disposed of the payment right under s128 of the PPSA • If, however, operation of the PPSA was not excluded by s8(1)(f) or s116, then Perpetual would in any case not have validly disposed of the property under s128, as it had not given a notice of seizure under s123(2) and therefore had not validly seized the property under s123 (as required by s128). While s123(3) also contemplates other methods of seizure 'if so agreed', the court did not consider a provision in the mortgage allowing Perpetual 'to do anything [Perpetual] considers appropriate to … deal with the Secured Assets' constituted agreement on another method of seizure. Given the importance of seizure to s128, the reference to other agreed methods should be construed narrowly, so that an actual alternative method of seizure must be specified. The parties could have contracted out of s123 (under s115), but had not done so. • Section 133 could not help Edwin Davey reach an outcome that Perpetual had disposed of the payment right to Benjamin and Brandon Doulos free of the interest of Boulos Holdings. Section 133(1) did not apply, as the payment right had not been disposed of under s128 (as required by s133(1)), and also as the necessary notices under s130 had not been given. While s133(2) provided that s133(1) could apply even if 'the requirements of [Chapter 4] had not been complied with', the court considered this should be construed narrowly, and did not allow collateral to be taken free of the interest of the grantor (Boulos Holdings) where there had been no compliance with the requirements of seizure. In any case, the court interpreted the assignment document as an assignment by Perpetual of its security interest (if it still held any at the time of the assignment, which it did not) in the payment right, not an assignment of the payment right itself. For these and other reasons, Boulos Holdings retained a good claim to enforce the payment right. Aspects of the decision (concerning a cross claim by Edwin Davey, rather than Boulos Holdings' claim in respect of the payment right) were reversed on appeal in *Edwin Davey Pty Ltd v Boulos Holdings Pty Ltd* [2022] NSWCA 65,

Case	Citation, judges	Comments
		but without further discussion of PPSA matters.
Bowery Bar Pty Ltd, Re ***Meaning of 'security interest'; statutory licences; interests in land***	**[2021] NSWSC 697** Black J	Bowery Bar ran a hotel, under leases from Investa Listed Funds Management Limited. An employee of Bowery Har held the hotel licence and associated gaming entitlements. The leases stated that the licence was the property of Investa, and that Investa was the beneficial owner of gaming entitlements, and that on termination of the lease they were to be transferred to Investa. Bowery Bar ceased trading and went into liquidation. Investa took a transfer of the licence. Bowery Bar sought a declaration that Investa's interest in the licence and gaming entitlements was a security interest; that it had not been perfected; and that it vested in Bowery Bar on its liquidation. The court refused the declaration. The court held that Bowery Bar was not the grantor of any security interest over the licence or gaming entitlements, as Bowery Bar was not the holder of them. Rather, an employee was the holder, and the court found no evidence that the employee held them on trust for Bowery Bar. This finding made it unnecessary to decide whether the licence and gaming entitlements were personal property, or whether the leases created a security interest. However, the court addressed these points. The court accepted that they were personal property, as the legislation creating them did not exclude them from the definition of personal property for PPSA purposes. The court did not accept that the leases created a security interest: rather, the leases simply contained contractual provisions dealing with the ownership of the licence and gaming entitlements, and those provisions were not way of security for any payment or performance of an obligation. Alternatively, if there was a security interest, the court considered it would be excluded from operation of the PPSA by s8(1)(f)(i), as it was provided for by the creation or transfer of an interest in land (the leases).
Breona Pty Ltd v Gosatti	**[2023] NSWSC 423** Fagan J	First Class Securities Pty Ltd provided some form of funding to Miluc Civil Pty Ltd. Gosatti provided a guarantee. First Class assigned the debt to Finstro Securities Pty Ltd, which in turn assigned the debt to Breona. Breona sought to recover the debt from Gosatti. In disputing the claim, one issue was whether the type of funding provided by First Class was, in the terms of the relevant agreement, 'debtor funding' (a loan) or 'debtor acquisition' (the purchase of debts). The agreement provided for 'debtor funding', but contained a term stating that First Class was entitled to make PPSR registrations in relation to 'a security interest over all debts assigned to us'. Breona argued that this term meant that the facility should be considered as 'debtor acquisition'. The court considered that this clause was insufficient to demonstrate that 'debtor funding' was not in fact provided, but went on to observe that it would serve no useful purpose even if it were an agreement for 'debtor acquisition', as it would require Miluc to grant security over debts that it was assigning outright. In saying this, the court did not seem to contemplate that the security could be by way of a transfer of accounts (s12(3)(a)). The court found that the kind of funding ultimately provided by First Class was outside the scope of the terms of the relevant agreement, and accordingly not covered by Gosatti's guarantee.
Browning v Australia and New Zealand Banking Group Limited	**[2014] QCA 43** Margaret McMurdo P, Muir JA and Daubney	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.

Case	Citation, judges	Comments
	J	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. 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).

Case	Citation, judges	Comments
Capital Securities XV Pty Ltd v Calleja	**[2020] NSWSC 301** Adamson J	Capital Securities provided a loan to a company associated with Mrs Calleja, and took a guarantee and general security deed from her. The loan, guarantee and security interest were affected by a range of unconscionable conduct factors (for example, misrepresenting their effect), and the court declared them void. As associated relief, the court ordered Capital Securities to provide 'in registrable form, a financing charge statement' to remove the PPS registration for the security interest. Alternatively, the Court Registrar was authorised to execute that form if Capital Securities did not.
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.
Cardtronics Australasia Pty Ltd v FX Investments Australia Pty Ltd ***Extension of time***	**[2020] FCA 218** Lee J	Cardtronix supplied ATMs and other equipment to FX over a period of time. Cardtronix claimed that the equipment had been supplied on rental terms (which would constitute a security interest), while FX claimed that they had been outright sales, on instalment payment terms but with property passing immediately on delivery. Cardtronix had not made PPSR registrations, and it also sought orders both 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. The court found that the arrangement was a rental. No final agreement had been signed, but initial email correspondence had generally contemplated a rental. Each piece of equipment was ordered by a form which explicitly provided for a rental. An exception applied to several specific items, where Cardtronix had agreed (at FX's request for tax reasons at the end of a financial year) to issue a sale receipt, but these items had by the time of the decision been paid for in full, and their exceptional treatment did not change the analysis that applied to the items of equipment that remained subject to outstanding payment. Accordingly this equipment was subject to security interests. Having made this determination as to the nature of the interest, the court did not go on to consider whether to grant extensions for registration, but instead returned the matter to the parties to consider further the relief (if any) that they wished to seek.
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

Case	Citation, judges	Comments
		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 '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.
Caydon Flemington Pty Ltd, Re ***Extension of time***	**[2023] FCA 796** Anderson J	Application by receivers of Caydon, a company in liquidation, under *Corporations Act* s588FM, to fix a later time for registration in respect of security interests granted during the receivership and after the appointment of liquidators. The court granted the order, to the extent necessary. The court considered the divergence of authority between (1) *KJ Renfrey Nominees Pty Ltd v OneSteel Manufacturing Pty Ltd* [2017] FCA 325, and cases which had followed it, holding that s588FL(2) applied to (and so an order under s588FM was necessary to protect) security interests granted after the 'critical time' referred to in s588FL(2), and (2) *Re Antqip Hire Pty Ltd* [2021] NSWSC 1122, followed in *Revroof Pty Ltd v Taminga Street Investments Pty Ltd* [2023] FCA 543 and *Re Cubic Interiors NSW Pty Ltd* [2023] FCA 694, which had held that it did not. The court found it unnecessary to express a concluded view as between the two lines of authority, but said that the analysis and conclusion in *Antqip was* 'compelling'. As the court had said in *Revroof* and *Cubic*, it was useful to grant an order 'to the extent necessary' in the absence of intermediate appellate authority on the point. There was further utility in this case of making the order as it was required as a condition precedent to the secured financing.
Celtic Capital Pty Ltd v Sky and Space Company	**[2023] WASC 269** Acting Master	Application by Celtic under *Corporations Act* s588FM to fix a later time for registration in respect of a security interest granted by Sky, where registration did not occur for several months due to the secured party mistakenly and inadvertently overlooking the need to make a registration..

Case	Citation, judges	Comments
Ltd ***Extension of time***	McDonald	The court was satisfied the failure was inadvertent and granted the order. Noting that there was only limited evidence as to Sky's solvency, the court reserved the right of insolvency administrators to apply to discharge if insolvency occurred within 6 months.
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 ***What is a transitional security agreement?***	**[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. 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	**[2016] VSC 431**	In earlier proceedings, Central Cleaning had been successful in obtaining orders that it held perfected security

Case	Citation, judges	Comments
Supplies (Aust) Pty Ltd v Elkerton (No 3)	Daly AsJ	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.
Chevron (TAPL) Pty Ltd, Re ***Transferred collateral***	**[2022] FCA 220** Banks-Smith J	First court hearing for scheme of arrangement for the transfer of the business and undertaking of Chevron to another subsidiary of the same parent company. In ordering the meetings for the scheme, the court considered the position of secured creditors of Chevron with PPSR registrations. The court noted that the PPSA contained provisions allowing secured parties to protect their priority position on transfer of assets under the scheme, noting s162 allowing registration of a financing statement to reflect a transfer of collateral before or after the transfer, s34(1) according temporary perfection on transfer, and s66 and s67 dealing with priority. The court noted with approval that Chevron had given the secured parties notice of their need to re-register.
Chevron (TAPL) Pty Ltd (No 2), Re ***Transferred collateral***	**[2022] FCA 381** Banks-Smith J	Second court hearing for scheme of arrangement for the transfer of the business and undertaking of Chevron to another subsidiary of the same parent company. In approving the scheme, the court re-iterated the protections provided by the PPSA to secured creditors of Chevron with PPSR registrations as described in *Re Chevron (TAPL) Pty Ltd* [2022] FCA 220. In addition, adopting submissions of Chevron, the court noted that s66 and s67 gave the secured creditors priority as long as they registered in time, with those sections dealing with priority as between the secured creditors of the transferor and transferee subsidiaries, to the exclusion of s55, which dealt with priority as between the existing secured creditors of the transferee subsidiary to the transferred collateral.
China Railway Materials (Australia) Pty Ltd v Aurora Metals Limited	**[2023] FCA 810** Lee J	Application by China Railway Materials under *Corporations Act* s588FM to fix a later time for registration in respect of security interests granted by Aurora and others. The grantors were all companies in administration, though the registrations in respect of which extensions were sought had all been made before the commencement of administration.

Case	Citation, judges	Comments
Extension of time		The court granted the order, finding it just and equitable to do so, so as to ensure the interest were not rendered inutile for no reason other than accident or inadvertence. The court also noted that the administrators had been given notice of the application and did not oppose it, and that the relief was not of such a nature as to prejudice the position of creditors or shareholders within the meaning of s588FM(2)(a)(ii). The court noted that the fact that the grantors were already in external administration was no bar to granting the application; and that as they were already in external administration there was no point making a *Guardian* order to reserve the right of administrators to seek to vary the order.
Cirillo v Registrar of Personal Property Securities ***Amendment demands***	**[2013] AATA 733** Deputy President K Bean	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 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.)

Case	Citation, judges	Comments
		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.
Classics for a Cause Pty Ltd v Grays Ecommerce Group Ltd	**[2023] NSWSC 967** Rees J	Grays offered a classic car for sale by online auction, on the terms of a User Agreement. Due to technological error, the auction closed prematurely when Classics was the highest bidder, but at a much lower price than expected. Classics rushed to make payment, and made a PPSR registration claiming a security interest in the car. Grays took action under the User Agreement, and held a second auction. At the second auction, Grays sold the car to Xclusive Tech Pty Ltd at a higher price. Classics claimed damages from Grays for breach of the User Agreement. This claim failed: the court found that Grays' action in cancelling the first auction (and any sale arising from it) and holding the second auction were permitted by the terms of the User Agreement. Xclusive claimed damages from Classics under PPSA s271, for losses areising from the PPSR registration which, Xclusive said, prevented it dealing with the car for seven weeks. Xclusive argued that Classics had breached PPSA s151 (and so was liable for damages under s271) by making a registration when it did not hold a security interest and did not have a reasonable belief that it held one. The court held that Classics did not hold a security interest. Classics argued that title to the car had been transferred to it as a result of the first auction and therefore that it had an 'interest' in the car; and that there was an outstanding obligation to deliver the car to it. However, the court said the mere existence of an interest and an obligation was not sufficient: there must be a connection between the interest granted and the obligation secured. In this case there was no such connection that would allow it to be said that the interest (title to the car) 'secured' the obligation to deliver the car. There was no consensual transaction between Classics and Grays that gave rise to a security interest. The court found it unnecessary to decide whether Classics had a reasonable belief that it held a security interest (and therefore whether it had breached s151), as Xclusive had not proved that it had suffered any damage as a result of the registration.
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 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.

Case	Citation, judges	Comments
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 Taxation v Resource Capital Fund IV LP	**[2019] FCAFC 51** Besanko, Middleton, Davies, Steward and Thawley JJ	Tax case, holding that profits received by foreign corporate limited partnerships on sale of shares in an Australian mining company were taxable to the partnerships as ordinary income in Australia. Among other issues, the court needed to consider whether 'general purpose leases' issued under the *Mining Act 1978* (WA) were 'mining, quarrying or prospecting rights', and also whether they were leases of land. The court held that the general purpose leases (along with various kinds of mining tenements) were 'mining, quarrying or prospecting rights', and also held that the general purpose leases were leases of land. While this conclusion was largely based on the court's interpretation of the nature of the leases under the *Mining Act* and general principles, the court also considered the conclusion was 'arguably supported' by the contextual consideration that s162A of the *Mining Act* provided, for the purposes of paragraph (d) of the definition of 'licence' in the PPSA, that a general purpose lease was not 'personal property' for the purpose of the PPSA.
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.
Commissioner of the Australian Federal Police v Tradieh	**[2023] NSWSC 1131** Walton J	In earlier proceedings, orders had been made under the *Proceeds of Crime Act 2002* (Cth) restraining dealings with the property of Tradieh. That property included land and a motor vehicle owned by Tradieh, over which Westpac Banking Corporation held, respectively, a registered mortgage and a perfected security interest. The AFP and Westpac sought consent orders excluding the interest of Westpac in the land and motor vehicle from the restraining orders. Under s319 of the *Proceeds of Crime Act*, such orders could be made by the court with the consent of 'everyone whom the court has reason to believe would be affected by the order'. Tradieh, the owner of the property, claimed to be a 'person affected' and opposed the consent orders. The court granted the orders. A registered mortgage over Torrens land is a statutory charge or security, not a conveyance, and as such was not a 'competing interest' with the defendant's interest. And the court relied on PSPA

Case	Citation, judges	Comments
		s12 to find that '[s]imilar principles and considerations' applied in respect of the security interest in the motor vehicle. Accordingly, the exclusion orders would not diminish Tradieh's rights in respect of the property, and therefore Tradieh was not a 'person affected' and his consent to the orders was not required.

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 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 HM Aircraft Holdings Pty Ltd	**[2021] FCA 447** Beach J	Applications by CBA 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 were affected by various errors: missing or incorrect serial numbers, incorrect collateral class, failure to specify that the security interest was a PMSI, and failure to make any registration. Errors arose from a mix of coding errors in CBA's software for

Case	Citation, judges	Comments
Extension of time; aircraft		automating registrations, and human error in entering incorrect details. The court noted that as the collateral was aircraft, serial number description was required under Sch 1, Pt 2 reg 2.2 of the *Personal Property Securities Regulations 2010*. The court found the errors were accidental or due to inadvertence, and made the requested orders, reserving the right of insolvency administrators to apply to discharge if insolvency occurred within 6 months. For the purpose of the orders under s293, the court noted that the orders could be prejudicial to non-PMSI secured creditors who would lose priority. However, the factors in favour of granting the orders meant that AllPAP holders contesting them would bear a forensic burden of demonstrating why they were unfairly prejudiced due to reliance on the state of the Register; and this burden had not been discharged.
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.
Commonwealth of Australia v Tonks ***Circulating assets***	**[2023] NSWCA 285** Bell CJ, Adamson JA, Griffiths AJA	Appeal from *Re BCA National Training Group Pty Ltd* [2023] NSWSC 366. The liquidator of BCA had sought directions as to the application of funds as between his remuneration, and the Commonwealth as a preferred creditor (by right of subrogation, having paid off employee creditors) under *Corporations Act* s561. That section provides for preferred creditors to be paid in priority to the claims of a secured creditor out of circulating assets. Westpac Banking Corporation had held perfected security over circulating and non-circulating assets of BCA, but had been paid in full out of the proceeds of non-circulating assets, and had discharged its PPSR registration. The Commonwealth had argued that s561 still operated to give it priority, as the circulating assets had been subject to Westpac's 'claim' (even though not ultimately required to discharge the debt to Westpac). The court at first instance had disagreed, holding that the Commonwealth did not have priority. On appeal, the court dismissed the appeal and upheld the first instance decision, holding that s561 did not apply as there was no extant

Case	Citation, judges	Comments
		'claim' by Westpac. The time for assessment of whether there was an insufficiency was when the directions were sought, not some earlier time at which Westpac's claim had been on foot (though the time for ascertaining whether an asset was a circulating asset was the date of the appointment).
Computer Accounting and Tax Pty Ltd v Professional Services of Australia Pty Ltd (No 7) ***Meaning of 'personal property'***	**[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 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

Case	Citation, judges	Comments
		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 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.
Cubic Interiors NSW Pty Ltd, Re ***Extension of time***	**[2023] FCA 694** Cheeseman J	Application by liquidator of Cubic in respect of a security interest granted after the commencement of liquidation. The liquidator sought (1) a direction under s90-15 of the *Insolvency Practice Schedule (Corporations) 2016* that the liquidator is justified in not seeking relief under s588FM of the *Corporations Act*, or (2) an order under s588FM extending the time for registration. The court considered the divergence of views between two lines of cases. First, *KJ Renfrey Nominees Pty Ltd v OneSteel Manufacturing Pty Ltd* [2017] FCA 325, and cases which had followed it, had held that s588FL(2) applied to (and so an order under s588FM was necessary to protect) security interests granted after the 'critical time' referred to in s588FL(2). Second, *Re Antqip Hire Pty Ltd* [2021] NSWSC 1122, followed in *Revroof Pty Ltd v Taminga Street Investments Pty Ltd* [2023] FCA 543, which held that s588FL did not apply to security interests granted after the critical time. The court preferred the second line of authority, holding that s588FL does not apply to security interests granted after the critical time. Accordingly, the court granted the declaration under s90-15 that the liquidator was justified in not seeking relief under

Case	Citation, judges	Comments
		s588FM. However, taking account of the fact that there was as yet no intermediate appellate authority on the diversion between the two lines of cases, the court also ordered (in similar terms to the orders in *Re Antiq* and *Revroof*) that, to the extent necessary, a later time was fixed under s588FM.
Curo Capital Pty Ltd v Registrar of Personal Property Securities ***Registrar's power to reinstate registrations***	**[2020] FCA 1515** Jackson J	Curo held security interests, which it assigned to another person. Curo's lawyers mistakenly discharged the registrations for the security interests, instead of transferring them to the assignee. When discovered, Curo sought reinstatement of the registrations under s186. In accordance with *Registrar's Practice Statement No. 8: Restoration of Data to the PPSR*, the Registrar expected the reinstatement application to be supported by statements from the grantors confirming that they had no objection. The grantors did not reply to Curo's request for such statements. The Registrar wrote directly to the grantors. Some (but not all) grantors wrote back objecting to reinstatement on grounds that Curo no longer held a security interest. The Registar declined to reinstate. The court considered the registrar's power to reinstate registrations under s186 should be construed in the context of other PPSA provisions which place the primary burden of ensuring that there is a reasonable basis for a registration to be made, or to continue, on the party making the registration or, failing that, other persons with an interest in the collateral. Section 186 required the Registrar to form a view about whether data was incorrectly removed or not, but did not impose a specific burden of proof. There was no requirement that it be 'clear' that the data had been incorrectly removed. Here, the Registrar had adopted an approach of only restoring data when it was clear that it had been incorrectly removed, and had declined to restore the registrations because of a combination of that misunderstanding of the requisite test, and strong opposition from the grantors. This was a refusal to exercise the discretion at all: the Registrar had adopted a policy of not exercising the discretion if any grantor expressed opposition, contrary to the requirement that the Registrar exercise the discretion. The matter was referred back to the Registrar for determination according to law.
Dabboussi v Ilend Capital Pty Ltd ***Amendment demands***	**[2024] NSWSC 1055** Peden J	Dabboussi was the director of CoreAssist Pty Ltd. CoreAssist entered into a mandate agreement with Ilend to obtain finance for a property purchase, guaranteed by Dabboussi. Ilend did not succeed in arranging finance, and Dabboussi eventually obtained finance to complete the purchase elsewhere. Ilend lodged a caveat over Dabboussi's property, and also made a PPSR registration against CoreAssist, claiming that they secured unpaid mandate fees and other amounts. Dabboussi complained to the Australian Financial Complaints Authority (AFCA), and obtained a binding determination requiring Ilend to remove the caveat. Ilend did not comply. Dabboussi commenced court proceedings seeking orders for removal of the caveat and the PPSR registration. The court ordered removal of the caveat, in accordance with the binding determination. However, the court did not order removal of the registration, holding that the court's power to do so under PPSA s182 was predicated on an amendment demand having been issued under s178, and there was noevindence that this had been done.
Dalian Huarui Heavy Industry Company Ltd v Clyde & Co Australia	**[2020] WASC 132** Kenneth Martin J	Dalian brought arbitration proceedings in Singapore against Duro Felguera Australia Pty Ltd. The arbitral tribunal ordered Duro to provide security for the claim. Duro did this by entering into a Trust Deed with Dalian and Clyde & Co (Duro's lawyers), under which Duro held $27m on trust. Dalian succeeded in the arbitration and the tribunal directed payment of the funds to Dalian. Dalian sought payment of the trust funds in accordance with the Trust Deed

Case	Citation, judges	Comments
Meaning of 'security interest': consensual; possession		and the tribunal's direction. Duro went into voluntary administration. Clyde & Co, as trustee, sought the court's advice, being concerned that funds paid out might later be clawed back as preferential or on some other basis in Duro's administration or liquidation.. The court held that the trust arrangement initially created a contingent equitable interest in the nature of a charge. It was more than a mere 'freezing' order preventing Duro disposing of an asset. But, once Dalian won in the arbitration and Duro was directed to release the funds, Dalian's interest was converted to a full beneficial entitlement. The trust arrangement was a consensual transaction, and so not excluded from the PPSA by operation of s8. The court gave two reasons for this. First, the orders were made in a consensual arbitration, not by a court. Second, the trust did not follow the form the arbitral tribunal had ordered (which called for funds to be held jointly by the parties' respective lawyers, not by Duro's lawyers alone). Until Dalian's success in the arbitration, the arrangement was a security interest over property of Duro, and so (not having been perfected) could have been subject to vesting under PPSA s267. However, once Dalian won in the arbitration (which occurred before administration commenced), Duro ceased to have any interest in the trust amount, and accordingly the arrangement no longer had the status of a security interest over property of Duro. Alternatively, the court said that if the transaction was still viewed as a security interest, then Dalian had perfected its interest by possession, arising from Clyde & Co's possession of the amount on behalf of Dalian (pursuant to the arbitral tribunal's order and the trust deed) as contemplated by PPSA s24(2).
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 seeking 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.
De Bourbel Pty Ltd v Distilleria Pty Ltd ***Bailments, PPS leases and 'regularly engaged in business'***	**[2023] SASC 88** Stein J	De Bourbel conducted a distillery business on property owned by Distilleria. De Bourbel failed to pay rent. Distilleria distrained certain plant and equipment for rent, and evicted De Bourbel. De Bourbel went into liquidation. The court found there was no formal tenancy for De Bourbel's occupation of the property, and it was merely an occupancy terminable at will. Distilleria was entitled to terminate the occupancy. However in the absence of a lease, there was no right to distress for rent, and so Distilleria was not entitled to seize the plant and equipment on that basis. But, the court also found that the plant and equipment was owned by Distilleria, and so Distilleria's purported unlawful distraint for it did not give rise to a claim for damages. De Bourbel claimed (among other things) that it had leased the plant and equipment from Distilleria, and that the lease was an unperfected security interest which had vested in De Bourbel on its liquidation. The property seized by Distilleria from De Bourbel also included barrels of whisky, held on terms that the whisky (but not the barrels) was owned by various private owners, and would be purchased by De Bourbel from them at an agreed future time and price. These arrangements were bailments under the common law concept of bailment, which the court considered also applied for PPSA purposes. De Bourbel claimed that these bailments also vested in it on liquidation. In relation to the plant and equipment: • The court found that it had been leased from Distilleria to De Bourbel for a term of 8 years. • However, the court was satisfied that only some of the plant and equipment was personal property. In the

Case	Citation, judges	Comments
		case of other equipment, which appeared to be installed with an intention that it would be permanently fixed and connected via pipes, De Bourbel had not discharged its onus of establishing that it did not constitute fixtures. • The court was satisfied that Distilleria was engaged in a business of leasing or bailing goods, even though it had only engaged in a single leasing transaction: Distilleria had been incorporated to buy what was needed for the distillery and lease it to De Bourbel, and accordingly leasing to De Bourbel was a normal component of its business, even though it involved only one lease transaction. • The court found that the lease was not enforceable against third parties (and therefore not perfected), as Distilleria did not possess or control the plant and equipment other than as a result of seizure, and there was no written security agreement for it; and accordingly none of the requirements of PPSA s20 were satisfied. • Accordingly, in the case of plant and equipment which was not fixtures, there was a PPS lease which vested in De Bourbel on liquidation. In relation to the bailments of whisky: • The court was satisfied that the term of the bailment was for a period until the expected maturity of the whisky, which was approximately 3 to 4 years, and therefore exceeded the 2 year term required by PPSA s13(1)(a). Some bailment agreements contained terms that they would be 'null and void' if the purchaser removed the whisky before maturity, without articulating when that could occur; and the court found these clauses were effectively provisions for early termination that did not preclude the bailment being for a term exceeding 2 years. • However, the court was not satisfied that there was evidence to establish that any of the private barrel owners were regularly engaged in the business of bailment, even if they had purchased multiple barrels. • Accordingly, De Bourbel had not established that the whisky was subject to PPS leases, and so it did not vest in De Bourbel on liquidation. • If this conclusion were wrong, however, and the whisky had vested in De Bourbel, then the court would have been prepared to consider that Distilleria's dealings with the barrels could have constituted conversion.
De Bourbel Pty Ltd v Distilleria Pty Ltd ***Vesting: orders and compensation***	**[2024] SASC 33** Stein J	In *De Bourbel Pty Ltd v Distilleria Pty Ltd* [2023] SASC 88, the court had held that certain plant and equipment had been leased by Distilleria to De Bourbel under an unperfected PPS lease which had vested in De Bourbel on liquidation. De Bourbel sought delivery up of the plant and equipment. Distilleria argued that only damages should be awarded. The court ordered delivery up of the plant and equipment. While the PPSA did not contain any express power to order delivery up, the effect of s267 was to vest goods in the grantor, and this conveyed a clear statutory intention that the grantor had ownership and therefore should be entitled to possession of them. It would be inconsistent with that statutory intention to limit relief for vested goods to an award of damages.

Case	Citation, judges	Comments
		Distilleria also argued that s269, providing for compensation to be owed by the grantor (De Bourbel) to the secured party (Distilleria) where a PPS lease has vested in the grantor, operated as a statutory set-off in respect of amounts owing by the secured party to the grantor. The court held that this was not the case. Rather, s269 gave rise to a claim for compensation for which Distilleria could prove in the liquidation of De Bourbel.
De Lage Landen Pty Ltd v Blayney Crane Services Pty Ltd ***Extension of time***	**[2020] FCA 1692** Gleeson J	Applications by De Lage Landen 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, in respect of three grantors that had been, but no longer were, in administration or subject to Deeds of Company Arrangement. PMSI registrations in respect of motor vehicles had mistakenly been made against vehicle identification numbers misdescribed as chassis numbers. The court was satisfied that this constituted 'inadvertence' for the purposes of s293(1)(a). The court granted the relief under s293(1), subject to the right of any other security interest holders with perfected security interests (other than named defendants) to apply to discharge. In relation to *Corporations Act* ss588FL and 588FM, the court found that these sections did not apply to a company that had once been, but no longer was, in external administration. De Lage Landen had sought declarations that 'it does not require relief pursuant to s588FM' for any security interest granted after entry into external administration. The court was unwilling to grant such a broad order, but was prepared to grant narrower declarations that the relevant security interests had not vested in the grantor under s588FL.
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.
Department of Employment and Workplace Relations v Howell ***Circulating assets***	**[2024] FCA 566** McElwaine J	Howell and others were appointed under a security agreement as receivers and managers of Castel Electronics Pty Ltd. They received and disposed of certain property. The Department claimed that the amounts received constituted circulating assets within the meaning of the PPSA, and therefore should have been paid to the department under ss556(1)(e) and 561 of the *Corporations Act* and s31 of the *Fair Entitlements Guarantee Act 2012.* The court held that the property did constitute circulating assets. The property consisted of the following. • The benefit of a right to enforce a judgment. This right arose because Castel Electronics was a party to a distribution agreement with TCL Air Conditioner (Zhongshan) Co Ltd, under which Castel agreed to distribute products for TCL, and was awarded damages against TCL for breach of an exclusivity provision. The court held that this was a circulating asset, in the form of an account arising from providing services in

Case	Citation, judges	Comments
		the ordinary course of a business of providing services of that kind. The court was satisfied that Castel provided services to TCL, that the right to enforce the judgment was a monetary obligation, and that the monetary obligation arose from the provision of services. Following *Resilient Investment Group Pty Ltd v Barnet and Hodgkinson* [2022] NSWCA 118, it was not necessary that the monetary obligation arose from the ordinary course of the business of Castel, but rather that it arose from the provision of services. The claim arose from TCL's breach of an exclusivity provision, where Castel was awarded damages for lost profits. The 'ultimate springboard' for the award of damages was the provision of distribution services by Castel. • A settlement sum received in respect of the judgment. TCL did not pay Castel in full, but a compromised sum was received. This was also a circulating asset, for the same reasons as the right to enforce the judgment itself. • Inventory and its proceeds, which were also circulating assets.
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 continue, unless and until Deruniec could re-commence proper court proceedings.
Devine v Registrar of Personal Property Securities	**[2020] AATA 3126** Deputy President Bernard J McCabe	Captain Devine owned a barge. He transferred it to a company controlled by him. He, and another, claimed to hold a security interest over the transferred barge, and made a registration in respect of it. Transport for New South Wales (TfN) took possession of the barge, in order to sell it to recover charges owing. To facilitate the sale, TfN sought removal of the registration under s178. The Registrar decided to remove the registration. Devine sought review of that decision. By the time of the hearing, TfN and the Registrar had been persuaded that removal of the registration was no longer justified. But, despite success on this point, Devine sought additional orders directing TfN in the conduct of the sale. The tribunal declined to make these additional orders. The PPSA did not authorise either the Registrar, or the tribunal on review, to make them.
Diversa Pty Ltd v Taiping Trustees Limited ***Transferred collateral; proceeds; distribution of proceeds; consensual security interests***	**[2022] FCA 316** Beach J	Taiping lent money to Sargon Capital Pty Ltd, the parent company of SC Australia Holdings Pty Ltd ('SCAH'), and in April 2018 Sargon Capital granted Taiping security over all its assets. Taiping perfected its interest by registration against Sargon Capital. Separately, Diversa agreed to sell assets to related companies of SCAH, on deferred payment terms.. In June 2019, SCAH granted Diversa security over all its assets, to secure the related companies' obligations to pay the deferred purchase price. Diversa perfected its interest by registration against SCAH. The dispute between Taiping and Diversa concerned proceeds of two parcels of shares:

Case	Citation, judges	Comments
		• the 'SEQ shares'. These had been owned by Sargon Capital, and subject to the security interest granted by Sargon Capital to Taiping. In December 2019, Sargon Capital transferred them to SCAH, and so they became subject to the security interest granted by SCAH to Diversa. • the 'Madison shares'. These had been owned by SCAH, and so were subject to the security interest granted by SCAH to Diversa. However, as part of the security arrangements between Sargon Capital and Taiping, in April 2018 Sargon Capital had agreed to give (and SCAH had given) the share certificates and signed transfer forms for the shares to Taiping. In February 2020, Diversa appointed receivers to SCAH. The receivers sold both parcels of shares. In the case of the Madison shares, Taiping made the share certificates available to the receivers to enable the sale to proceed. The receivers distributed the proceeds to Diversa. After the sale of the SEQ shares had occurred, with the aim of perfecting its interest in the SEQ shares and their proceeds, Taiping made a registration against SCAH, and gave Diversa a notice under s68(5), claiming priority in the shares and proceeds as holder of a transferor-granted interest. *Priority to proceeds of SEQ shares* Taiping had initially argued that its interest in the SEQ shares, following their transfer from Sargon Capital to SCAH, remained temporarily perfected under s34. However Taiping abandoned that argument, accepting that it had become aware of the transfer and failed to re-register within 5 business days as required by s34(c)(ii). Taiping then argued that it had re-perfected its interest in the shares following the transfer as required by s68 and accordingly was entitled to priority as the holder of the transfer-granted interest; and that its priority extended to the proceeds of the shares. The court held that Diversa was required to distribute the proceeds received by it in accordance with the priority of the respective claims, in accordance with s140. Section 116 (which would disapply the application of s140 to property in the hands of a receiver) no longer applied once the property had been distributed by the receivers to Diversa. The time for determining the priority order in which the proceeds were to be applied was the time at which the underlying property was realised (and not the later time at which the proceeds are actually applied). Accordingly, nothing done by Taiping after the shares were sold (including its re-registration and notice under s68) was relevant to the question of priority. Taiping did not have a perfected security interest at the time the shares were sold, and could not later re-perfect its interest as a continuation of its former interest so as to obtain priority under s68. Further, 'proceeds' in s140 had its ordinary meaning, rather than its meaning under s31. Once Diversa became obliged to distribute the proceeds under s140, s32 (providing that the security interest would continue) no longer applied. Accordingly Diversa had priority to the proceeds of the SEQ shares, as its perfected security interest at the relevant time ranked ahead of Taiping's unperfected security interest under s55. *Priority to proceeds of Madison shares* The court held that the provision of certificates and transfers for SCAH's Madison shares to Taiping amounted to the

Case	Citation, judges	Comments
		grant of security (in the form of an equitable mortgage) by SCAH to Taiping. The security interest was perfected by control and/or possession, and so had priority over Diversa's interest under s57. The court dismissed an argument that Taiping's equitable interest was excluded from operation of the PPSA by s8(1)(c) as an interest arising 'by operation of the general law', noting that where both s12 and s8(1)(c) may appear capable of applying to an interest that arises from a consensual transaction, the interest will be captured by s12 (as a security interest to which the PPSA does apply) rather than s8(1)(c). However, the court said, if Taiping's interest was excluded from operation of the PPSA by s8(1)(c), then s73 would operate to give Taiping priority, as the holder of an interest arising by operation of general law.
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': payment into court, 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

Case	Citation, judges	Comments
		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. 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.
Elimatta Pty Ltd v NT Bullion Pty Ltd ***Extension of time***	**[2021] FCA 1416** Yates J	Application by Elimatta under *Corporations Act* s588FM to fix a later time for registration in respect of a security interest granted by NT Bullion, where Elimatta's lawyers had failed to make the registration in time. The court noted there was no evidence as to why the lawyers had failed to make the registration, but said it was more likely than not that it was due to 'ignorance, oversight or incompetence' (and therefore 'incompetence' as required by s588FM(2)(a)(i)), but that whatever the reason was, it should not now be visited on Elimatta by denial of the relief sought. Accordingly, the court made the order, subject to a *'Guardian'* condition reserving the right of insolvency administrators to apply to discharge if insolvency occurred within 6 months.
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.
Ellume Limited, Re ***Extension of time***	**[2022] FCA 1102**	Administrators of Ellume 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, to avoid the security interests granted in administration vesting immediately. In deciding it was just and equitable to do so, the court noted that there was no prejudice to creditors and no displacement of other security interests; that no objection had been raised to the relieve sought; and that any affected person had liberty to apply to vary the orders.
Empire Plant Hire Pty Ltd, Re	**[2021] VSC 549** Gardiner AsJ	Empire granted security over various items of equipment to CC Investment Enterprises Pty Ltd. Empire went in to liquidation, and the liquidator disclaimed the equipment.

Case	Citation, judges	Comments
Entry on land to seize		CC sought orders that the equipment vested in it, orders appointing a receiver of the equipment, and orders permitting it to enter onto specified property of third parties where the equipment was located to seize it. The third parties had previously indicated that they did not wish to grant access. The court granted the orders. While vesting the equipment in CC would normally be sufficient to give power to take possession of its own equipment without needing the appointment of a receiver, CC wished to appoint an insolvency practitioner to recover the equipment, and the court considered that a reasonable position as the equipment was on the property of third parties. The orders allowed the receivers to enter on to specified sites for the purpose of obtaining access to and taking possession of the equipment. The court considered this similar to the position in *Bank of Queensland Limited v Star Trek Pty Ltd* [2019] NSWSC 1712, where orders were made entitling entry on to land to seize property under s123 of the PPSA. In *Senworth Capital Pty Ltd v Galleria SUV Pty Ltd* [2022] NSWSC 1513, the court expressed doubt on the existence of a power to order a unilateral licence to enter private land as in this case, as opposed to an order directing the occupier of the land to permit entry.
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.
Eticore SD Pty Ltd, Re ***Extension of time***	**[2021] NSWSC 110** Black J	Application by Eticore ST Pty Ltd under *Corporations Act* s588FM to fix a later time for registration in respect of a security interest granted by Eticore SD, as part of a securitisation transaction. Registration was made about 3 days late, due to the relevant lawyers not considering the issue in time. The court considered that the oversights and errors of the lawyers constituted 'inadvertence', and granted the order, reserving the right of insolvency administrators to apply to discharge if insolvency occurred within 6 months.
Everlyte Ltd v Registrar of Personal Property Securities ***Meaning of 'security interest'; amendment demands***	**[2020] AATA 2584** Member K Parker	Everlyte owned a helicopter, which it said was stolen and then sold to Nautilus Aviation Pty Ltd. Everlyte registered a financing statement in respect of the helicopter, specifying Nautilus as grantor. Nautilus agreed to on-sell the helicopter to Steller Projects Pty Ltd. Nautilus issued an amendment demand (s178) seeking removal of the registration, and then invoked the administrative process (ss179-181) to have the registration amended. The Registrar amended the registration by removing it. Everlyte objected to the removal, first, on the ground that Nautilus had no 'interest' in the helicopter to support an amendment demand as required by s178. The Tribunal found that Nautilus was either in possession of the helicopter, or was acting on behalf of Steller which was in possession, and this constituted sufficient 'interest'.

Case	Citation, judges	Comments
		The Tribunal found that: • the helicopter was not property of the kind for which a registration could be made under s148(c) and reg 5.3(c) (property subject to a court or tribunal order that restrains dealings or requires disposal), as no such order had been made. • Everlyte's ownership interest in the helicopter did not constitute as security interest, as there was no consensual transaction by which the helicopter secured payment or performance of an obligation as required by s12(1), and the transaction did not fall within the kinds of security interest specified in s12(3). Accordingly the Tribunal upheld the removal of the registration.
Evolution Fleet Services Pty Ltd v Allroads Plant Pty Ltd ***Extension of time***	**[2022] FCA 1084** Downes J	Applications by Evolution and a related company 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, in respect of vehicle leases to multiple parties where registrations had either been made incorrectly, or not made at all. The court was satisfied the failures resulted from inadvertence due to ignorance of the legal requirements for registration, and made the orders, reserving the right of insolvency administrators to apply to discharge if insolvency occurred within 6 months. In exercising its discretion to grant the orders, the court noted that the applicants had acted promptly once the errors were discovered, and that the grantors and affected holders of AllPAP registrations had been notified of the applications and had not opposed them.
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 '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.

Case	Citation, judges	Comments
		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.
Finch v IClick Group Pty Ltd	**[2023] QCAT 55** Member Deane	Finch bought a written-off car from IClick. IClick sold the car 'as is', showing Finch a PPSR report which disclosed that it had been written off and listing 6 items of damage. Finch consulted a repairer, who estimated that the damage listed in the report would cost about $1500 to repair. In fact, the damage turned out to be more extensive than listed, and would cost more to repair. Finch brought claims under the *Australian Consumer Law*. The tribunal accepted evidence that a PPSR report indicating a car has been written off could not be expected to list all items of damage, and should put a user on alert that there may also be other items of damage. The tribunal found that Finch had not established that the car as sold was not as described.
Finetea Pty Ltd v Block Arcade Melbourne Pty Ltd	**[2019] VCAT 1529** Senior Member R Walker	Under a loan agreement between Winchelada Pty Ltd as lender, Finetea as borrower, and Mrs Koutomanos and Premiumtea Pty Ltd as guarantors, Finetea purported to grant security over various shares and units, none of which it owned. The tribunal found this purported grant by Finetea ineffective to create security as it did not hold the relevant assets. Koutomanos and Premiumtea did hand over some blank transfers over shares (including shares in Finetea itself), and the tribunal found that this was effective to confer security.

Case	Citation, judges	Comments
		PPS registrations were made, specifying the correct owners of the collateral (rather than Finetea) as grantors. Finetea argued that the enforcement provisions applying to the security that had been validly created (that is, the security over shares created by Koutomanos and Premiumtea providing blank transfers) were void as penalties, as they would allow Winchelada to take ownership of the shares and retain it indefinitely. The tribunal considered whether PPSA s140, providing for transfer of any surplus after enforcement to the grantor, would overcome that outcome, but decided that it would not. In coming to that conclusion, the tribunal possibly considered that 'grantor' in s140 meant the party that had purportedly granted the security under the loan agreement (Finetea), rather than the parties that had actually granted it (Koutomanos and Premiumtea). However, the tribunal considered it could avoid a penal outcome by ordering that the shares could be held by Winchelada as security only, and must be transferred back to Koutomanos and Premiumtea after amounts owing had been paid.
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 Goldrange Pty Ltd ***Possession***	**[2016] WASC 419** Master Sanderson	Goldrange, a landlord, had an unperfected security interest over of Flown, its tenant. Flown was in default of rent, 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

Case	Citation, judges	Comments
		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 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.
Francis v Helios Corporation Pty Ltd ***Priority of general law liens***	**[2022] FCA 199** Colvin J	Francis, trustee in bankruptcy of Mr Fotios, made claims against Mr Fotios in his capacity as trustee of a trust, seeking recourse to Mr Fotios' right of exoneration and related lien over trust assets. Mr Fotios had also granted a perfected security interest to Helios. The question arose whether Mr Fotios' lien had priority over Helios' security, under s73, on the basis that the lien was a security arising 'by operation of general law'. The court held that the lien did have priority under s73. While the deed for the trust provided for an express right of indemnity in favour of the trustee, this did not prevent the trustee's lien arising 'by operation of general law', either because the law did not allow the trustee to contract out of the general law right (which exists not just for the protection of the trustee, but also for the protection of trust creditors), or because the trust deed did not manifest an intention to displace the general law right. The other requirements of s73 were also satisfied. In particular, in relation to s73(b) and (c), the lien arose in relation to the provision of services by Mr Fotios as trustee, with the services being either the incurring of liabilities in respect of the trust, or the discharge of liabilities in respect of the trust.
Freestone Auto Sales Pty Ltd v Musulin	**[2015] NSWCA 160** McColl and Ward JJA	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.

Case	Citation, judges	Comments
	and Simpson J	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.
Frigger v Trenfield ***Meaning of 'security interest' – superannuation fund***	**[2019] FCA 1746** Jackson J	Mr and Mrs Frigger, bankrupts, sought an injunction to restrain their trustees in bankruptcy from dealing with certain shares. They claimed the shares were assets of a superannuation fund and so not part of the bankruptcy estate. A PPSR registration had been made in respect of the shares by an entity called Frigger Super Fund'. One ground of claim was that the assets were subject to a security interest, constituted by 'the beneficial ownership' of the Fund, and perfected by the PPSR registration. The court disposed of this claim by commenting briefly that it was 'unclear' how the beneficial interest of beneficiaries of a superannuation trust could satisfy the definition of 'security interest' in PPSA s12. The court considered some of the other claims of the Friggers arguable, but that the balance of convenience did not justify the grant of an interlocutory injunction. Granting the injunction would probably result in the Friggers selling the shares, and they might be unable to satisfy a later judgment against them. Whereas if the trustees took the shares but the Friggers were later found to have a valid claim for the superannuation fund, damages would be an adequate remedy.
Frigger v Trenfield (No 10) ***Meaning of 'security interest' - trusts and trust receipts***	**[2021] FCA 1500** Jackson J	Mr and Mrs Frigger, bankrupts, claimed that certain assets were assets of a superannuation fund, of which they were the beneficiaries, and so not part of the bankruptcy estate. In support of the claim that some of assets (a bank account and shares) were trust assets or used for trust purposes, Mr and Mrs Frigger sought to rely on PPSR registrations naming themselves as grantors and the superannuation fund as secured party. They argued that the security interest was a 'trust receipt', relying on s12(2)(g). The court held that the registration did not support the argument that the assets were trust assets, was 'a misconceived attempt to record some sort of interest of the [fund] in [the assets]', and 'was not capable of recording that [Mr and Mrs Frigger, or either of them] held [the assets] as trustees'.

Case	Citation, judges	Comments
		The court quoted with approval provisions from the Whittaker Report *(Final Report: Review of the Personal Property Securities Act 2009,* Canberra 2015), which noted that: • a trust receipt was a specific type of finance and security transaction where, for example, a purchaser of property that has not been paid for declares that it is held on trust for the vendor until payment has been made; and • under a typical trust, the trustee's obligations are not secured by the beneficiary's interest – those obligations are part of what makes up the interest, rather than being secured by it. The court found that the assets were not assets of the superannuation fund. The decision was upheld on appeal (but without further discussion of PPSA aspects except to affirm the primary judge's reasoning) in *Frigger v Trenfield (No 3)* [2023] FCAFC 49.
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 said that the defect was not a defect of a kind mentioned in s165, and then turned to consider whether it was a 'seriously misleading defect' for the purposes of s164(a). 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 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.

Case	Citation, judges	Comments
		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*https://jade.barnet.com.au/Jade.html - article=67949 *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 Ltd ***Meaning of 'security interest': consensual***	**[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 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

Case	Citation, judges	Comments
		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.
Geelong Fire Services Pty Ltd, Re ***Extension of time***	**[2022] FCA 963** Moshinsky J	Application by administrators of Geelong Fire Services under *Corporations Act* s588FM to fix a later time for registration in respect of a security interest granted to a financier, where the security interest was 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. The court noted that there was no prejudice to creditors as the order would not displace the priority of any other secured creditors holding registrations, whose registrations would continue to rank earlier in time; and no prejudice to unsecured creditors as the security agreement by its terms only secured amounts owing under the new financing agreement. The court also noticed that without the new financing, the company would probably need to cease operation, to the likely detriment of all creditors.
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.

Case	Citation, judges	Comments
Gemi 143 Pty Ltd v The Gosford Pty. Limited ***Extension of time***	**[2023] FCA 1375** Halley J	Application by Gemi and related companies under *Corporations Act* s588FM to fix a later time for registration in respect of security interests granted by Gosford, where the secured parties' lawyers had adopted a practice of making registrations with an end time of only about two years. The initial registrations expired. Later the secured parties realised the implications of the practice and made new registrations with no stated end time. Gosford went into receivership, and the secured parties were exposed to the risk of vesting under s588FL if it proceeded to liquidation. The court was satisfied that the failure to register for a longer period was due to inadvertence, and granted the orders. The court reserved the right of liquidators, administrators or deed administrators to apply to vary or discharge the orders if a liquidator or administrator was appointed, or a deed of company arrangement executed, within 6 months.
George 218 Pty Ltd v Bank of Queensland Limited	**[2016] WASCA 56** Murphy JA	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 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.
Getakate Pty Ltd v Beniki Finance Pty Ltd ***Amendment demands***	**[2021] FCA 1118** Greenwood J	Getakate paid out a secured debt owed to Beniki, and then sent emails asking Beniki to remove the relevant PPSR registration. Beniki did not reply. Getakate then issued an amendment demand seeking removal of the registration, and then when Beniki still made no reply, applied under s182 for an order requiring the Registrar to remove it. Beniki did not appear. The court made the order.
Gold Valley Iron Pty Ltd v OPS Screening & Crushing Equipment Pty Ltd ***Meaning of 'security interest' – hiring agreement as 'in substance' security interest***	**[2022] WASCA 134** Buss P, Murphy and Vaughan JJA	Appeal from *OPS Screening & Crushing Equipment Pty Ltd v Gold Valley Iron Pty Ltd* [2020] WASC 412. Gold Valley had hired mining equipment from OPS. OPS went into administration, and then liquidation. Gold Valley claimed the hiring agreements were security interests which vested in it under s267. At first instance, the court had held that the hiring agreement were not security interests, either as 'in substance' security interests under s12(1) or PPS leases, and accordingly s267 had no application. The hiring agreements provided for a minimum hire period of 10 months. They also provided for an option to purchase, and a first right of refusal to purchase, at any time. On exercise of the first right of refusal, some or all of the hire charges already paid would be rebated, with the amount of the rebate decreasing over time. The court held, in a joint judgement by Buss P and Murphy JA with which Vaughan JA largely agreed, contrary to the finding in the court below, that the hiring agreements created 'in substance' security interests, on the following basis. • The hiring agreements were 'hire purchase agreements' within the meaning of s12(2)(e). 'Hire purchase agreement', which is not defined in the PPSA, had its usual meaning of an agreement conferring a bailment of goods coupled with an option to purchase the goods, and where progressive bailments constituted instalments of the purchase price (if the purchase option was exercised).

Case	Citation, judges	Comments
		Contrary to the funding of the court below, the agreements should be interpreted as conferring an option to purchase, exercisable if Gold Valley decided to exercise it, and not merely a right of first refusal to purchase, exercisable only if OPS decided to sell. However, the reference to both rights meant that Gold Valley's option to purchase would be defeasible if OPS decided to sell to a third party and Gold Valley did not take up its option to purchase at that point. The reducing rebate for hire charges already paid, while unfavourable to Gold Valley, did not prevent the right to purchase operating as an option, so as to make the arrangements 'hire purchase agreements'. • The transactions enumerated in s12(2) (including 'hire purchase agreements' in s12(2)(e)) are transactions that ordinarily provide for an interest in personal property (but, in Vaughan JA's view, this was merely an observation of what usually applied as a matter of experience, not a statement of legal principle). In this case, the hire purchase agreements did provide for OPS to hold interests in personal property, being OPS's rights as hiree (owner) of the equipment and holder of the reversion in the equipment under the hiring arrangements, unless and until Gold Valley exercised its purchase option. • OPS's rights secured the obligations of Gold Valley to make payments and perform obligations under the agreements. Vaughan JA elaborated on this finding, first noting that the issue was whether the transaction (rather than the secured party's interest) secured payment or performance. In deciding whether a hire purchase agreement operated by way of security or not, several factors (developed from both Australian and overseas case law) which had been used to determine whether a lease was a 'true' lease or a 'security' lease were relevant. Central issues were whether or not the transaction was ultimately intended to provide for sale of the goods to the lessee/hirer, and the extent to which the lessee/hirer held the incidents of ownership while in possession of the goods. In this case, the relevant factors favoured the construction of the arrangement as in substance security, with the single most important factor being the existence of the purchase option. Accordingly, s267 was capable of applying to the hiring agreements. Further proceedings would be required to determine whether or not OPS had perfected its interests. In his separate judgment, Vaughan JA also discussed whether or not the PPSA effected a 'recharacterisation' of title-based security interest, so that the grantor rather than the secured party was treated as if it were the owner of the collateral. After noting US and Canadian authorities which treated recharacterisation as occurring, and Australian commentary on the issue, he found it unnecessary to conclude whether or not recharacterisation occurred in Australia in the way contemplated by the overseas analysis.
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.

Case	Citation, judges	Comments
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.
Goldphyre WA Pty Ltd v Australian Potash Ltd ***Security for costs***	**[2021] WASC 456** Registrar Griffin	Goldphyre and Australian Potash were parties to an agreement for sale of mining tenements. Goldphyre brought proceedings regarding the interpretation of the agreement. Australian Potash sought security for costs. In contending that Goldphyre may not have assets in the jurisdiction to satisfy a costs order, Australian Potash brought evidence showing (among other things) that Goldphyre had four PPSR registrations against it and its assets. Those registrations turned out to relate to expired security interests, and were later removed. The court said Goldphyre was entitled to rely on the PPSR searches as evidence of what they showed; but Australian Potash had accepted that the security interests were no longer on foot. The court declined to order security for costs, as there was credible evidence that Goldphyre held sufficient unencumbered assets to satisfy a costs order.
Gow v Registrar of Personal Property Securities	**[2021] AATA 917** Member D Mitchell	Sam Gow Pty Ltd, of which Gow was a director, granted security over a motor vehicle to Volkswagen Financial Services Australia Pty Ltd. The grantor defaulted, and Volkswagen repossessed the vehicle and sought to sell it. However Gow registered a security interest in her own favour over the vehicle, preventing its sale. Volkswagen had the Registrar remove the registration, using an amendment demand and the administrative process (ss179-181). Gow sought review of the Registrar's decision to remove the registration. Gow brought evidence of various commercial disputes with Volkswagen. The tribunal upheld the removal. The tribunal was only concerned with whether or not there were reasonable grounds to suspect that the removal was not authorised (s178), not with any other commercial issues in dispute. For this purpose, the tribunal needed to ascertain whether a security interest had been granted to Gow. Gow had not provided any evidence that Volkswagen (or anyone else) had granted Gow a security interest over the vehicle. Even if Volkswagen owed Gow money in relation to the matters she disputed (for example, because the repossession was wrongful) there was no evidence that any of that money was secured.
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

Case	Citation, judges	Comments
		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 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. In further proceedings in *Grounded Construction Group Pty Ltd v Easy Stay Mining Accommodation Pty Ltd [No 2]* [2020] WADC 44, the court (Staude DCJ) noted that it could be assumed, without deciding, that the perfected security interest would have priority over *later* judgments obtained by Grounded Construction.
H&H Funding Pty Ltd, Re ***Extension of time***	**[2022] NSWSC 1354** Black J	Application by Noda Development Ltd under *Corporations Act* s588FM to fix a later time for registration in respect of a security interest granted by H&H, where the director of Noda was a foreign resident who was unaware of the requirement to register, and his Australian solicitors apparently did not turn their mind to the requirement. The registration was made about 6 years after the security interest was granted, but H&H went into liquidation less than 6 months after registration. The court granted the order, which was sought as a matter of urgency. The court was satisfied the omission was inadvertent. The court noted there were two unsecured creditors. One was a professional services provider where there was no suggestion that it would have failed to provide its services if it had known of the secured debt. The other was the Australian Taxation Office, which had no option to choose not to become a creditor whether it knew of the secured debt or not. Having regard to the urgency with which the order was granted, the court reserved liberty to the liquidator of H&H to apply to discharge if further information concerning unsecured creditors became available.

Case	Citation, judges	Comments
Habrok (Dalgaranga) Pty Ltd v Gascoyne Resources Ltd ***Meaning of 'security interest'; mining services contract***	**[2020] FCA 1395** Beach J	Habrok sought to terminate a Deed of Company Arrangement made by Gascoyne and related companies, on multiple grounds. These grounds included that the DOCA improperly favoured NRW Holdings Limited, the principal mining contractor at Gascoyne's mine, including as a result of inadequate investigation of whether security granted to NRW should have been set aside for late PPSR registration. The court considered two PPSA issues concerning this security. First, NRW held a General Security Agreement, which had been granted to secure a $12m loan, and arguably also secured other indebtedness. A registration for this security interest had been made within 20 business days after it was granted, and accordingly no issue of vesting under s588FL of the *Corporations Act* arose (even though the registration had perhaps occurred more than 20 business days after some of the indebtedness secured by it had arisen). Second, NRW had made various PPSR registrations which appeared to relate to equipment owned by it and used under its mining services contract with the Gascoyne companies. Some of these registrations were made more than 20 business days after the date of the contract. The court noted that the contract required NRW to perform work at the mine using equipment owned by NRW, and granted NRW non-exclusive possession of the site to enable NRW to do that work. The court held that this did not involve NRW leasing, bailing or otherwise granting any other security interest over the equipment. As there was no security interest which required registration, no question of vesting arose. The court also rejected Habrok's other attacks on the DOCA, and declined to terminate it.
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.

Case	Citation, judges	Comments
Hamersley Iron Pty Ltd v Forge Group Power Pty Ltd ***Nature of security interests; set-off; accounts***	**[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. 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.
Hardy v Coates Hire Operations Pty Ltd ***Unjust contracts***	**[2022] NSWCA 122** White and Kirk JJA, Basten AJA	Hardy guaranteed performance of a hiring contract, under which Coates hired equipment to a company controlled by Hardy and his brother. The company defaulted, and Coates sought recovery under the guarantee. At first instance, Hardy had argued that it was unjust to enforce the guarantee, relying on the *Contracts Review Act 1980* (NSW). Hardy had argued that he suffered from cognitive impairments, and that the guarantee was too complex to be understood by a person in his position. The court at first instance had rejected Hardy's arguments and gave judgment for Coates. In doing so, the court at first instance had noted that the guarantee contained several clauses dealing with security,

Case	Citation, judges	Comments
		charges, the PPSA and priority, noting that they were 'ultimately mechanical', and that it was difficult to conclude they were more complex than could be understood by the director of a company responsible for running multiple construction projects. On appeal, the court upheld the first instance decision, quoting the passage dealing with the security provisions with approval.
Hardy v International Motor Cars Pty Ltd ***Meaning of 'security interest'***	**[2022] VMC 24** Magistrate TW Greenway	Hardy claimed beneficial ownership of a car that had been held by IMC, a company in administration. Hardy had previously obtained an injunction restraining dealings with the car, and now wished to proceed to claim damages against IMC for alleged breach of the injunction. IMC sought a stay of proceedings until leave was granted by a superior court under *Corporations Act* s444E to proceed against it as a company in administration. Hardy had made a PPSR registration in respect of his claimed beneficial ownership. Hardy's claims covered (1) recovery of money such as damages for breach and (2) orders to obtain possession and title to the vehicle. The court held that Hardy was a 'creditor' in respect of the first claims, and therefore required leave under s444E to proceed; but that Hardy was not a 'creditor' in respect of the second claims, and therefore did not required leave. Accordingly the court stayed the first claims pending the grant of leave, but not the second. In relation to the second claims, IMC argued that Hardy was claiming as a secured creditor (and accordingly a 'creditor'). The court disagreed, saying that Hardy's claim was for 'a true ownership interest (as distinct from a financing interest)', which was not a security interest under PPSA s12.
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. 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.
Highfields Australia Pty Ltd v Advanced Motor Dealers Group Pty Ltd	**[2023] NSWSC 1458** Richmond J	AMDG owned several cars, which were subject to finance. Highfields and AMDG entered into an agreement under which Highfields would use secured finance arranged by Highfields to pay out the finance that AMDG owed on the cars, and then Highfields would allow AMDG to use them in its motor dealership business (which included hiring out cars for use by customers). Highfields claimed that it was a term of the agreement that Highfields would own the

Case	Citation, judges	Comments
Meaning of 'security interest'		cars, while AMDG claimed the agreement provided for AMDG to retain ownership. Highfields sought a declaration that it was the owner of the cars. The court granted the declaration. The court found that Highfields had established that it was a term of the agreement that Highfields, rather than AMDG would own the cars, as both parties were aware that the arrangement for Highfields to arrange finance for the vehicles required Highfields to grant security as owner, and as Highfields would not have agreed to enter into the financing arrangements unless it was in a position to take back possession of the cars from AMDG if AMDG did not put it in funds to meet its obligations under the financing arrangements. Title passed from AMDG to Highfields at the time intended by the parties, under s22 of the *Sale of Goods Act 1923* (NSW), and the court inferred that the intended time was when Highfields paid AMDG for the cars. The court also found that the transfer of the cars from AMDG to Highfields was absolute, and not by way of security, noting that AMDG had no right to return of the cars on satisfaction of any secured obligations. The court said it was not necessary to consider whether the transactions created security interests under s12(2) of the PPSA; but if the question had arisen, the court would have concluded that they did not, as the transactions did not in substance secure payment or enforcement of an obligation. (There was no consideration, and perhaps it was not necessary to consider, whether the bailment of the cars from Highfields to AMDG gave rise to a PPS Lease under s12(3)).
Highfields Australia Pty Ltd v Advanced Motor Dealers Group Pty Ltd (No 2)	**[2024] NSWSC 35** Richmond J	In *Highfields Australia Pty Ltd v Advanced Motor Dealers Group Pty Ltd* [2024] NSWSC 35, Highfields had sought and obtained orders that cars which had been transferred by AMDG to Highfields had been transferred absolutely and not by way of security. Bilpin Projects Pty Ltd held security over the assets of AMDG. In these proceedings (which were mainly concerned with costs of the first proceedings), Highfields sought a further order directing a director of Bilpin to remove Bilpin's PPSR registration in respect of its security interest. The court declined to grant the order, noting that the order would affect Bilpin's rights as secured party, Bilpin was not a party to the proceedings, and Highfields had chosen not to join Bilpin to the proceedings.
Holdco Pty Ltd, Re	**[2020] FCA 666** O'Bryan J	Application by administrators under *Corporations Act* s442C for intellectual property subject to security interests to be sold free of those interests. The application was sought to enable the business of companies in administration to be sold, with the sale including intellectual property used by the companies, despite some of the intellectual property being owned by third parties and being subject to security interests. The court granted the orders but, being required under s442C(3) to be satisfied that arrangements had been made to protect adequately the interests of the third parties, ordered that sale proceeds be deposited into a controlled account in order to be available for application to their claims. Further, despite s442C(7) providing for the security interests to be extinguished upon the disposal, the court made ancillary orders under s447A, modifying the operation of s442C(7) so that it should operate as if the rights of the secured parties (and the rights of the third party owners) were preserved for the purpose of determining their claims to the retained sale proceeds.
Horizons (Asia) Pty Ltd v Enagic Co Ltd	**[2022] FCA 365** Stewart J	Application for security for costs. In granting the order, the court noted there were realistic cause for concern that the relevant party might not be able to meet any costs order, noting that it appeared to have minimal assets of any significance, with searches indicating no title to real property, no manufacturing facilities and 'no assets registered on the Personal Property Securities Register' [without reference to the fact that the PPSR is not a register of assets].

Case	Citation, judges	Comments
Hubbard v Holmes Establishment Pty Ltd ***Jurisdiction***	**[2019] QMC 10** Magistrate AH Sinclair	Dispute about equipment owned by Wananchi Portable Water Purification Pty Ltd, over which Holmes claimed a security interest. Hubbard, a police officer, sought orders as to disposition of the equipment, which had been seized by the police. The court considered it had jurisdiction under PPSA s207. That confers jurisdiction subject to the court's general jurisdiction limits, and s4 of the *Magistrates Court Act 1921* (Qld) would generally confine jurisdiction to monetary matters, but s694 of the *Police Powers and Responsibilities Act 2000* (Qld) gave jurisdiction in this instance to grant disposal orders. There was a short-form security agreement purportedly signed by Wanachi, but the court did not consider it binding as it had been signed by only a single interested director. However, Wanachi's board had also resolved to grant security, with the minutes signed by several directors, and the court considered these minutes effective to grant the security. Holmes had made a registration in respect of the security interest, which the court considered perfected it (even though, the court said, there was some doubt whether the security interest was valid), and which entitled Holmes to seize the equipment.
Huda v Huda ***Interaction with family law***	**[2020] FCCA 822** Judge Howard	Family law case, concerning division of property between husband and wife. Husband had granted a general security agreement to a friend, Mr Laham, to secure a judgment debt for a loan made by Mr Laham. In ordering the debt to be repaid out of the husband's share alone (and not the wife's share), the court noted in respect of the security agreement that any priority enjoyed by reason of the PPSA must give way to orders made by the court under s80(1)(k) of the Family Law Act 1975 (Cth) for the just disposition of the case.
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.
Huntermotive Pty Ltd v Khan ***Amendment demand***	**[2022] FedCFamC2G 529** Judge Manousaridis	Huntermotive acquired a second-hand Mercedes car from Ms Bi, as a trade-in for a Ford car that it sold to her, after searching the PPSR and finding no security interest. Khan then made a registration claiming a security interest. Huntermotive gave an amendment demand asking Khan to remove it and then, when he did not, commenced court proceedings for its removal. Huntermotive argued, and the court accepted, that no security interest held by Khan had arisen after Huntermotive acquired the car. If Khan held a security interest that had arisen previously, then it was unperfected at the time Huntermotive acquired the car, and so Hundermotive acquired the car free of it under s43. Huntermotive was a 'buyer for value' of the Mercedes even though it was acquired as a trade-in rather than for cash, the 'value' being the interest in the Ford that Huntermotive transferred to Ms Bi. The court ordered the financing statement removed

Case	Citation, judges	Comments
		under s182(4)(a).
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-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

Case	Citation, judges	Comments
		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 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.
Jayfield Pty Ltd v Cussen ***Statutory liens; liens arising at general law***	**[2020] VSC 380** Garde J	Melded Fabrics Australia Pty Ltd leased premises from Australian Comfort Group Pty Ltd. MFA also leased goods from Jayfield under a service agreement, and agreed to purchase other goods from Jayfield, and used them at the premises. MFA defaulted under its agreements. AGC gave notice to terminate the premises lease, while Jayfield gave notice to terminate the service agreement and rescind the sale agreement. MFA went into administration, and then liquidation, with Cussen and others appointed as liquidators. MFA vacated the premises, leaving the goods. AGC sought to dispose of them under the uncollected goods provisions in the *Australian Consumer Law and Fair Trading Act 2012* (Vic), and also claimed a lien on them for storage costs. Jayfield sought to recover the goods.

Case	Citation, judges	Comments
		AGC had made no PPS registrations. Jayfield had made late PPS registrations, shortly before appointment of administrators. The liquidators argued that both AGC's and Jayfield's interests had vested in MFA under s267 (AGC) or *Corporations Act* s588FL (Jayfield). The court granted orders allowing AGC to dispose of the goods under the ACLFTA, and also held that it was entitled to its equitable lien. The PPSA did not apply to the statutory disposal rights because of s8(1)(b) or to the equitable lien because of s8(1)(c). AGC also held a contractual right to remove and store the goods, but the court found it unnecessary to decide whether this right vested in MFA under s267, as AGC did not claim to rely on it. While the court noted the difficulty with Jayfield's claim to the assets, arising from its failure to perfect in time, Jayfield's case had failed in any event due to a failure to provide security for costs.
Johnny's Furniture Group Pty Ltd, Re ***Taking free of security interests***	**[2024] FCA 838** Goodman J	Johnny's, a furniture retailer, went into liquidation. The liquidator proposed to sell stock of Johnny's where property to the stock had not already passed to customers. Several secured parties held security interests over Johnny's stock. The liquidator sought directions under s90-15 of the *Insolvency Practice Schedule (Corporations)*, being schedule 2 to the *Corporations Act*, that it was justified in (among other things): • acting on the basis that title to the stock had passed to customers where there were items in stock available to satisfy the order, either in whole or in part; and • acting on that basis despite the existence of perfected security interests over those items. The court was satisfied that the liquidator was justified in treating property in the goods as having passed in accordance with ss21 to 23 of the *Sale of Goods Act 1923* (NSW) and corresponding provisions in the equivalent Victorian and Queensland legislation. Those sections provide for property to pass when there is an unconditional contract for sale of specific goods in a deliverable state, and the goods have been unconditionally appropriated to the contract by the buyer with the assent of the seller. The liquidator proposed, and the court agreed, that goods could be taken as having been appropriated to the customer if (among other conditions) the customer had paid for them but not received them, and at least one item of stock was available to satisfy the order. In this regard, the court noted that 'unconditional appropriation' did not require that a specific item of stock (as opposed to an item within a pool of stock of the kind ordered) had been identified. The court was also satisfied that the buyers had taken free of the relevant security interests under PPSA s46. The evidence indicated that the items had been sold in the ordinary course of Johnny's business of selling furniture as required by s46(1), and that none of the circumstances listed in s46(2) applied.
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.

Case	Citation, judges	Comments
		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 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.
Kimberley Diamonds Limited, Re ***Amendment demands***	**[2021] NSWSC 865** Black J	Kimberley granted a security interest to Zhejiang Huitong Auction Co Ltd over its shares in Mantle Diamonds Ltd. Huitong made a registration in respect of all Kimberley's present and after-acquired personal property. Kimberley issued an amendment demand seeking amendment of the registration so that it would no longer extend to shares in another company, Alto Minerals Pty Ltd. Huitong did not comply, and Kimberley applied under s182 to have the court order the amendment.

Case	Citation, judges	Comments
		The court was satisfied that Huitong's security interest did not extend to the shares in Alto Minerals, and made the order.
Kirkalocka Gold SPV Pty Ltd v Zenith Pacific (KLK) Pty Ltd ***Meaning of 'security interest'; PPS leases; in-substance security interests; possession***	**[2024] FCA 428** Besanko J	Under a power purchase agreement between Kirkalocka and Zenith, Zenith agreed to build a power plant on land owned or leased by Kirkalocka, and operate it to generate power for Kirkalocka. The agreement gave Kirkalocka a right to purchase the plant in certain circumstances including default by Zenith, and also at any time at Kirkalocka's option, for a pre-agreed price decreasing over time. The agreement also gave Kirkalocka step-in rights in the event of default by Zenith. Zenith's was given a non-exclusive right to occupy Kirckalocka's land for the purposes of the agreement. The parties agreed that the power plant constituted personal property and not fixtures. Kirkalocka went into administration, and claimed that Zenith held an unperfected security interest over the power plant, which vested in it. Kirkalocka claimed the security interest arose as both a PPS lease under s12(3) and an in-substance security interest under both s12(1). *PPS lease* The court held that there was no PPS lease, as there was no bailment of the power plant by Zenith to Kirkalocka; rather, Zenith retained possession of the power plant. Accordingly, s13(1) was not satisfied. Kirkalocka had argued that it (Kirkalocka) had possession because of the non-exclusive nature of Zenith's occupancy right, Kirkalocka's rights of entry to the power station, and certain safety controls which remained with Kirkalocka. However the court was not satisfied that these matters amounted to possession by Kirkalocka, and the step-in rights which allowed Kirkalocka to *take possession* indicated that Kirkalocka did not ordinarily have it. However if there had been a bailment, the court would have held that s13(2) was not satisfied, as Zenith was not regularly engaged in the business of bailing goods, being a special purpose vehicle with only a single project (and therefore a single bailment). The court would have held that s13(3) was satisfied, as Kirkalocka was providing value by making payments as required under the power purchase agreement for the supply and availability of power. *In-substance security interest* Kirkalocka argued that the purchase option, with the decreasing purchase price, made the transaction similar to a hire purchase agreement, where the ownership interest of Zenith secured Kirkalocka's obligation to pay the charges over the term of the agreement. Zenith argued that the transaction was unlike a hire purchase agreement because Zenith, not Kirkalocka, retained possession of the power plant (and the court agreed that Zenith did retain possession). The court agreed with Kirkalocka, and held that Zenith's retention of title did give rise to a security interest which secured payment of supply and availability charges by Kirkalocka. However, although Zenith had not made a PPSR registration until after the commencement of administration, it had perfected its interest by possession. Zenith had actual possession of the power plant for the purposes of s21, and Kirkalocka did not have apparent possession (so as to override Zenith's actual possession) for the purposes of s24(1).

Case	Citation, judges	Comments
		Accordingly, the security interest did not vest in Kirkalocka.
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) ***Extension of time***	**[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, 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	**[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.

Case	Citation, judges	Comments
Pty Ltd ***Possession***		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).
Laurus Group Pty Ltd v Mitsui & Co (Australia) Ltd (No 2) ***Meaning of 'security interest': payment into court, consensual***	**[2023] VSC 412** M Osborne J	In proceedings between Laurus and Mitsui, Laurus was ordered to, and did, pay money into court by way of security for costs. Subsequently Laurus also complied with further orders made by consent requiring a further payment. Laurus went into administration. The administrator argued that the payment into court under the second order, being made by consent, gave rise to an unperfected security interest which vested in Laurus under PPSA s267. The court held that the payment under the consent order did not give rise to a security interest. In doing so, the court followed *Dura (Australia) Constructions Pty Ltd v Hue Boutique Living Pty Ltd* [2014] VSCA 326, which had held that a security interest had to arise from a consensual transaction, and a payment pursuant to court order did not do so. The court found that Mitsui's interest under the consent order was in the nature of an equitable lien or equitable charge, which arose by reason of the general law, and so fell within the exclusion in s8(1)(c). Laurus argued that despite that, the agreement between Laurus and Mitsui to obtain the consent order for the payment of security for costs was a 'transaction' that gave rise to a security interest, and that s267 could apply to that security interest. However, the court held that the making of a consent order was not a mere ministerial act implementing the parties' prior agreement, but rather an independent judicial act requiring due consideration of the appropriateness of the order. Accordingly it was not the agreement to seek the court order that 'provided for' the security interest, but rather the making of the order by the court.
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.
Leung v Fordyce	**[2021] NSWDC 522**	Leung, as executor of the will of Ho, had obtained a judgment debt against Mr Fordyce, and a garnishee order in respect of a debt owed by Slattery to Mr Fordyce.

Case	Citation, judges	Comments
Attachment	J Smith SC, DCJ	Mrs Fordyce claimed that she was entitled to the benefit of the debt owed by Slattery, under either a general security agreement granted to her by Mr Fordyce, or a deed of assignment in her favour made by Mr Fordyce. The general security agreement had been granted to secure loans purportedly made by Mrs Fordyce to Mr Fordyce. The court found no loans had been made. and held that this meant the security interest had not attached to any property of Mr Fordyce. (In doing so, the court did not comment further on the meaning of 'attachment'. It seems implicit that the court considered no value had been given for the security interest so as to satisfy s19(2)(b)(i), but the court did not comment on whether execution of the general security agreement could have satisfied the requirement of 'an act by which the security interest arises' so as to satisfy s19(2)(b)(ii).) However, the court found that the deed of assignment made by Mr Fordyce had assigned the debt to Mrs Fordyce, and so she, rather than Leung, was entitled to the benefit of the debt.
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.
Lifestyle Property Partners Pty Ltd v O'Reilly	**[2024] NSWSC 311** Schmidt AJ	Lifestyle and O'Reilly made an unwritten agreement for Lifestyle to make mares available to O'Reilly for her to breed with her stallions, for a 12 month period, for no payment but on terms that O'Reilly would be responsible for the costs of the care of the mares. O'Reilly then sought a further agistment agreement providing for the payment of agistment fees, and a 5 year lease of the mares. Lifestyle did not agree to that further agreement. Lifestyle then terminated the unwritten agreement and sought return of the mares. O'Reilly did not return them, and made a PPSR registration claiming a security interest. The court held that Lifestyle had established ownership of the mares. O'Reilly did not hold a security interest over them, as Lifestyle had not agreed to the 5-year lease agreement. The court ordered that O'Reilly remove her PPSR registration.
Lobux Pty Ltd v Willshaun Pty Ltd ***Unfair contract terms***	**[2022] FCA 204** Downes J	Lobux manufactured a vacuum tank for Willshaun. Before it was finished or paid for, Willshaun took it to have another company install a part on it, and did not return it. Lobux sought orders for delivery of the tank. The contract provided that Lobux retained title to the tank, and Willshaun was a bailee of it, until paid in full. In support of that provision, the contract also included PPSA clauses saying that Lobux's interest was a security interest, providing for Willshaun to execute other documents and take further steps to support registration of financing statements, excluding certain sections of the PPSA that could be contracted out of, and waiving certain rights under the PPSA. Willshaun argued that these PPSA clauses (and other clauses) were unfair contract terms under s24 of the *Australian Consumer Law*. The court found that the PPSA clauses were not unfair contract terms. They were reasonably necessary to protect the legitimate interests of Lobux under its retention of title clause, did not cause a significant imbalance in the parties' rights and obligations, and were expressed in transparent terms.

Case	Citation, judges	Comments
		The court ordered the return of the tank.
LTDC Pty Ltd v Cashflow Finance Australia Pty Ltd	**[2019] NSWSC 150** Darke J	Priority dispute over real property. Cashflow 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. The court held that LTDC had priority to the sales proceeds. Cashflow, although having the prior equitable interest, had prejudiced its position by failing to lodge a caveat. Cashflow 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 Cashflow. 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.
Luxtown Pty Ltd, Re	**[2019] FCA 1861** Markovic J	Luxtown, in administration, held goods subject to numerous competing purchase money security interests. While some secured parties had identified specific goods to which their interests applied, others had not. The administrators lacked funds to assess and determine the competing claims, and sought to sell the business as a whole. This required leave of the court under *Corporations Act* s442C, which restricts administrators disposing of property subject to security interests. The court granted the requested leave.
MacDonald Contracting Australia Pty Ltd, Re ***Perfection of migrated security interests***	**[2024] NSWSC 729** McGrath J	In 2009 (before the commencement of the PPSA), MacDonald granted a fixed and floating charge to Tarenast Pty Ltd. The charge was registered with ASIC under the *Corporations Act* provisions then in force, and migrated to the PPSR in 2012 when the PPSA commenced. A verification statement was issued, containing Tarenast's ABN, and the registrar's generic email address (enquiries@ppsr.gov.au) as an address for service In 2022, Tarenast completed the 'find and claim' procedure in relation to the charge, and was issued with a verification statement for the registration, with updated details including Tarenast's ACN rather than its ABN, and a new email address for service. Less than 6 months later MacDonald went into liquidation. The liquidator claimed that the security interest was a transitional security interest which was temporarily perfected for 24 months (ending in 2014) under s322; that period had now expired; and accordingly it vested in MacDonald under *PPSA* s267 or s267A or *Corporations Act* s588FL. The court held that the security interest did not vest in MacDonald. First, the security interests had remained continuously perfected. It was not only a 'transitional security interest', but also a 'migrated security interest'. As such, and as contemplated by s322(2)(a), it was perfected by migration, and did not cease being perfected in 2014 after 24 months. Second, the registration did not suffer from seriously misleading defects that would have rendered its registration ineffective. The liquidator argued that these defects were the generic email address for service, and Tarenast's ABN rather than ACN being used as its identifying number. These matters are not listed as particular defects in PPSA

Case	Citation, judges	Comments
		s165, and accordingly the court needed only to consider whether they were seriously misleading under the general rule in s164(1). Following *Future Revelation Ltd v Medica Radiology & Nuclear Medicine Pty Ltd* [2013] NSWSC 1741 and *Re OneSteel Manufacturing Pty Limited* [2017] NSWSC 21, the test was whether the irregularity resulted in the registration not being discoverable on a search of the PPSR. These did not. There was no facility to search the PSR by reference to a secured party's email address or ACN, and so defects in those matters could not result in a registration being unable to be disclosed by PPSR search. In any case, for a migrated security interest, under clause 1.3 of schedule 1 of the *Personal Property Securities Regulations 2010*, of the secured party's identifying number to be included in the registration was the number as recorded on the transitional register, which in this case was the ABN as recorded on the ASIC register. The court granted a declaration that the security interest had been continuously perfected under *PPSA* s56 from immediately before the registration commencement time in 2012, and had not vested in MacDonald under *PPSA* s267 or s67A or *Corporations Act* s588FL.
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

Case	Citation, judges	Comments
		made in relation to the truck.
Maiden Civil (P&E) Pty Ltd, Re ***Attachment; transitional security interests; not registered on pre-PPSA register***	**[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 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.
Manda Capital Holdings Pty Ltd v Pappas	**[2024] VSC 495** Connock J	Manda made a loan to Austpro Management Services Group Pty Ltd, secured (among other things) by a guarantee from each of Statemark Pty Ltd (in its own capacity and as trustee of the Pappas Family Trust) and Mr Chris Pappas. The guarantee included a grant of security over all assets from the guarantors. Statemark's assets at the time of

Case	Citation, judges	Comments
Taking free and constructive knowledge		grant included shares in Point Bay Developments Pty Ltd, held as bare trustee for Mrs Josephine Pappas. Statemark transferred those shares to Mrs Pappas. Austpro defaulted, and Manda sought to enforce its security. Manda sought freezing orders to prevent Mrs Pappas dealing with the transferred shares. No PPSR registration had been made in respect of the security agreement. The transfer of shares took place in two parts: 70 shares were transferred from Statemark to Mrs Pappas, then to Mr Pappas, then back to Mrs Pappas; and later 30 shares were separately transferred from Statemark to Mrs Pappas. To obtain a freezing order, Manda was required to demonstrate that there was a good arguable case that the shares were subject to the guarantee security. The court held that there was not a good arguable case that the shares were subject to the security granted by Statemark, as those shares had been held as bare trustee for Mrs Pappas, and not in Statemark's own capacity or in its capacity as trustee of the Pappas Family Trust named in the security agreement. However, 70 of the shares had been transferred to Mr Pappas (possibly in error) before being transferred to Mrs Pappas. There was a good arguable case that: • those shares had become subject to the guarantee security granted by Mr Pappas, and that the security continued when they were transferred to Mrs Pappas. • Mrs Pappas did not take the shares (as investment instruments) free of the security under s50(1), as there was little evidence that she gave value for the transfer (s50(1)(a)) or took possession or control of them (s50(1)(b)). Under s296, the onus of demonstrating taking free rested on Mrs Pappas, and had not been discharged. • even if s50(1) had been satisfied, the constructive knowledge exception in s50(2) applied, noting the presumption in s299(2) that applies in the case of transfers between members of the same household (as Mrs and Mr Pappas were) Accordingly the court granted the freezing order in respect of 70 shares.
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 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.)
Matcove Pty Limited, Re	**[2020] NSWSC 625**	Mr Fuller, a director and shareholder in Matcove, borrowed money from Mrs Albert, and granted security over a

Case	Citation, judges	Comments
Retention of collateral; contracting out	Black J	share in Matcove. The security agreement provided that, on default, Mrs Albert was entitled to a transfer of the share It also provided that for the purposes of s115 she need not comply with PPSA s125 and 130, providing for retention of collateral. Mr Fuller did not repay the loan, and the share was transferred to Mrs Albert. Mr Fuller then sought to redeem the share by repaying the loan. The court considered that the transaction gave rise to a security interest. Mr Fuller argued that transfer of the share to Mrs Albert was in breach of the PPSA, amounting to a purchase by the secured party under ss 128 and 129 but that did not comply with ss129 and 130. The court rejected that argument: ss 128 and 129 only applied where there had been a seizure of collateral under s123, which was not alleged to have occurred; and in any case s130 had been excluded by the security agreement. The court also dismissed arguments that non-compliance with s129 invalidated the transfer, saying that the PPSA provided for no such invalidity, and there was no reason to imply consequences for a breach of the PPSA other than those set out in the PPSA itself (such as the entitlement to damages under s271). The court considered Mrs Albert had taken the transfer of the share as mortgagee. However, Mr Fuller was not entitled to an order for redemption, as he had failed to offer to pay the full amount secured including costs. The loan had been a short-term loan without interest; several years had elapsed; it was not now unconscionable for Mrs Albert to retain the share.
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.
MC XXIV Pty Ltd, Re ***Extension of time***	**[2023] NSWSC 767** Williams J	Application by J&D Damjanovic Pty Ltd and Damjanovic Holdings Pty Ltd under *Corporations Act s588FM* in respect of security interests granted by MC and others, in circumstances where registrations were not made in time for some of the grantors due to relevant officers of the secured parties not being aware of the need to make them. Registrations were eventually made, and the grantors went into liquidation. For the grantors where registrations had been made in time, the court found that *Corporations Act* s588FL had no application, and so granted no relief. For the grantors where registrations were made late, the court made the orders. The court was satisfied that the failures to register in time were due to inadvertence, and noted that unsecured creditors would not be prejudiced as (1) there was no evidence that any unsecured creditors had dealt with the companies on the basis of its assets being unsecured; (2) only one of the grantors had unsecured creditors other than the ATO, and that company's assets were unlikely to be sufficient to provide any return to unsecured creditors (after payment of liquidation expenses) even if the security interest did vest in the grantor; and (3) the ATO, which was an unsecured creditor of all grantors,

Case	Citation, judges	Comments
		was an involuntary creditor in the sense of having no choice but to become a creditor whether the existence of the security interests was apparent from a search or not. The court also reserved the rights of unsecured creditors to apply to discharge or vary the orders.
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.
McWilliam's Wines Group Ltd (No 2), Re ***Extension of time***	**[2020] FCA 417** Gleeson J	Application by administrators of McWilliam's and a related company under *Corporations Act* s588FM to fix a later time for registration in respect of security interests granted by the companies to a financier (Gordon Brothers Pty Ltd), 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. The court noted that there was no prejudice to creditors generally as the Gordon Brothers funding would be used to refinance similar funding that had been provided by another secured creditor, and that the order would not displace the priority of any other secured creditors holding registrations, as their registrations would continue to rank earlier in time.
Mega v WW Property	**[2022] VSC 607**	Mr and Mrs Mega brought proceedings against WW for contribution under a guarantee. Under a consent order, WW

Case	Citation, judges	Comments
Development Pty Ltd ***Meaning of 'security interest': payment into court***	Garde J	paid funds into court pending further agreement or order. WW went into liquidation. Mr and Mrs Mega claimed that the payment into court was intended to secure any payment ultimately due from WW, and so they held a security interest over the funds. WW's liquidator claimed that if there was a security interest, then it was unperfected and so vested under PPSA s267. The court noted with approval the decision in *Dura (Australia) Constructions Pty Ltd v Hue Boutique Living Pty Ltd* [2014] VSCA 326, where the court had said that whether or not a payment into court gave rise to a security interest depended on the circumstances, and described the following categories of payments into court: • in satisfaction of a cause of action, • pursuant to an order for security for costs, • as a condition of being allowed to defend an application for summary judgment, • by way of interpleader, where the party does not know which of several claimants are entitled to the money, • as an alternative to a freezing order being made in respect of the party's assets, or • as a condition of a stay or execution of a judgment pending appeal. The court examined the circumstances surrounding the payment, and fount that it was an alternative to a freezing order, under which WW would have been restrained from dealing with its assets. Such an order, and accordingly a payment into court analogous to it, did not create a security interest. Accordingly the court ordered the funds be paid to the liquidator.
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,

Case	Citation, judges	Comments
		inadvertence had been established. For the other two, the court was satisfied that other creditors were unlikely to be prejudiced.
Metal Manufactures Pty Ltd v WesTrac Pty Ltd ***Security interest continuing in collateral; taking free***	**[2024] NSWSC 144** Stevenson J	Metal Manufactures sold solar panels on retention of title terms to Symmetry Electrical Services Pty Ltd, and perfected its security interest by registration. SES entered into a contract to sell the panels to Verdia Pty Ltd. Verdia entered into a contract to sell them to WesTrac. Pursuant to the contracts, MM delivered the panels to WesTrac. WesTrac paid Verdia for the panels. Verdia did not pay SES, and SES did not pay MM. MM sought to enforce its security interest over the panels. *Security interest not continuing in collateral*. The court held that MM's security interest did not continue in the panels, pursuant to s32, as (1) MM had expressly or impliedly authorised SES to dispose of them disposal (this was conceded by MM), and (2) the disposal had given rise to proceeds. The sale by SES to Verdia did not give rise to proceeds, as Verdia had not paid for the panels. However, the court held that the sale by Verdia to WesTrac did give rise to proceeds, defined in s31 as 'identifiable or traceable personal property'. The amount paid by WesTrac to Verdia constituted 'proceeds' as it was identifiable (and traceable), and as it was derived from a dealing with the panels, being the purported sale by Verdia to WesTrac and their delivery to WesTrac's premises. It did not matter whether the purported sale by Verdia to WesTrac was in fact a sale or not. *Taking free.* While this was sufficient to dispose of the case, the court also considered whether WesTrac would have taken the panels free of the security interest under s46, which allows taking free where there is a sale in the ordinary course of business. The court held that WesTrac did not take free, because MM had retained title to the panels, and thus they were not Verdia's (or SES's) to sell, and so there was no 'sale'. The court determined that there was no 'sale' by applying the *Sale of Goods Act 1923* (NSW), under which there was merely an 'agreement to sell', and not a 'sale' where title was to be transferred at some future time subject to a condition which had not yet been fulfilled. The court followed *Warehouse Sales Pty Ltd v LG Electronics Australia Pty Ltd* [2014] VSC 644 in determining that it was appropriate to apply State sale of goods legislation to interpret the meaning of 'sale' in the PPSA. *Not bound because no assent to security agreement*. WesTrac also argued that it was not bound by MM's security interest because (1) by obtaining possession, it had become the grantor of the security interest in the panels under s19 and the definition of 'grantor' in s10, and (2) it had not signed or accepted the security agreement as required for the security interest to be enforceable under s20. The court rejected this argument. The security agreement remained in place and was sufficient for the purposes of s20, regardless of there being a new grantor under it.
MIB Family Holdings Pty Ltd v Gaston Resources Pty Ltd ***Extension of time***	**[2024] FCA 801** Jackman J	Application by MIB and another under *Corporations Act* s588FM to fix a later time for registration in respect of security interests granted to them by Gaston, where their lawyers failed to lodge registrations in time. The court granted the application. The court was satisfied that the failure to register was due to inadvertence (s588FM(2)(a)(i)), and also that there was no prejudice to creditors or shareholders (s588FM(2)(a)(ii)). The orders reserved the right of insolvency administrators to apply to discharge if insolvency occurred within 6 months. The court would also have been satisfied that it was just and equitable to grant the application.
Momcilovic v The Queen	**[2011] HCA 34**	For at least the first 5 years after enactment of the PPSA, including the first 3 years of full operation, this case was

Case	Citation, judges	Comments
The High Court refers to the PPSA … in footnote no 708	French CJ, Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ	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. 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	**[2013] FCCA 2274**	NCO Finance had a security interest, perfected by registration, over a motor vehicle.

Case	Citation, judges	Comments
Pty Ltd v Australian Pacific Airports (Melbourne) Pty Ltd	Judge O'Dwyer	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 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
Nissan Financial Services Australia Pty Ltd v The Prospective Respondent ***Jurisdiction***	**[2023] FedCFamC2G 1035** Judge Street	Nissan sought ex parte orders directing Transport for NSW to give discovery of the name and address details of the registered owner of a motor vehicle, preparatory to seeking orders for enforcement of a security interest over the vehicle under PPSA s123. The court granted the orders for discovery, noting that it fell within the court's jurisdiction under PPSA s207,
NRMA Treasury Limited v Elenium Automation Pty Ltd ***Extension of time***	**[2022] FCA 808** Goodman J	Application by NRMA under *Corporations Act* s588FM to fix a later time for registration in respect of a security interest granted by Elenium, where internal lawyers for NRMA overlooked the requirement in what was, for NRMA, an unusual transaction, and where carriage of the transaction was being transferred between lawyers because of illness. The court accepted that the failure was accidental or inadvertent, and made the order, reserving the right of insolvency administrators to apply to discharge if insolvency occurred within 6 months. The court noted that the order would not affect the position of secured creditors (for the reasons given in *123 Sweden AB v Appleyard Capital Pty Ltd* [2014] NSWSC 782), and that the reservation of the right to discharge protected the position of unsecured creditors.
NT Port and Marine Pty	**[2024] FCA 905**	NT Port was subject to a deed of company administration. As an alternative to liquidation, a recapitalisation

Case	Citation, judges	Comments
Ltd, Re	Charlesworth J	transaction was proposed, which required the shares in NT Port held by Ezion Offshore Logistics Hub Pte Ltd to be transferred to the recapitalisation provider free of security interests. There were PPSR registrations for two security interests granted by Ezion over the shares, in favour of PT Limited and Aus AM Pte Ltd. None of Ezion, PT or Aus had consented to the transfer. The administrator sought leave to transfer the shares, free of the security. Under *Corporations Act* s444GA, the court granted leave for the administrator to transfer the shares. The court was satisfied that the transfer would not unfairly prejudice the interests of Ezion as shareholder, as the company's value was such that there would be no distribution to Ezion on a liquidation and the shares had no residual value to Ezion. PT's security interest secured amounts owing to noteholders. PT was unwilling, in the absence of funding, to convene a noteholder's meeting to consider granting a release. The court was satisfied that as the shares had no value, PT's security also had no value. Under *Corporations Act* s444F, the court ordered that PT be restrained from enforcing its security interest, and that the security interest be discharged on sale. While s444F required a creditor's interests to be adequately protected, the worthless nature of the shares meant that there was no lack of adequate protection here. The nature of the obligation secured by Aus AM's security was not known. Amendment demand procedures under PPSA s178 were on foot, but Aus AM had not replied to any correspondence. Communications sent to Aus AM's email address as noted on the PPS Register had been returned with a notification that they could not be delivered. For similar reasons as for PT, the court was satisfied that it was appropriate under *Corporations Act* s444F to order that Aus AM be restrained from enforcing its security interest, and that the security interest be discharged on sale. In making those orders, the court noted that it was satisfied that the administrator had made all reasonable steps to communicate with Aus AM by way of the email address for service specified in the PPSR registration.
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

Case	Citation, judges	Comments
		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.
Old Hume Truck and Car Repairs Pty Ltd v Milion Miles Pty Ltd	**[2023] VSC 551** John Dixon J	Million Miles hired a truck to SMD Logistics Pty Ltd, under the terms of a security agreement entitled 'General Security Agreement', which appeared to operate as a hire purchase agreement under which SMD agreed to pay instalments until it became entitled to ownership of the truck. Beattie guaranteed the obligations of SMD. Million Miles perfected its interest by registration. SMD went into liquidation, but Million Miles allowed Beattie to continue to retain possession of the truck. Beattie died. The truck came into the possession of Old Hume, which claimed it had made repairs to the truck for which it had not been paid. Million Miles sought possession of the truck. Old Hume claimed that Million Miles' interest in the truck was a security interest, and that Old Hume held a repairer's lien which had priority over Million Miles' security interest. The court disagreed, and held that Million Miles was entitled to possession of the truck. First, the court found that the security agreement terminated on SMD's liquidation, and Beattie's possession of the truck was pursuant to a new agreement with Million Miles, rather than by way of assumption of the security interest granted by SMD. Second, the court was not satisfied that Old Hume had actually made authorised repairs to the truck, and so it was not entitled to a repairer's lien. Accordingly, there was no priority dispute between security interests, and Million Miles was entitled to possession as owner.
One Corporate Trust Services Limited v MLSP Assets Pty Ltd ***Extension of time***	**[2022] FCA 555** Beach J	Application by One Corporate Trust Services under *Corporations Act* s588FM to fix a later time for registration, where MLSP had granted security in its capacity as trustee of a trust, but registrations had been made against the ACN of the trustee, the name of the trustee, and the name of the trust, rather than the ABN of the trust. The court granted the order. In doing so:- • the court considered that the requirement in s588FM(2)(a)(i) for an 'accidental' failure included a physical act or omission that was not itself accidental, but was committed or omitted 'without any corporate delinquency or knowing disregard of the relevant statutory requirements', and that 'inadvertence' included 'failure to advert to or understand the requirement for registration within the relevant period or to fully appreciate its prescriptive requirements, or an innocent error in failing to register or adequately register through ignorance of the consequences of not doing so'. In this case, the court was satisfied the failure was through inadvertence, not deliberate or conscious, and not a deliberate flouting of the stator requirements. • the court considered the failure would not prejudice the position of creditors or shareholders

Case	Citation, judges	Comments
		(s588FM(2)(a)(ii)), because a person searching the grantor's ACN, its name, or the name of the trust would have discovered the registration; there were no other substantial creditors; and One Corporate Trust Services had moved expeditiously to register when becoming aware of the defect.
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.
OPS Screening & Crushing Equipment Pty Ltd v Gold Valley Iron Pty Ltd ***Meaning of 'security interest' – hiring agreement as 'in substance' security interest; PPS leases***	**[2020] WASC 412** Tottle J	Gold Valley hired mining equipment from OPS. There was no evidence that OPS had made a PPS registration in respect of the hiring agreements. OPS went into administration, and then liquidation. Gold Valley claimed the hiring agreements were security interests which vested in it under s267. The outcome turned on whether the hiring agreements were security interests. The hiring agreements provided for a minimum hire period of 10 months. They also provided for an option to purchase, and a first right of refusal to purchase, at any time. On exercise of the first right of refusal, some or all of the hire charges already paid would be rebated, with the amount of the rebate decreasing over time. The court found that the hiring agreements did not create security interests. First, they were not 'in substance' security interests under s12(1). Unlike *White v Spiers Earthworks Pty Ltd* [2014] WASC 139, these were not in substance sale agreements with title retained to secure payment of the full value. The court found the 'option to purchase' referred to the first right of refusal, rather than establishing an independent option, and so the right to purchase only arose if the owner decided to sell. The terms were consistent with an operating lease, coupled with the first right of refusal, rather than a sale agreement. Second, they were not PPS leases. The stated term of 'a minimum 10 months continuous hire' did not constitute the specification of a lease term of 10 months or any other period, and there was no provision for renewal of any term that could attract the operation of s13(1)(c). Accordingly, this was a lease for an indefinite term and, under s13(1)(d), would only become a PPS lease if the lessee remained in possession for more than 2 years. This had not occurred. It was not enough for s13(1)(d) that a lease may extend for more than 2 years, it must actually do so.

Case	Citation, judges	Comments
		Accordingly, the court held the hiring agreements did not vest in Gold Valley. The decision was overturned on appeal in *Gold Valley Iron Pty Ltd v OPS Screening & Crushing Equipment Pty Ltd* [2022] WASCA 134, where the court held that the hiring agreements were 'in substance' security interests.
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 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.
Panoramic Resources	**[2024] FCA 449**	Panoramic granted security to Trafigura Pte Ltd over shares in and intercompany debts owed by a subsidiary,

Case	Citation, judges	Comments
Limited, Re	Feutrill J	Savannah Nickel Mines Pty Ltd, and over money and other things 'in respect of' those shares and debts. Trafigura claimed that money arising from an equity raising by Panoramic, which would mostly be provided by Panoramic to Savannah (whether by way of equity subscription, loan or otherwise) to fund its mining activities, fell within the scope of the security interest. The court held that it did not, finding that the words 'in respect of'' required a connection (which was not present) between the money and the rights of Panoramic as legal or beneficial owner of the shares and debts. While the case turned on the interpretation of the particular security agreement, the court made extensive reference to the PPSA, using meanings of definitions of terms in the PPSA to help inform the interpretation of the security agreement. For example, the court referred to the PPSA definition of 'proceeds' when interpreting that term (which was not defined) in the security agreement, noting that the PPSA definition fell within the ordinary meaning of the term. The court noted that the security agreement made extensive references to the PPSA, and so the PPSA formed part of the context in which the agreement was to be construed, and it could be inferred that reasonable businesspeople in the position of the parties would have intended it to operate harmoniously with the PPSA.
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.
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

Case	Citation, judges	Comments
		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.
Pit N Portal Mining Services Pty Ltd v Aurora Metals Limited ***Extension of time***	**[2023] FCA 762** Feutrill J	Aurora granted a security interest to Pit N Portal. An incorrect registration was initially made in respect of the security interest, naming the wrong secured party. Subsequently, a correct registration was made about 2 months later (that is, outside the time required by *Corporations Act* s588FL), and then shortly after that Pit N Portal appointed administrators to Aurora. Pit N Portal purported to act under *Corporations Act* s436C, which permits a secured party when entitled to enforce a security interest to appoint an administrator, but in relation to a PPSA security interest only if it is perfected. The administrators were concerned for the validity of their appointment, as the late registration meant that the security interest would be taken under s588FL to have vested immediately before their appointment, thereby depriving Pit N Portal of an entitlement under s436C to appoint them. To resolve that concern, Pit N Portal applied under *Corporations Act* s588FM to fix a later time for registration in respect of the security interest. The court made the order. The court was satisfied that the failure to register was accidental; and that it was unlikely that failure to register correctly would have caused unsecured creditors to deal with Aurora on the assumption that its property was unencumbered, as there were other AllPAP registrations in place (including the registration made by Pit N Portal which named the wrong secured party). The order also ordered the administrators to notify creditors, and ASIC, of the extension, and reserved the right of any creditor or other interested party to apply to vary or discharge it within 28 days. In a separate judgment, *Re Aurora Metals Limited* [2023] FCA 761, the court also made orders under *Corporations Act* s447A that the appointment of the administrators be treated as valid under s436C, unless and until an order was made setting aside the extension of time granted under s488FM.
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.

Case	Citation, judges	Comments
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, and so GNR's security interest did not apply to it. This decision was overturned in *Hughes v Pluton Resources Ltd* [2017] WASCA 213.
Pogana Pty Ltd v Registrar of Personal Property Securities ***Amendment demands; authorisation of disposal***	**[2022] AATA 2441** Senior Member Mrs CJ Kelly	Pogana lent money to Pro Pump Concrete Pumping NSW Pty Ltd, to fund purchase of a truck, took security over the truck, and made a registration. Pro Pump sold the truck to Mr Katombe. Katombe issued an amendment demand seeking removal of the registration, then initiated the administrative process under PPSA ss179-181 to have the Registrar remove it. In response to the Registrar's request for evidence of the security interest, Pogana sent a short email saying that money was still owed and Pogana would not be removing the registration until paid, but provided no other evidence. The Registrar was not satisfied that the secured obligation remained outstanding, and removed the registration. On review, affirming the Registrar's decision, the tribunal found that Pogana had, by its representative's conduct (which included various messages and conduct to facilitate the purchase), impliedly authorised the disposal of the truck for the purposes of s32(a)(i), and accordingly the security interest in it did not continue and removal of the registration was justified. This was so even though Pogana representative had *not* contemplated that the sale would extinguish the sale as contemplated by s32(a)(ii). Alternatively, if the conclusion on s32 were wrong, the tribunal was not satisfied that the debt secured by the security interest remained out standing, and so would also have been prepared to affirm the Registrar's decision on that basis.
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.

Case	Citation, judges	Comments
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 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***	**[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

Case	Citation, judges	Comments
unperfected – but did PPSA actually apply?		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, 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. As the security interest had vested under s267, relief under s588FM was not available.
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.
PT Limited v Pinelake	**[2024] FCA 355**	Application by PT under *Corporations Act* s588FM to fix a later time for registration, where PT's lawyers had made

Case	Citation, judges	Comments
Ribbon Retail Pty Limited ***Extension of time***	Halley J	registrations against Pinelake's ACN, but not the ABN of the trust in respect of which it had entered into a security agreement. The court was satisfied that the failure, which was inconsistent with the lawyers' standard practices, was accidental or inadvertent. The court was also satisfied that the order was not of such a nature as to cause prejudice to the position of creditors or shareholders within the meaning of s588FM(2)(a)(ii). Finally, the court was also satisfied that it would be just and equitable to make the orders. The order court therefore granted the order, reserving the right of insolvency administrators to apply to discharge if insolvency occurred within 6 months.
Qenos Pty Ltd, Re ***Meaning of 'security interest'; PPS leases***	**[2024] NSWSC 483** McGrath J	Indorama Ventures Oxides Australia Pty Ltd and Qenos had an agreement for Qenos to supply ethylene (a petroleum product) to Indorama. Qenos's facilities were shut down and it was unable to supply and so, to deal with that situation, Indorama purchased ethylene from other sources and stored it in a storage tank owned by Qenos, drawing it out as needed. Qenos went into liquidation. Qenos claimed that the storage arrangement was an unperfected PPS lease, which vested in Qenos on its administration. Qenos' claim that the storage arrangement was a PPS lease was made under now-repealed s13(1)(b), which applied to a bailment for an indefinite period, and was in force when some of the contractual arrangements between Indorama and Qenos were put in place. The court held that the timing of the contracts was not relevant: rather, the bailment arose when the ethylene was delivered to Qenos for storage, which was after s13(1)(b) was repealed, and so s13(1)(b) did not apply. The bailment did not fall within any other paragraph of s13(1)(b), and therefore there was no PPS lease. If this were not correct, the court would also have been prepared to hold that s13(2) was not satisfied as Indorama was not regularly engaged in the business of bailing goods: rather, the storage arrangement was an unusual transaction arising from the Qenos shutdown. Further, s13(3) was not satisfied as Qenos did not provide value, either in the sense of payment or any other sufficiently connected financial benefit. The bailment itself could not be viewed as constituting 'value', as otherwise every bailment would be taken to be made for value and s13(3) would be superfluous. The steps that Qenos took to process liquid ethylene and convert it to gaseous form also were not 'value' for the bailment; rather, those steps were simply the performance of the bailment.
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	**[2019] QSC 191**	The State of Queensland sought liquidation of David Oriel, a company in administration. The administrators sought

Case	Citation, judges	Comments
Industries Pty Ltd	Lyons SJA	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.
Ralan Arncliffe Pty Ltd, Re ***Extension of time***	**[2019] NSWSC 1678** Black J	Application under *Corporations Act* s588FM by receivers of Ralan Arncliffe, a company in administration, to fix a later time for registration in respect of security interests to be granted by Ralan Arncliffe, to avoid those security interests vesting immediately. The security interests were required for Ralan Arncliffe to obtain finance that it would use both to repay existing financiers and to complete building projects. The court accepted that cases including *KJ Renfrey Nominees Pty Ltd v OneSteel Manufacturing Pty Ltd* [2017] FCA 325 and *Re Ten Network Holdings Ltd* [2017] FCA 1144 had established that such interests, granted in administration, would vest unless the order was granted. The court noted that the new security was similar to the security being relinquished by the existing financiers (though the terms of the new facilities were more onerous, reflecting the decline in the grantor's financial position), and that the transaction would at least preserve (and possibly improve) the prospects of unsecured creditors, and granted the order.
RCR Tomlinson Ltd, Re ***Circulating assets; accounts; inventory***	**[2020] NSWSC 735** Black J	Liquidators of RCR Tomlinson and related companies sought directions about classification of various assets as circulating or non-circulating, and the date as of which the classification should be determined, for the purpose of determining priority creditors' entitlements under *Corporations Act* s561. The court directed that classification for the purposes of s561 should be determined as at the liquidators' appointment date, rather than on a continuous basis or on some other date. Converting non-circulating assets to circulating (for example, selling tangible assets and placing the proceeds in a bank account) after the appointment date would not change the classification. This outcome was consistent with the snapshot approach other cases had taken to s433, dealing with receivership. The court was unwilling to give directions about 'new assets' acquired after appointment of liquidators and not derived from pre-existing assets, as this was not a matter of real or practical significance in the case at this point. The court directed as follows in respect of specific asset classes, which required consideration of whether the relevant assets were 'monetary obligations' that constituted an 'account' so as to be a 'circulating asset' under s340(5)(a). • 'Surplus proceeds': where, after appointment of liquidators, a counterparty of a company in liquidation called on performance bonds to secure the performance of the company's obligation, received more than was required to satisfy the amount due from the company, and so was required to pay the surplus to the company. As at the appointment date, the prospect of the company receiving surplus proceeds was a

Case	Citation, judges	Comments
		'mere expectancy', and so not personal property at all, and therefore not capable of being an account. Even if this was wrong and the 'surplus proceeds' were personal property, they were still not an 'account' as there was no 'monetary obligation' as at the appointment date. In particular, there was no 'obligation' as at that date, with the prospects of recovery turning on decisions by the counterparty about whether to call on the bonds. • 'WIP': proceeds of work done that had not been invoiced as at the appointment date. Where the work had been done, and all that remained was for the company to issue an invoice, or obtain certification (which, if disputed, could be resolved by contractual mechanisms) and then issue an invoice, there was a 'monetary obligation', and accordingly an 'account' which was a 'circulating asset'. However, where only part of the work had been done and there was no contractual regime to charge for the part done, no 'monetary obligation' existed, and so this WIP was not a 'circulating asset'. Where work had not begun, the parties accepted that there was no 'monetary obligation', and so the court found it unnecessary to give directions. • 'Subcontractor proceeds': where a company held a performance bond provided by a subcontractor, but had not called on the bond (even if entitled to) by the appointment date. These were not 'monetary obligations', and accordingly not 'accounts', as there was no obligation to pay the money. An unexercised right to require payment of money was not the same as a right to receive payment, and did not give rise to an 'obligation'. The performance bonds were also not 'negotiable instruments' (and accordingly not 'circulating assets' under s3405(f)), as they were payable up to a specified maximum amount rather than for a sum certain, and as they did not possess the characteristic of negotiability necessary for a negotiable instrument. The court also considered whether 'Intangible WIP' (WIP arising from work done or services rendered only and not resulting in production of goods) constituted 'inventory' (within its ordinary meaning: s341(1B)) so as to be a 'circulating asset' under s340(5)(e). The court held that it did not: the ordinary meaning of 'inventory' did not extend to work in progress constituted by unfinished services.
Reel Action Sports Fishing Pty Ltd v Marine Engineering Consultants Pty Ltd ***Meaning of 'security interest'; taking free' seriously misleading defects***	**[2022] QSC 271** Brown J	Reel Action engaged Marine Engineering to build a boat. The boat-building agreement provided for transfer of title to the part-completed to Reef Action upon payment of an instalment payment, which Reef Action paid. However, the boat remained in the possession of Marine Engineering as builder, and Reef Action made a PPSR registration 'out of precaution' in case the bailment of the boat to Marine Engineering constituted a security interest. The boat was not completed, and Reef Action went into liquidation. Marine Engineering claimed that the transfer of title to Reef Action was a security interest, to secure the performance of Marine Engineering's building obligations; that Reef Action's PPSR registration was seriously misleading and so ineffective; and accordingly that the security interest vested in Marine Engineering on Reef Action's liquidation. Reef Action held that it was entitled to possession of the boat. The court held that the transfer of title to Reef Action did not constitute a security interest. While 'transfer of title' is listed as an example in s12(2), that section is not to be read as meaning that everything listed there constitutes a

Case	Citation, judges	Comments
		security interest in every case. In this case, the transfer of title was made in exchange for a significant payment by Reef Action; it was not given to secure performance of future obligations; it was simply the purchase of goods still under construction. This conclusion was not affected by the fact that the agreement contained a provision allowing Reef Action to make a PPSR registration. That clause simply operated 'to the extent that' there was a security interest, effectively allowing Reef Action to hedge its bets by making a registration if it wished to. The bailment of the boat to Marine Engineering also did not constitute a security interest. The court noted that this was a gratuitous bailment, and said it would be excluded from the operation of the PPSA by s8(1)(c), as a bailment arising under general law. While these conclusions meant it was not necessary to decide whether the Reef Action's registration was seriously misleading, the court commented on the issue. Reef Action had made two registrations: one in the 'watercraft' category, and the other in the 'other goods' category. The parties agreed that the 'watercraft' registration was inapplicable for an uncompleted boat. The 'other goods' registration included a free text description which described the boat as a boat to be constructed under the relevant boat-building agreement (describing the agreement by date), and by reference to a specified hull number. That hull number did not appear on the uncompleted boat. However, the court considered that the lack of hull number on the boat did not render the registration seriously misleading. The description of the relevant agreement was helpful, and the vessel would be ascertainable in the circumstances. National Australia Bank Limited had also made a PPSR registration over all Marine Engineering's assets. However Reef Action took free of this registration under s46, as the boat was sold to it in the ordinary course of Marine Engineering's business of selling boats of that kind. Accordingly, the court held that Reef Action was entitled to possession of the boat, and that no interest in it had vested in Marine Engineering under s267 of the PPSA. Marine Engineering was also liable to pay damages for conversion.
Registrar of Personal Property Securities v Brookfield ***Entitlement to register: reasonable belief***	**[2024] FCA 29** Sarah C Derrington J	Blueprop Pty Ltd sold its rent roll (that is, a set of management agency agreements) to Real Estate Now Pty Ltd. Blueprop, which claimed not to have been paid by Real Estate Now, sold the debt arising under the rent roll sale agreement to Brookfield. Brookfield made several PPSR registrations against Real Estate Now. Registrations were removed by the Registrar, on grounds that Brookfield did not hold a security interest, but Brookfield made new registrations. The Registrar sought declarations that Brookfield had contravened PPSA s151 by making the registrations without believing on reasonable grounds that he was, or would become, a secured party in relation to the relevant collateral, and for pecuniary penalties for the contraventions. The court granted the declarations and ordered a pecuniary penalty of $30,000. The court held that there was no security interest. The agreement for sale of the rent roll explicitly provided that the assets were transferred free from any security interest. While at common law the vendor may have had an unpaid seller's lien, the court said that the PPSA had swept away prior law relating to securities over personal property; that remedial constructive trusts or remedial equitable charges that may be imposed by a court are not within the regime created by the PPSA; and that whether Brookfield held a security interest that is registrable under the PPSA could

Case	Citation, judges	Comments
		only be determined by reference to the PPSA and subsequent jurisprudence. Here, there was simply an agreement of sale or purchase, with no security interest. While Brookfield honestly believed he was entitled to make PPSR registrations, that belief was not reasonable, especially in light of the correspondence from the Registrar explaining why he was not entitled. In setting the penalty of $30,000, the court noted that taking account of the number of registrations and the period of time for which they had remained on the register, the total maximum penalty under PPSA s151 for all contraventions was $315,900. Civil penalties such as these were imposed primarily, if not solely, for the purpose of deterrence, and keeping the Register free of unjustifiable or vexations registrations was an important policy consideration.
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.
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

Case	Citation, judges	Comments
		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 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.
Resilient Investment Group Pty Ltd v Barnet and Hodgkinson ***Circulating assets***	**[2022] NSWCA 118** Gleeson, White and Brereton JJA	Spitfire Corporation Limited granted security over all its assets to Resilient, then went into administration and then liquidation. Barnet and Hodgkinson, the liquidators of Spitfire, sought directions on whether entitlements to the research and development ('R&D') tax incentive refunds held by Spitfire were subject to a circulating security interest. Spitfire received refunds in respect of the entitlements while in liquidation, and accordingly the character of the entitlements giving rise to the refunds needed to be ascertained as at the appointment date to determine whether the refunds should be paid to Resilient as secured creditor or to statutory preferred creditors. At first instance, in *Re Spitfire Corporation Limited* [2022] NSWSC 340, the court had held that the entitlements were 'property' and 'personal property' for the purposes of the PPSA, and that they were circulating assets under s350(1)(a) and (5)(a), being accounts that arose from granting rights or providing services, being the R&D services provided by Spitfire to its subsidiaries. On appeal, the court held that the entitlements were not circulating assets. In the judgment of Gleeson JA, with which Brereton JA agreed, this was for two reasons. First, they were not 'accounts' (ie 'monetary obligations') as at the data of appointment, as the relevant legislation did not impose an obligation or duty on the Commonwealth to pay a tax offset refund to the taxpayer at the end of an income year, and Spitfire had no chose in action against the Commonwealth for the refund at the end of the income year; that chose in action only arose once tax returns had been lodged and an assessment had been made, which had occurred after the appointment date. Second, even if they had been monetary obligations, the entitlements did not arise from the provision of services in the way required by the definition of 'account' and s340(5)(a). This test required that (1) the services were provided in the ordinary course of a business of providing services of the relevant kind (rather than the monetary obligations arising in the ordinary course of business), and (2) the account arose from the provision of the relevant services. Here, Spitfire's ordinary business was the provision of financial platform services, and even if the

Case	Citation, judges	Comments
		R&D activities were for the ultimate benefit of Spitfire's customers who used those services, the refund entitlements did not arise in the course of a business of providing those services. The R&D activities should not be equated with the provision of services in the ordinary course of the business of providing financial platform services. White JA would have been inclined to take a different view on the first point, considering that the entitlements probably were obligations (albeit contingent obligations) as at the appointment date, but finding it unnecessary to express a concluded view. White JA agreed with Gleeson JA on the second point, holding that even if the entitlements were monetary obligations, they did not arise from providing services in the ordinary course of a business of providing services of that kind. Accordingly White JA agreed with the conclusion that the entitlements were not circulating assets. Accordingly Resilient, as secured creditor, was entitled to the R&D refunds in priority to the Commonwealth as statutory preferred creditor. Subsequently, the High Court refused special leave to appeal from the decision, observing that there was insufficient reason to doubt the correctness of the decision to justify granting special leave: *Commonwealth of Australia v Resilient Investment Group Pty Ltd* [2023] HCATrans 173.
Revroof Pty Ltd v Taminga Street Investments Pty Ltd ***Extension of time***	**[2023] FCA 543** Jackman J	Receivers of Revroof sought orders permitting them to sell assets over which they had been appointed as receivers, despite the existence of possible priority issues concerning other security interests granted to Taminga and others. The court considered the sale was in the best interests of creditors, and was prepared to grant these orders. The receivers also sought orders under *Corporations Act* s588FM, to the extent necessary, to fix a later time for registration in respect of security interests that had been granted during the receivership and after the appointment of administrators. The court granted the orders under s588FM. In doing so, the court noted *Re Antqip Hire Pty Ltd* [2021] NSWSC 1122, where the NSW Supreme Court had held that s588FL did not apply (and therefore there was no need for such orders) in relation to security interests granted after the appointment of administrators. The court agreed with the reasoning in *Re Antqip*, but also noted that there was a considerable body of Federal Court decisions, both before and after *Re Antqip*, where such orders had been granted. Accordingly, the court considered there would be utility in granting the orders, in case a later appellate court decided not to follow *Re Antqip*, and granted them, prefaced with the words 'to the extent that it was necessary'.
Rezatechnica Pty Ltd v Michails	**[2023] FCA 972** Charlesworth J	Rezatechnica bought two trucks on retention of title terms. The sellers made no PPSR registrations. Rezatechnica went into liquidation. The liquidators sought declarations that Rezatechnica was the legal and beneficial owners of the trucks. The court granged the declarations. The retention of title arrangements were security interests, the sellers had not perfected them either by registration or possession, and so the interests vested in Rezatechnica on liquidation under PPSA s267.
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.

Case	Citation, judges	Comments
		There was no evidence before the court that RG Murch had granted a security interest to (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.
Riseley v Toyota Finance Australia Ltd ***Jurisdiction; entry on land to seize***	**[2021] FCA 1566** Besanko J	Toyota instituted proceedings in the Federal Circuit and Family Court against Mr and Mrs Riseley, and obtained orders requiring delivery of a vehicle over which Toyota claimed a security interest, and permitting Toyota to take reasonable steps to take possession of it. Mr and Mrs Riseley appealed to the Federal Court, and sought a stay of the first instance orders pending the appeal. The court refused the stay. The court noted that this meant Toyota could repossess the vehicle, and that while possible loss of the subject-matter of the appeal could be a reason for granting a stay, in this case there was no suggestion that Toyota would be unable to meet any claim for damages if the appeal was successful. The court discussed the power of the Federal Circuit and Family Court to make the orders, noting that s123 appeared to give a secured party a right to seize collateral, rather than conferring jurisdiction on a court to make an order for seizure. The court considered that ss206 and 207 conferred jurisdiction, and approved the approach taken in *Bank of Queensland Limited v Star Trek Pty Ltd* [2019] NSWSC 1712 where it was considered that a secured party could approach the court to obtain authority confirming that the seizure methods were unquestionably permitted by law.
RM Road Services Pty Ltd, Re ***Jurisdiction***	**[2023] VSC 794** Matthews J	Liquidators of RM Road Services and related companies sought orders under s90-15 of the *Insolvency Practice Schedule (Corporations)*, being schedule 2 to the *Corporations Act*, for possession of certain assets of a related company Roadmaster Line Marking Pty Ltd, despite those assets being subject to security interests in favour of Ms Ofli (a director of the RM Companies) and her related company. Those orders were sought under the broad powers of s90-15 due to concerns around compliance with Ms Ofli and the related company with their duties as secured parties. Ms Ofli and the related company argued (among other things) that the orders could not be made under the *Insolvency Practice Schedule*, as the orders sought related to the court's ability to make orders in respect of PPSA matters under PPSA s206(1)(a) and/or (c). The liquidators, in reply, argued that PPSA s206(5) provided that nothing in s206 affected any other jurisdiction of any court. The court granted the orders under the *Insolvency Practice Schedule*, holding that PPSA s206 did not prevent it doing so.
RnD Funding Pty Limited v Goldus Pty Limited	**[2021] FCA 1096** Colvin J	RnD claimed to hold security over various items of mining equipment owned by Australian Tailings Group Pty Ltd and situated on mining tenements held by Goldus. It was argued that some of the items had been sold to other parties, and RnD's security interest no longer applied. The court held that RnD's security interest had been perfected by registration before the sales occurred, and accordingly under s43 the buyers did not take free of the security interest. The court declared that the items were subject to the security interest, and ordered that the items be delivered up, or that access be provided to enable RnD to take possession.

Case	Citation, judges	Comments
Robinson Grain Training Co Pty Ltd v Rain-AG Shipping Services Pty Ltd ***Extension of time***	**[2024] FCA 714** Halley J	Application by Robinson 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, in respect of a security interest granted to it by Rain, where registration was late because of Robinson's directors not being aware of the need to register. The court granted the applications. The court was satisfied that the failure to register was due to inadvertence (*Corporations Act* s588FM(2)(a)(i) and PPSA s293(3)(a)), and also that there was no prejudice to creditors or shareholders (*Corporations Act* s588FM(2)(a)(ii) and PPSA s293(3)(b)). Other secured parties with registrations had been given notice of the proceedings but had not appeared. The orders reserved the right of insolvency administrators to apply to discharge if insolvency occurred within 6 months.
Rolfe v George Zakharia Group Pty Ltd	**[2020] NSWSC 391** Robb J	GZG had made PPS registrations over motor vehicles and earthmoving equipment belonging to Rolfe and his company. GZG seized the property, claiming to act under PPSA s123. The documentation for and nature of the underlying transaction between the parties was disputed. Rolfe said the registrations were to have been made to secure 'the prospective provision of advice or finance' to be arranged by GZG, which had not been provided and which Rolfe no longer required. GZG said they were to secure services agreed to be provided by GZG and paid for by Rolfe, the nature of which appeared to involve GZG seizing and selling the property so it could not be claimed by Rolfe's wife, son or son's girlfriend. The court issued an injunction pending trial, requiring GZG to return most of the seized property, on conditions including Rolfe agreeing not to sell or encumber the property and only to use it in the ordinary course of business.
Rose Guerin and Partners Pty Ltd v Princes Square W24NY Pty Ltd ***Vesting***	**[2021] FCA 483** Anderson J	Rose Guerin, as trustee, granted BMW Australia Finance Limited a security interest, in the form of a chattel mortgage, over a motor vehicle. BMW made a PPSR registration, but wrongly specified Rose Guerin's ACN rather than the trust's ABN. Rose Guerin went into administration and then liquidation. The liquidators initially disclaimed the vehicle as onerous property, taking the view that the debt to BMW would substantially exceed its value. But the liquidators then took the view that BMW's PPSR registration for the security interest was defective, and took possession of the vehicle. BMW objected, on the grounds that the liquidators had already disclaimed it. The court held that the registration was defective, having been made against the ACN rather than the ABN. BMW conceded – correctly, in the court's view - that this meant its security interest had vested in Rose Guerin under s267(2). The effect of vesting was that BMW's unperfected security interest was transferred to Rose Guerin as from the start of administration, so that BMW held no further security interest in the vehicle, and Rose Guerin held it as its unencumbered asset. As Rose Guerin held unencumbered title to the vehicle, it was not onerous property, and so the liquidators' purported disclaimer of it was ineffective.
Rothuan Pty Ltd v Acumen Finance Pty Ltd	**[2023] FCA 401** Jackman J	Rothuan was in discussions with Acumen regarding the appointment of Acumen as a finance broker. Acumen claimed that Rothuan had entered into an agreement, first with Advanced Fintech Pty Ltd (a related party of Acumen), and then with Acumen, providing for security over property of Rothuan to secure the payment of broking fees. Acumen had made PPSR registrations. Rothuan sought their removal. The court found that the first agreement with Advanced Fintech was void, as Advanced Fintech had been deregistered., and found that the second agreement had not been signed by Acumen. Accordingly, Acumen held no

Case	Citation, judges	Comments
		security. The court ordered the registrations removed, and that Acumen be restrained from making further registratons.
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). Finally, the court referred Garrett's conduct to the Director of Public Prosecutions.
Ryan v Registrar of Personal Property Securities ***Amendment demands***	**[2021] AATA 2348** Senior Member Damien O'Donovan	Ryan entered into a costs agreement with a law firm. The costs agreement included a term allowing the law firm to register a security interest under the PPSR against all Ryan's personal property, including any judgement or settlement proceeds. The law firm made a PPSR registration, in the general intangible class, specifying fruits of litigation including judgement and costs orders as the collateral. The law firm was later placed in liquidation. Ryan issued an amendment demand seeking removal of the registration, and then an amendment notice under s181 seeking to have the Registrar remove it. The Registrar decided not to remove it. Ryan sought review of that decision, arguing (1) that the costs agreement was invalid or unenforceable for various reasons, (2) that the costs

Case	Citation, judges	Comments
		agreement was for litigation on a no-win no-fee basis, and he had not won, (3) that 'fruits of litigation' was a mere expectancy, and not personal property in respect of which a registration could be made, and (4) that the registration was in respect of 'commercial property' (property held in connection with an enterprise with an ABN), and that he held no such property. The Tribunal considered that the review hearing was not the appropriate place to determine any of those arguments. The test under s181 was whether the decision-maker suspects on reasonable grounds that removal of the registration is not authorised. The Tribunal accepted that a costs agreement was in place, and that Ryan had not paid for legal services. Here, none of Ryan's arguments were sufficient to dislodge the Tribunal's suspicion that there was an obligation currently owed and secured by the collateral described in the registration. However, if Ryan in fact held no commercial property, then that might mean the registration was of little value to the law firm.
Samios Plumbing Pty Ltd v John R Keith (QLD) Pty Ltd	**[2019] QDC 237** Barlow QC DCJ	Samios supplied plumbing goods to JRK. The parties had provided each other with their own respective trading terms, which were inconsistent, and each contended that its own prevailed. Samios' terms provided for a security interest by retention of title, and stated that Samios was entitled to make PPSR registrations for its interest. The court found, taking account of the circumstances in which each party had delivered its terms, that JRK's terms prevailed. Samios had argued (among other things) that it had made PPSR registrations in reliance on its terms, and that this should help establish that its terms prevailed. The court rejected that argument. Making PPSR registrations was post-contractual conduct. While post-contractual conduct could constitute evidence of whether a contract was formed, in this case there was not even any evidence that JRK knew of the registrations when made. They were nothing more than evidence of Samios' subjective (but mistaken) belief as to the terms of the contract.
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*.

Case	Citation, judges	Comments
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 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 power 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.
Senworth Capital Pty Ltd v Galleria SUV Pty Ltd ***Entry on land to seize***	**[2022] NSWSC 1513** Fagan J	Galleria granted security to Senworth over motor vehicles, and defaulted in payment of the secured money. Senworth sought ex parte orders requiring surrender of possession of the motor vehicles, and (under ss20 and 123 of the PPSA) authorising Senworth to enter any premises where the vehicles are located to take possession of them. The vehicles were located on the property of third parties.

Case	Citation, judges	Comments
		The court held that s20 (enforceability against third parties) and s123 (right to seize) did not authorise the court to make orders allowing entry on to third parties' land to seize the vehicles in the circumstance of this case, where the likely attitude of the third parties was unknown. Even if they did, the court would not make those orders in ex parte proceedings where the third parties had not been joined, or even contacted. In reaching this conclusion, the court discussed three earlier cases. • In *Bank of Queensland Limited v Star Trek Pty Ltd* [2019] NSWSC 1712, orders were made that the secured party be granted access to specified property of parties to the security agreement, and directing specified parties to the proceedings to permit entry. That was consistent with the approach taken by the court in this case. • In *Riseley v Toyota Finance Australia Ltd* [2021] FCA 1566, orders were made directing that the secured party be granted access to specified property of the grantors, and any other premises where the collateral was reasonably believed to be located. The court noted that the terms of the order went beyond directing named parties to allow access, as it granted a unilateral right to enter other land, but that the reasoning in the case did not support a wider power to grant authority to commit what would otherwise be trespass without the affected parties having been joined as defendants and given an opportunity to be heard. • In *Re Empire Plant Hire Pty Ltd* [2021] VSC 549, orders were made authorising entry onto specified sites occupied by third parties who had not been joined. The court doubted that there was power to order a unilateral licence to enter private land in the way that had been permitted in that case, as opposed to an order directing the occupiers to permit entry.
Senworth Capital Pty Ltd v Galleria SUV Pty Ltd	**[2023] NSWSC 171** Wright J	Galleria had granted security to Senworth over motor vehicles, and defaulted in payment of the secured money. In *Senworth Capital Pty Ltd v Galleria SUV Pty Ltd* [2022] NSWSC 1513, Senworth had sought ex parte orders requiring surrender of possession of the motor vehicles, and (under ss20 and 123 of the PPSA) authorising Senworth to enter any third party premises where the vehicles are located to take possession of them. The court in that case had declined to make those orders in circumstances where the affected third parties had not been joined, or even contacted. Subsequently, Senworth ascertained that one of the vehicles had been impounded by the NSW police. The police indicated that they would release the vehicle if required by court order. Accordingly Senworth sought a declaration under s123 that it was entitled to take possession of the vehicle. The court granted the order.
SFS Project Australia Pty Ltd v Registrar of Personal Property Securities ***Registrar's power 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).

Case	Citation, judges	Comments
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. 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

Case	Citation, judges	Comments
		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 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.
Snowy Valleys Council v Evans ***Amendment demands***	**[2021] NSWSC 428** Slattery J	Mr Evans received a rate notice from the Council. He took the view that by filling out certain US tax forms, he was able to convert it into a secured debt owed by the Council to him, and made a PPSR registration. The Council issued an amendment demand seeking removal of the registration, and then applied under s182 for an order requiring the Registrar to remove it. The court found there was no security interest, and granted the order. While the court noted that while there were conflicting authorities as to which party bore the onus of proof in establishing whether the amendment demand was authorised, the outcome in this case was beyond debate, on any standard of proof. The Council also sought a very broad injunction restraining Mr Evans from making further registrations, and requiring the Registrar to remove them if made. The court declined to issue such a broad injunction, instead restraining Mr Evans from making further registrations in respect of rate notices and US tax forms. The court was not prepared to extend the injunction to require the Registrar to remove future injunctions, as the Registrar had independent powers to consider removal under s178.
Southern Engineering Services Pty Ltd, Re	**[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.

Case	Citation, judges	Comments
Extension of time		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.
Spitfire Corporation Limited, Re ***Circulating assets***	**[2022] NSWSC 340** Black J	Spitfire granted security over all its assets to Resilient Investment Group Pty Ltd, then went into administration and then liquidation. Liquidators of Spitfire sought directions on whether entitlements to the research and development ('R&D') tax incentive refunds held by Spitfire were subject to a circulating security interest. Spitfire received refunds in respect of the entitlements while in liquidation, and accordingly the character of the entitlements giving rise to the refunds needed to be ascertained to determine whether the refunds should be paid to Resilient as secured creditor or to statutory preferred creditors. The court found that they were subject to a circulating security interest. First, the court considered that the entitlements to the R&D refunds were 'property', and 'personal property' for the purposes of the PPSA, and were more than a mere expectancy. The court took into account that the entitlements arose under applicable statute; that Spitfire was obliged to bring the offsets to account when calculating its assessable income rather than having a discretion to do so; and the entitlements were not subject to commercial contingencies (comparing *Re RCR Tomlinson Ltd* [2020] NSWSC 735, where entitlements to receive 'surplus proceeds' turned on the making of commercial decisions). The fact that returns needed to be lodged to receive the refunds in money did not prevent the entitlements being property. Nor did the fact that the entitlements were not enforceable against the Commissioner of Taxation (noting that they were enforceable against the Commonwealth). Second, the entitlements to the R&D refunds were not circulating assets under s340(1)(b), being assets which the secured party had given the grantor authority to deal with in the ordinary course of business. Under the terms of the security agreement, the only applicable category of assets for which such authority had been granted was 'proceeds in the form of money or other consideration of any Trade Debt'. Even if the entitlements were 'Trade Debts', at the relevant time (which was before the refunds had been received) no 'money or other consideration' had been received for them. However, the court found the entitlements were circulating assets under s350(1)(a) and (5)(a), being accounts that arose from granting rights or providing services. They were 'monetary obligations' (and so 'accounts'), as they represented a statutory entitlement, which the Commissioner of Taxation had an obligation to pay, enforceable against the Commonwealth. The relevant 'services' were the services provided by Spitfire in the course of performing its R&D activities. These services were provided to its subsidiaries. There was no requirement under the PPSA that the services be provided to the Commissioner or the Commonwealth. The decision was overturned on appeal in *Resilient Investment Group Pty Ltd v Barnet and Hodgkinson* [2022] NSWCA 118.
Squadron Resources Pty Ltd v Highlake Resources Pty Ltd	**[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.

Case	Citation, judges	Comments
Extension of time		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.
StockCo Agricapital Pty Ltd v Dairy Livestock Services Pty Ltd ***Meaning of 'security interest'; PMSIs; agricultural security interests***	**[2020] NSWSC 318** Parker J	Reid Agricultural Co Pty Ltd purchased stock using funds provided by StockCo. The stock were purchased by DLS as agent for Reid. StockCo's financing arrangements provided that it was the absolute owner of the stock (with Reid buying and selling them as StockCo's agent), but also provided for grant of security interests by Reid to StockCo, over both the purchased stock and other stock. StockCo had made both PMSI and non-PMSI registrations. DLS also held a security interest from Reid, to secure amounts including the purchase price of stock, feed and agistment fees. DLS had made a PMSI registration, before StockCo's registrations. DLS sold stock on Reid's behalf, retained part of the proceeds, and paid the rest over to Reid, which dissipated it. Reid went into liquidation. StockCo claimed to be entitled to proceeds in priority to DLS, and claimed against DLS for amounts it had retained or paid over to Reid. The court held as follows. • StockCo's 'ownership' interest was, in substance, a security interest, and so the PPSA applied to it. And the security interest was a PMSI, and StockCo had perfected it as such. In some cases, Reid had already taken possession of stock before StockCo's facility was put in place and its PMSI registration made. DLS argued that this meant StockCo did not satisfy the requirement of s62(2)(b) that the security interest be perfected before the grantor obtained possession. But the court held, relying on *Allied Distribution Finance Pty Ltd v Samwise Holdings Pty Ltd* [2017] SASC 163, that 'possession' meant 'possession as grantor', and this did not arise until the stock was made subject to the security interest, which occurred after perfection. • While DLS's security interest secured both the purchase price for the stock and the maintenance costs (feed and agistment), DLS had already been reimbursed for the purchase price out of the funds advanced by StockCo. The maintenance costs were not paid 'to enable the grantor to acquire' the collateral within the meaning of s14(1)(b), nor applied to acquire the collateral, and so s14(1) did not confer PMSI priority on them. The court also rejected an argument that s14(7), which extended to value given to enable the grantor to 'use' the collateral, applied, noting that 'use' was an inappropriate word to apply to the possession or

Case	Citation, judges	Comments
		ownership enjoyed by a livestock grazier; and that s86 (conferring priority ranking after PMSIs for funds provided to enable livestock to be fed and developed) indicated that s14(7) was not intended to apply to such funding. • Accordingly, StockCo's PMSI had priority over DLS's non-PMSI security interest.
StockCo Agricapital Pty Ltd v Tucki Hills Pty Ltd ***Seizure of livestock***	**[2022] FCA 929** Stewart J	StockCo and Tucki Hills entered into a Mater Livestock Agreement, under which Tucki Hills purchased livestock as StockCo's agent, for Tucki Hills use, with title to the livestock remaining with StockCo until paid for by Tucki Hills. StockCo perfected a security interest in the livestock by registration. Tucki Hills defaulted, and StockCo sought possession of the livestock. The court found that the arrangement constituted an 'in substance' security interest under s12(1). The court considered it might also constitute a PPS lease (as a bailment) under s12(3)(c), but it was not necessary to decide this in view of the conclusion that s12(1) applied. StockCo argued that it was entitled under s138C to seize the livestock, and to enter onto land to do so, even if that entry would otherwise constitute unlawful trespass. In its argument, StockCo drew a distinction between s123 (the general seizure right) which allowed seizure 'by any method permitted by law', and s138C (the livestock seizure right) which did not mention 'methods permitted by law', arguing that the distinction meant that limitations of law (such as the law of trespass) did not apply to livestock seizure. The court held that StockCo was entitled to seize the live stock, and made orders declaring this, and ordering Tucki Hills to do all things reasonably necessary to enable StockCo to do so. However, the court did not accept that s138C was broader than s123 in excluding a 'permitted by law' requirement, noting that s138C conferred rights for the purpose of seizure *under s123*, and therefore that s138C should be interpreted as setting out ways in which particular collateral could be seized under s123, but without limiting that section, including the 'permitted by law' requirement. The court was not prepared to extend the order to say that the StockCo's rights of seizure included seizure by 'unlawful means if necessary'. Consistently with *Bank of Queensland Limited v Star Trek Pty Ltd* [2019] NSWSC 1712, the court found it unnecessary to decide whether StockCo would have been entitled to enter the property, as a self-help remedy, in the absence of the requested order permitting it to do so.
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 security vested in the liquidator under s267A.
Sydney Carlingford Pty Ltd, Re	**[2024] FCA 799** Jackman J	Administrators of Sydney Carlingford sought appointment as receivers of property of a trust, of which Sydney Carlingford was trustee. The administrators sought the appointment as receivers on the basis that all the company's business was carried on as trustee of the trust, and because their appointment as administrators had, under the terms of the trust deed, disqualified them from exercising the company's powers as trustee. The court made the appointment. A PPSR registration was in place against Sydney Carlingford, specifying its ACN rather than its ABN. While this could have tended to suggest that the company carried on business in its own capacity rather than (or rather than

Case	Citation, judges	Comments
		solely as) trustee, the court was satisfied in the weight of other evidence suggested that this was a registration error rather than an genuine indication that the company carried on business in its own right.
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.
Syncordia Group Operations Pty Ltd, Re	**[2021] VSC 732** Hetyey AsJ	Syncordia sought to set aside a statutory demand served on it by Nexia Melbourne Pty Ltd. Nexia held a security interest granted by Syncordia, and had perfected it by registration. One of Syncordia's arguments for setting aside the statutory demand was that the procedure was inappropriate for use by a secured creditor, contending that enforcement of the security could render obtaining a judgement on the debt unnecessary. The court rejected this argument. Enforcing security and obtaining a judgement were not mutually exclusive, and holding security did not prevent use of a statutory demand, noting that s110 of the PPSA expressly stated that the PPSA did not derogate from the rights of a secured party, debtor or grantor. The court also rejected Syncordia's other arguments, and declined to set aside the statutory demand.
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.
Tasman Logistics Services Pty Ltd v Seaco Global Aust Pty Ltd ***Priority of general law and statutory liens***	**[2020] VSC 100** Garde J	Tasman provided storage services to SKM Corporate Pty Ltd, storing containers filled with recyclable waste collected by SKM. SKM went into liquidation, and the liquidator disclaimed its interest in the containers and their contents. Some of the containers were owned by Seaco and other secured creditors. The agreement between Tasman and SKM provided for Tasman to have a lien, and a chattel mortgage, over the goods, for storage charges and other amounts payable. The court held that the terms of the agreement authorised Tasman to sell the containers and contents. If sale was impossible, Tasman was authorised to dispose of the goods to landfill under the uncollected goods provisions in the *Australian Consumer Law and Fair Trading Act 2012* (Vic). The court also held that Tasman's security interest had priority under PPSA s73 over the interests of the secured creditors. The secured creditors had conceded that s73(1)(a)-(c) and (e) applied, with the court agreeing and observing: • as to s73(1)(a) (lien arising under statute or general law), the test was satisfied, as 'Tasman's interest arises by contract under the operation of the general law, and is modified by the provisions of the ACLFTA', • as to s73(1)(e) (no actual knowledge of breach of security agreement), even if it had been possible for

Case	Citation, judges	Comments
		Tasman to identify other holders of security interests by looking at markings on the containers, searching the PPS register, or making further enquiries, it was not obliged to do so and had not done so; and Tasman had no knowledge of a breach of any of the security agreements. The secured creditors disputed the application of s73(1)(d) (no statute provides for priority between the interests), arguing that the ACLFTA did so provide. The court held that it did not: although the ACLFTA extended and strengthened recovery rights, it did not ascribe priority. The court also noted that the ACLFTA contained no declaratory provision of the kind required by s73(2).
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).
Tedesco v LVT Capital Pty Ltd ***Extension of time***	**[2024] FCA 601** Shariff J	Application by Mr and Mrs Tedesco under *Corporations Act* s588FM to fix a later time for registration in respect of security interests granted by LVT Capital and other companies, being companies associated with their son. Mr and Mrs Tedesco had made loans under short form loan agreements which contemplated the grant of security, or arguably did grant security. Later, formal security agreements were executed. Mr and Mrs Tedesco were initially unaware of the need to make PPSR registrations. Some registrations were later made within 20 business days of execution of the formal security agreements (but out of time for any security interest granted under the loan agreements). However, those registrations did not initially include ABNs for two of the borrower trusts. When the ABNs were ascertained, further registrations were made, just over 20 business days after the date of the formal security agreements. LVT Capital and the other companies went into administration. The applications under s588FM were opposed by Ms Campbell, the former spouse of Mr and Mrs Tedesco's son, who claimed to be an unsecured creditor of the companies. The court granted the application. The court considered it was only necessary to find that it was reasonably arguable that security interests existed, not that they undoubtedly existed. It was not reasonably arguable that the short form loan agreements created immediate security interests, but it was reasonably arguable that they created

Case	Citation, judges	Comments
		springing security interests which would come into effect on the occurrence of the making of loans or other events (which had occurred). And, in any case, the formal security agreements did create security interest. The court was satisfied that the failure to register was due to inadvertence (s588FM(2)(a)(i)), and also that there was no prejudice to creditors or shareholders (s588FM(2)(a)(ii)), noting that the relevant prejudice is prejudice attributable to the delay in registration, rather than to the making of the order (*123 Sweden AB v Appleyard Capital Pty Ltd* [2014] NSWSC 782). The court did not consider that short delay in registration was prejudicial, in this sense, to the interests of Ms Campbell as unsecured creditor.
Teen Entertainment Enterprise Network Pty Ltd v A&H Natoli Pty Ltd ***Jurisdiction***	**[2022] VCAT 1500** Deputy President R Wilson	Natoli ran a greengrocer business. Teen agreed to provide management consultancy services to Natoli, on terms that effectively gave control of the business to Teen, with Natoli receiving a salary payment. Natoli granted security over the business to secure obligations under the agreement, and Teen made a PPSR registration. Natali claimed the agreement was an unfair contract under the *Australian Consumer Law*. At a previous hearing, the tribunal had set aside the contract on grounds of unconscionable conduct. The Supreme Court had overturned this finding on the basis that unconscionability had not been pleaded, and remitted the proceedings to the tribunal for redetermination. In the present proceedings, the tribunal noted that (not being a 'court of a State') it had no power to exercise federal jurisdiction, and that the *Australian Consumer Law* issues could be matters of federal jurisdiction. The Deputy President therefore decided to refer the matter to a judicial member of the tribunal to consider whether to make an order under s77 of the *Victorian Civil and Administrative Tribunal Act 1988* (Vic) transferring the proceedings to a court with jurisdiction (noting that only a judicial member had power to make such an order). In a footnote, the tribunal noted that one of the claims made by Natali was for declarations and orders requiring the removal of the PPSR registration. The footnote queried whether the tribunal had power to make orders requiring removal of registrations from a Commonwealth register, while also noting that the previous tribunal determination had in fact made such orders. On referral to a judicial member, in *A&H Natoli Pty Ltd v Teen Entertainment Enterprise Network Pty Ltd* [2023] VCAT 576, the tribunal confirmed that the PPSR registration issue was a federal matter, and struck the proceedings out.
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.
Tesoriero v Cao Holdings Pty Ltd	**[2024] FCA 623** Shariff J	Application by Mr and Mrs Tesoriero under *Corporations Act* s588FM to fix a later time for registration in respect of security interests granted to them by Cao, where their lawyer had made registrations with incorrect details. Cao had been given notice of the proceedings and had not elected to be heard.

Case	Citation, judges	Comments
Extension of time		The court granted the application. The court was satisfied that the failure to register was due to inadvertence (s588FM(2)(a)(i)), and also that there was no prejudice to creditors or shareholders (s588FM(2)(a)(ii)). The orders reserved the right of insolvency administrators to apply to discharge if insolvency occurred within 6 months. The court would also have been satisfied that it was just and equitable to grant the application.
Texas Consolidated Pty Ltd v Sklovsky (No 2) ***Implied duty to register***	**[2022] VCC 617** Judge Woodward	Sklovsky was the guarantor of a security loan made by Texas to Michael Sjlovsky Pty Ltd, a company in liquidation. Texas claimed the loan amount from Sklovsky. Sklovsky argued that that he had been prejudiced by Texas' failure to perfect the security granted by the company, contrary to either an express or implied term requiring Texas to do so. The court held that there was no express term requiring registration (instead, the agreement specified that Texas could request the company to make the registration), and that there was no need as a matter of business efficacy to imply such a term. The terms of the agreement effectively gave Texas the right to choose to be satisfied with an unperfected security.
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.)
The Natural Grocery Company Pty Ltd, Re	**[2020] NSWSC 572** Black J	Application by Natural Grocery Company's deed administrator under *Corporations Act* s442C for leave to dispose of property subject to a security interest held by Trumps Pty Ltd. The relevant property included PPSA retention of title property. The court granted the order (with no reference to the extinguishment of the security interests that would occur under s442C(7)), noting that it was satisfied that adequate arrangements had been made to protect Trumps' interest as the sale proceeds were to be set aside pending resolution of dispute as to the amount owing to Trumps, and the sales proceeds would on any view exceed the amount owing.
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	**[2014] NSWCATCD**	TLK got Thornthwaite to repair its Nissan truck. There was a dispute about the repairs, and TLK (with the help of

Case	Citation, judges	Comments
Thornthwaite Pty Ltd ***Liens arising at general law***	**147** A Anforth, General Member	police) took the truck from Thornthwaite's premises without paying one of the invoices. Thornthwaite 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 Thornthwaite, 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 Thornthwaite had not complied with s157(1) as it had not notified TLK of its registration, and TLK had not waived its right to be notified. However, given Thornthwaite's ignorance of the law concerning repairer's liens, and the fact that Thornthwaite had not enforced its interest, the tribunal did not regard the failure to notify as a serious breach on this occasion. The tribunal ordered Thornthwaite to remove its registration.
Todae Solar Pty Ltd, Re ***Extension of time***	**[2020] FCA 1071** Jagot J	Application by Mr and Mrs Von Arx under *Corporations Act* s588FM to fix a later time for registration in respect of a security interest granted by Todae Solar, where registration had been incorrectly made in a manner that made it ineffective under s165(b), because of failure to understand the required registration procedures. The court granted the order.
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 allowed the extension of time for PMSI registration.
Top Shelf International Holdings Ltd, Re ***Extension of time***	**[2023] FCA 1519** Shariff J	Application by AMAL Trustees Proprietary Limited under *Corporations Act* s588FM to fix a later time for registration in respect of security interests granted to it by Top Shelf and related companies, where the security was granted to AMAL in its capacity as trustee, but registrations had been made specifying the secured party's ACN rather than its ABN. The court granted the orders. In doing so, the court said that specification of the secured party's ACN rather than ABN was a defect which rendered registration ineffective under s164(b) and s165(d), which deals with 'circumstances in relation to the data related to the registration that are prescribed by registration'. (In saying this, the court did not refer to *Future Revelation Ltd v Medica Radiology & Nuclear Medicine Pty Ltd* [2013] NSWSC 1741, which had held that such a defect was *not* covered by s165.) The court considered it reasonable to grant the orders on an ex parte basis, noting that (1) the interests of the Top Shelf companies were unaffected in practical terms by the orders, (2) their interests could be protected by a condition requiring that they be given notice and liberty to apply to set aside the orders, (3) maintaining the orders as soon as possible would give effect to the statutory scheme under the PPSR that securities be registered promptly

Case	Citation, judges	Comments
		and the register be accurate, and (4) there were 'commercial sensitivities' in current negotiations between AMAL and the Top Shelf group. However, the 'commercial sensitivities' reason was less persuasive than the others. The order was granted subject to conditions requiring that notice be given to the Top Shelf companies, and that they be given liberty to apply to discharge or vary the orders, including (if the wished) to apply for a 'Guardian' condition reserving rights of insolvency administrators or others to discharge or vary the orders.
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.

Case	Citation, judges	Comments
		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. 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.
TTL Australia Pty Ltd, Re ***Extension of time***	**[2023] NSWSC 875** Black J	Appplication by Asset Rental Group (Holdings) Ltd under *Corporations Act* s588FM to fix a later time for registration in respect of security interests arising where ARG leased vehicles to TTL. The relevant vehicles were owned by Tracom Pty Ltd, which made them available to ARG, which in turn leased them to TTL. Tracom made PPSR registrations in respect of its interest. ARG did not make registrations at that point, believing that it was not able to do so as it was not the owner of the vehicles. Subsequently, ARG paid Tracom for the vehicles and became their owner, Tracom removed its PPSR registrations, and ARG made registrations. TTL went into administration within 6 months of the ARG registrations. The court granted the application. ARG would have been entitled to make registrations at the outset, in respect of its interest as lessor or bailor, regardless of whether it owned the vehicles, and its failure to do so based on the misunderstanding of the law was inadvertent. The court was satisfied that no prejudice to crefditors arose from the delay in making the registration, noting that creditors would have been aware at all times that the relevant vehicles were subject to security interests, first from Tracom's registrations, and then from ARG's.
Tucker v Mongbwalu Goldfields Investments Limited ***Meaning of 'security interest' – escrow agreement***	**[2121] FCA 135** McKerracher J	Vector Resources Limited had entered into an agreement with Mongbwalu Goldfields Investments Limited (MGI), a Seychelles company, to buy shares in a BVI company(MGIH6). Vector and MGI also made an escrow agreement with Harneys Corporate Services Limited (also incorporated in the BVI), under which Harneys would hold a share transfer (and certain other documents) to effect a transfer of the shares back to MGI in certain circumstances. MGI claimed Vector was in breach of the agreements, and began proceedings to have Harneys transfer the shares back to it. Vector went into administration. Vector and its administrators wished to bring proceedings in Australia against MGI, MGIH6 and Harneys, to claim (1) that the escrow agreement was a security interest, (2) that *Corporations Act* s440B prevented it being enforced during administration, and (3) that the security interest was unperfected on administration and so vested in the company under s267. To do this, Vector needed leave to serve originating process outside the jurisdiction; and for that purpose it needed to demonstrate a prima facie case. In *Re Vector Resources Limited* [2021] FCA 112 the court granted leave for service outside the jurisdiction, finding (among other things) that it was arguable that the escrow agreement was a security interest, as it provided MGI with both a legal right and the practical ability to have the shares transferred to it, to secure Vector's obligations under the share purchase agreement.

Case	Citation, judges	Comments
		In these proceedings, Vector sought an injunction to restrain MGI from taking any action that would effect a transfer of the shares back to MGI. The court was not prepared to grant injunctive relief, as the court considered authority did not justify an Australian court restraining a foreign corporation from dealing with foreign property in a foreign jurisdiction. The court was, however, prepared to grant a declaration, which MGI may be able to use to support foreign proceedings. The court declared that the escrow agreement did create an interest that was a 'security interest' as defined in the PPSA; and that *Corporations Act* s440B precluded MGI taking steps under the escrow deed to effect a transfer of the shares during Vector's administration.
Vale Australia Pty Ltd v Vale Exploration Pty Ltd ***Transferred collateral***	**[2023] WASC 272** Lundberg J	Published reasons for orders made at first and second court hearings for schemes of arrangement for solvent corporate reorganisation of the Vale group. In ordering the meetings for the scheme, and consistently with the approach taken in *Re Chevron (TAPL) Pty Ltd* [2022] FCA 220 and *Bombardier Transportation Australia Pty Ltd v Alstom Transport Australia Pty Limited (No 2)* [2022] FCA 880, the court noted with approval that notice of the scheme had been given to all secured parties of the affected companies. This allowed secured parties to register a financing statement, either before the schemes were implemented or after implementation but within the times set out in PPSA s34, so as to maintain their existing priority over the relevant collateral even after it was to transferred to the relevant transferee companies, and even if the transferee companies had granted other security interests before or after the transfer.
Vector Resources Limited, Re ***Meaning of 'security interest' – escrow agreement***	**[2021] FCA 112** McKerracher J	Vector entered into an agreement with Mongbwalu Goldfields Investments Limited (MGI), a Seychelles company to buy shares in a BVI company(MGIH6). Vector and MGI also made an escrow agreement with Harneys Corporate Services Limited (also incorporated in the BVI), under which Harneys would hold a share transfer (and certain other documents) to effect a transfer of the shares back to MGI in certain circumstances. MGI claimed Vector was in breach of the agreements, and began proceedings to have Harneys transfer the shares back to it. Vector went into administration. Vector and its administrators wished to bring proceedings in Australia against MGI, MGIH6 and Harneys, to claim (1) that the escrow agreement was a security interest, (2) that *Corporations Act* s440B prevented it being enforced during administration, and (3) that the security interest was unperfected on administration and so vested in the company under s267. To do this, Vector needed leave to serve originating process outside the jurisdiction; and for that purpose it needed to demonstrate a prima facie case. The court granted leave, finding that each of the following was arguable. • That the escrow agreement was a security interest, as it provided MGI with both a legal right and the practical ability to have the shares transferred to it, to secure Vector's obligations under the share purchase agreement. • That Australian law applied to the vesting issue, as the shares were 'financial property', and so under s240(1) and 240(4) issues of validity and perfection of the security interest were governed by the laws of the place where Vector was located, which was the jurisdiction of its incorporation (s235(3)). • That the security interest was unperfected, as (1) no registration had been made, (2) MIG did not have possession, as the shares were certificated but neither MIG nor Harneys held the share certificates as

Case	Citation, judges	Comments
		required by s24(6), and (3) MIG did not have control, as it was neither registered as the owner of the shares as required by s27(2), nor had possession of the share certificates as required by s27(3). In subsequent proceedings in *Tucker v Mongbwalu Goldfields Investments Limited* [2021] FCA 135, the court declared that the escrow agreement did create an interest that was a 'security interest' as defined in the PPSA; and that *Corporations Act* s440B precluded MGI taking steps under the escrow deed to effect a transfer of the shares during Vector's administration.
Virgin Australia Holdings Ltd (No 4), Re ***Extension of time***	**[2020] FCA 927** Middleton J	Application by administrators of Virgin and related companies under *Corporations Act* s588FM to fix a later time for registration in respect of security interests granted by the companies to financiers, 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. The court noted that the order was necessary to enable the administrators to draw on funding required to complete the administration and a sale process, and that it would not displace the priority of any other secured creditors holding registrations, as their registrations would continue to rank earlier in time.
Viscariello v Australia and New Zealand Banking Group Limited	**[2024] SADC 71** Auxiliary Judge Chivell	Viscariello entered into a hire agreement with Esanda (a subsidiary of ANZ), and Esanda made a PPSR registration. Viscariello paid off most but not all of the debt, and Esanda decided not to pursue him for the balance. Esanda did not remove the registration. Some years later, when Viscariello tried to sell the vehicle, the registration was discovered. Esanda apologised, removed the registration, and offered Viscariello a $2,000 'goodwill' payment. Viscariello did not accept the offer. Instead, he sought compensation of $12,000 from ANZ, along with declarations that Esanda and/or ANZ had contravened the PPSA. He wished to use the declarations to persuade the Registrar of Personal Property securities and/or ASIC to commence civil penalty proceedings against ANZ. ANZ offered to pay the full $12,000 claimed. The court entered judgement for the agreed amount of $12,000, but declined to make declarations of contravention of the PPSA as they would be of no practical utility.
Volkswagen Financial Services Australia Pty Ltd v Adra	**[2024] FedCFamC2G 653** Judge Manousaridis	Volkswagen lent Adra money to fund the purchase of a vehicle, and took a perfected security interest over the vehicle. Adra defaulted, and Volkswagen sought orders for possession of the vehicle, and for entry into premises to seize the vehicle, under ss100 and 101 of the *National Credit Code*. The court found that the loan was made for business purposes, and accordingly the *National Credit Code* did not apply. However, following *Volkswagen Financial Services Australia Pty Ltd v Tate* [2024] FedCFamC2G 491, the court was prepared to make a declaration that Volkswagen was entitled to take possession of the vehicle, noting that PPSA s123 allows a secured party to seize collateral by any method permitted by law if the debtor is in default under the security agreement, and being satisfied that the debtor was default. As in *Tate*, the court also made orders authorising Volkswagen to enter the premises specified in the loan agreement, and any other premises in Australia over which Adra had apparent control and at which the vehicle was reasonably believed to be located; but was not willing to make broader orders permitting entry to any premises at which the vehicle was reasonably believed to be located.

Case	Citation, judges	Comments
Volkswagen Financial Services Pty Limited v Dabbour & Sons Wholesalers Pty Ltd	**[2024] FedCFamC2G 808** Judge Cameron	Volkswagen held a perfected security interest over a motor vehicle owned by Dabbour to secure repayment of a loan. Dabbour defaulted, and Volkswagen sought an order under PPSA s123 entitling it to take possession of the vehicle. The court was satisfied that default had occurred, and granted made orders that Volkswagen was entitled to take possession of the vehicle, and to enter specified premises, and any other premises in Australia over which Dabbour had apparent control and at which the vehicle was reasonably believed to be located, for the purposes of taking possession. However, the court was not prepared to grant certain ancillary orders requested by Volkswagen. First, Volkswagen sought an order that it be provided with information from the motor vehicle register about the vehicle's current registered operator. The court held that no entitlement to such an order had been made out. Second, Volkswagen sought an order that it be entitled to report the vehicle stolen if it was unable to recover it. Again, the court held that no entitlement to such an order had been made out, noting that Volkswagen did not apparently have title to the vehicle.
Volkswagen Financial Services Pty Ltd v Glass Shop Perth Pty Ltd	**[2024] FedCFamC2G 537** Judge Ladhams	Volkswagen lent Glass money to fund the purchase of a vehicle, and took a perfected security interest over the vehicle. Glass defaulted, and Volkswagen sought orders for possession of the vehicle, and for entry into premises to seize the vehicle. Initially Volkswagen sought orders under the *National Credit Code*, but after some defects with the default notice purportedly served under the Code were detected, Volkswagen sought the orders under PPSA s123. Following *Riseley v Toyota Finance Australia Ltd* [2021] FCA 1566, the court was satisfied that it had jurisdiction to make orders permitting seizure and entry into premises for the purposes of seizure. The court considered that it needed to be satisfied that the agreement between Volkswagen and Glass was a 'security agreement', that Volkswagen was the 'secured party', that the vehicle was 'collateral', and that Glass was in default. The court was satisfied of each of those things. The court ordered that Volkswagen be permitted to take reasonable steps to take possession of the vehicle from certain defined premises, or from any other premises in Australia of over which Glass, or the guarantor of Glass's loan, had apparent control and at which the vehicle was reasonable believed to be located. The court was not willing to grant a wider order covering other premises not necessarily under the apparent control of glass or the guarantor.
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.
Volkswagen Financial Services Australia Pty Ltd v Muon	**[2024] FedCFamC2G 84** Judge Manousaridis	Volkswagen lent money to Builden Pty Ltd to finance the purchase of a motor vehicle, and took a chattel mortgage over the vehicle and a guarantee from Muon. Builden defaulted, and Volkswagen sought orders for entry into premises and for possession of the vehicle under ss100 and 101 of the *National Credit Code*.

Case	Citation, judges	Comments
Jurisdiction		The court declined to make the orders. Volkswagen had not given any evidence that it had given the notice required by s88 of the *National Credit Code* before commencing enforcement proceedings; and in any case it was doubtful that the *Code* applied to the loan, as it was a loan made to a corporation for which a business purposes declaration had been made. In refusing the application, the court observed that PPSA s207 conferred jurisdiction 'with respect to a PPS matter', which is broadly defined and would extend to an application for an order for possession. However, Volkswagen had made its application under the *Code*, not the PPSA, and the court would not grant orders on the basis of a case that Volkswagen had not advanced.
Volkswagen Financial Services Australia Pty Limited v Tate	**[2024] FedCFamC2G 491** Judge Cameron	Volkswagen lent Tate money to fund the purchase of a vehicle, and took a perfected security interest over the vehicle. Tate defaulted, and Volkswagen sought orders for possession of the vehicle, and for entry into premises to seize the vehicle, under ss100 and 101 of the *National Credit Code*. The court found that the loan was made for business purposes, and accordingly the *National Credit Code* did not apply. However, the court was satisfied that the security agreement, supported by PPSA authorised Volkswagen to take possession, and was prepared to make a declaration that Volkswagen was entitled to possession. The court also made orders authorising Volkswagen or its representatives to enter certain named premises, or other premises under the apparent control of Tate, for the purpose of taking possession. The court was not willing to make broader orders which had been sought by Volkswagen, authorising entry to any premises at which the vehicle was reasonably believed to be located, noting that the court had not been directed to any statutory provision which would authorise an order in such broad terms.
Volkswagen Financial Services Australia Pty Ltd v Victorian Inspection Testing and Compliancing Services Pty Ltd	**[2024] FedCFamC2G 641** Judge Champion	Volkswagen lent VITC money to fund the purchase of a vehicle, and took a perfected security interest over the vehicle. VITC defaulted, and Volkswagen sought orders for possession of the vehicle. The vehicle was no longer in VITC's possession, having been taken by another company with a similar name, controlled by the ex-partner of VITC's sole director. VITC did not object to the orders sought by Volkswagen. The court was satisfied that Volkswagen was entitled to possession under PPSA s123, and following *Volkswagen Financial Services Australia Pty Ltd v Tate* [2024] FedCFamC2G 491, the court was prepared to make a declaration that Volkswagen was entitled to take possession of the vehicle. The court also made orders permitting Volkswagen to enter any premises in Australia over which VITC had apparent control and at which the vehicle was reasonably believed to be located.
Volkswagen Financial Services Australia Pty Ltd v Wilson	**[2024] FedCFamC2G 421** Judge Ladhams	Volkswagen lent Wilson money to fund the purchase of a vehicle, and took a perfected security interest over the vehicle. Wilson defaulted, and Volkswagen sought orders for possession of the vehicle, and for entry into premises to seize the vehicle, under ss100 and 101 of the *National Credit Code*. Wilson did not appear. The court granted the orders, including an order under PPSA s123 authorising Volkswagen and its agent to enter into identified residential premises, or any other residential premises in Australia at which the vehicle was reasonably believed to be located, in order to take possession.
Walsh v KC & WL Brain Pty Ltd	**[2023] NSWDC 38** Neilson DCJ	Walsh planted a crop of rice on a farm, then sold the farm to Brain. Both Walsh and Brain claimed to be entitled to the rice. The court held that title in the rice had passed to Brain: the rice crop while growing was a fixture, and the terms of the sale included fixtures.

Case	Citation, judges	Comments
Retention of title		Walsh had purchased the rice seed from SunRice, and agreed to sell the resulting crop to SunRice, on terms that the cost of the seed would be deducted from the crop proceeds. SunRice held a security interest, in the form of retention of title, over the seed and its proceeds (including the crop). Walsh argued that the existence of the security interest severed the seed from the soil, so that title to rice crop did not pass with the land. The court rejected that argument. The security interest did not prevent Walsh having an interest in the seed, and that seed was transferred to Brain, subject to SunRice's security interest.

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.
		  ○ 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.

Case	Citation, judges	Comments
		○ 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 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***	**[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.

Case	Citation, judges	Comments
Constitutional validity: PPSA meets The Castle		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.
Whymark Nominees Pty Ltd v Australian Civils Pty Ltd	**[2020] WASC 62** Acting Master Whitby	Application for costs by Whymark in successful proceedings against Australian Civils. Whymark had purchased a boat from Australian Civils (and/or its director), and licensed it back to Australian Civils. This gave Whymark a security interest (as bailor) in the boat. The licence agreement provided for Australian Civils to make a PPSR registration for Whymark's security interest. Australian Civils did not do so. Whymark issued notice of default, based on the failure to make the registration, and terminated the licence. Whymark brough proceedings claiming delivery of the boat, and execution of a transfer of title. The orders were granted. Whymark sought orders for costs, based on its success in the substantive proceedings. Australian Civils objected, on several grounds, including that Whymark had failed to protect its own interests by not making its own PPSR registration. The court did not agree that Whymark had failed to protect its own interests, noting that the licence agreement had required Australian Civils to make the registration, and granted the order for costs.
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

Case	Citation, judges	Comments
		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.
Wilson v Barno	**[2022] VCAT 601** I Lulham, Deputy President	Wilson bought a second hand car from Barno, and later found the car needed repair. Wilson sought a refund from Barno. As part of his claim, Wilson alleged the car had been written off. In reply, Barno tendered a PPSR certificate which did not show the car as written off. The tribunal said that this certificate failed to prove that the car had not been written off; it only provided evidence that no write-off had been reported. However, the onus was on Wilson to prove that the car *had* been written off, rather than on Barno to prove that it had not; and Wilson had not discharged the onus. Wilson also failed on the other aspects of his claim, and it was dismissed.
Wiluna Mining Corporation Ltd, Re	**[2023] WASC 194** Acting Master McDonald	Mercuria Energy Trading Pty Ltd and FrancoNevada Australia Pty Ltd held perfected security interests over assets of Wiluna. Wiluna went into administration. Administrators of Wiluna sought orders under *Corporations Act* s447A to pay employee entitlements in accordance with *Corporations Act* ss 433, 556 and 561, in priority to holders of circulating security interests, as if those sections applied in administration in the way that they apply in receivership or liquidation. Mercuria consented to the administrators' application, and FrancoNevada did not oppose it. The court granted the orders, allowing the amounts to be paid in priority to the circulating security interest holders, finding that employees had suffered prejudice and hardship due to the delay in paying their entitlements, while it was difficult to see what prejudice the secured and unsecured creditors would suffer by reason of the payments being made in advance of any deed of company arrangement or winding up.
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

Case	Citation, judges	Comments
		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.
Yeeda Pastoral Company Pty Ltd, Re ***Extension of time***	**[2024] WASC 120** Hill J	Administrators of Yeeda proposed to enter into a secured financing arrangement to provide funding for the company in administration. They sought a direction under s90-15 of the *Insolvency Practice Schedule (Corporations) 2016* that they were justified in not seeking applying under s588FM to fix a later time for registration in respect of a the security interest to be granted. The court considered the divergence of views between (1) *KJ Renfrey Nominees Pty Ltd v OneSteel Manufacturing Pty Ltd* [2017] FCA 325, and cases which had followed it, holding that s588FL(2) applied to (and so an order under s588FM was necessary to protect) security interests granted after the 'critical time' referred to in s588FL(2); and (2) *Re Antqip Hire Pty Ltd* [2021] NSWSC 1122, followed in other cases including *Re Cubic Interiors NSW Pty Ltd* [2023] FCA 694, which held that s588FL did not apply to security interests granted after the critical time. The court preferred the second line of authority, adopting the reasons for doing so given in *Re Cubic Interiors NSW Pty Ltd*. And, as in that case, the lack of intermediate appellate authority on the diversion between the two lines of cases meant that there was utility in ordering that, to the extent necessary, a later time was fixed under s588FM. Accordingly the court made that order.
Yimiao Australia Pty Ltd v Cyber Intelligence Tech Pty Ltd ***Bailments, PPS leases and 'regularly engaged in business'***	**[2023] VSCA 21** McLeish, Walker and Macaulay JJA	Appeal from *Yimiao Australia Pty Ltd v Star Mining Pty Ltd* [2022] VSC 701. Yimiao had sought an injunction requiring delivery up of cryptocurrency mining equipment in the possession of CIT. The equipment had been acquired by Yimiao, then delivered to Star Mining, then to Genesis Mining Pty Ltd, and then to CIT which held it at its premises. The court had refused to grant the injunction on balance of convenience grounds. On appeal, the court agreed to grant the injunction, holding that the court at first instance had failed to give adequate weight to the fact that the cryptocurrency mining equipment would decline in value very quickly (due to technological advancement), and was expected to be valueless by the time of final determination; accordingly, it should be made available for Yimiao to use in its business in the meantime. While the issue of dissipation of asset value was determinative, the court also made some observations on PPSA issues that had been raised in argument. CIT had argued that Yimiao, as bailor to Star Mining, was the secured party under a security interest, in the form of a PPS lease over the equipment, and had failed to perfect its security interest; and that CIT's perfected security

Case	Citation, judges	Comments
		interest prevailed over Yimiao's unperfected security interest. On appeal, Yimiao had argued that the court at first instance should have held that it did not have a PPS lease, on the basis that it did not carry on a business of bailing goods (s13(2)(b)), and that Star Mining did not provide value for the bailment (s13(3)) – rather, Yimiao paid Star Mining a fee for hosting the equipment. The court held that Yimiao was not permitted to raise an argument on appeal that the court should have so ruled at first instance, as its counsel had said at first instance that the issue did not need to be determined. However, in considering the balance of convenience arguments for granting the injunction, the court observed (without forming a concluded view) that Yimiao had a 'good argument' that it fell within the exception in s13(3) and, 'perhaps', the exception in s13(2)(b), so that there would be no PPS lease.
Yimiao Australia Pty Ltd v Star Mining Pty Ltd	**[2022] VSC 701** Attiwill J	Yimiao sought an injunction requiring delivery up of cryptocurrency mining equipment in the possession of Cyber Intelligence Tech Pty Ltd (CIT). The equipment had been acquired by Yimiao, then delivered to Star Mining, then to Genesis Mining Pty Ltd, and then to CIT which held it at its premises. CIT claimed that it held security over the equipment, on terms set out in an unsigned agreement between Genesis and CIT which provided for the grant of the security interest to secure payments due to CIT for making available the site at which the equipment would be located and power and other services needed to operate it. CIT had made a registration in respect of the equipment, but the registration had been made out of time. Yimiao argued that CIT's claimed security interest was 'weak', and so should be no impediment to granting the injunction, on grounds that it did not adequately describe the equipment or the place where it was located, and that Yimiao, Star Mining and Genesis were not 'regularly engaged in the business of bailing goods' as contemplated by s13(2) of the PPSA, so that there was no PPS Lease. [The relevance of the argument concerning PPS Leases became more apparent on appeal in *Yimiao Australia Pty Ltd v Cyber Intelligence Tech Pty Ltd* [2023] VSCA 21: CIT had argued that Yimiao, as bailor, was the secured party under a security interest over the equipment, and had failed to perfect its security interest; and that CIT's perfected security interest prevailed over Yimiao's unperfected security interest.] The court declined to grant the injunction, on balance of convenience grounds, finding that the various claimed weaknesses were matters that would require further analysis at trial: • there were arguable positions available to CIT to address the issues regarding description of the equipment and its location. • the issue of regular engagement in the business of bailing goods raised questions of fact and law that would require investigation at trial. The court also noted that CIT currently had possession of the equipment, and that (given that its registration had been made out of time and 6 months had not yet elapsed) CIT would be at risk of vesting under s588FL of the *Corporations Act* if it gave up possession, if Yimiao went into insolvency administration, and if an order setting a later time for registration were not granted under s588FM. Yimiao had offered various undertakings, including an undertaking not to assert that CIT did not have 'possession' by reason of delivery under the requested injunction, but the court considered the undertakings did not adequately protect CIT. The court was not in a position at this interlocutory stage to assess the likelihood of grant of relief under s588FM.

Case	Citation, judges	Comments
		The decision to refuse the injunction was overturned on appeal: *Yimiao Australia Pty Ltd v Cyber Intelligence Tech Pty Ltd* [2023] VSCA 21.