

# AUSTRALIAN BUSINESS LAW REVIEW

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## ARTICLES

### **Function, Form, Fixed, Floating and Forge: Filtering Out Pre-PPSA Concepts in a Post-PPSA World** – *Linda Widdup*

The *Personal Property Securities Act 2009* (Cth) (PPSA) applies to “security interests” as that term is defined in the legislation. It overhauls many common law and equitable rules that previously applied to personal property securities, which focused on the form of the transaction. The PPSA takes a functional approach and applies uniform and consistent rules to all personal property securities transactions that perform the same function, which function is to create an interest in personal property that, in substance, secures payment or performance of an obligation. However, the case law that has been emerging shows a reluctance to let go of the old forms – in particular, the distinction between a fixed charge and floating charge. This article explains the PPSA’s functional approach and argues that the floating charge as it applies to personal property subject to the PPSA is not capable of operating concurrently with the PPSA. The Western Australia Court of Appeal’s decision in *Hamersley Iron Pty Ltd v Forge Group Power Pty Ltd* is also discussed. .... 405

### **The Floating Charge under the PPSA: The Current State of Play** – *Sheelagh McCracken*

Since its recognition by 19th-century English courts, the floating charge has been a form of security favoured by lenders and corporate borrowers. Although the *Personal Property Securities Act 2009* (Cth) (PPSA) is generally acknowledged as modifying this charge when taken over personal property (as defined), both the manner and the extent of modification are controversial. This article contends that the floating charge over personal property is absorbed into the statutory regime as a security interest over present and after-acquired property, thereby attracting statutory attributes. It thus challenges judicial dicta recharacterising the floating charge (and other property interests constituting security interests) as a new statutory generic interest. As a matter of statutory construction, the property interest created by the parties operates under s 19 of the PPSA as a fixed, rather than floating, security interest. Consequently, the article further contends that the PPSA necessarily addresses the grantor’s ability to deal with the collateral differently from the general law, and infers that additional statutory rules may be required to address commercial demands. .... 418

### **Registration Errors under the PPSA: A Case Law Inventory and Analysis** – *Martin Lovell and Oliver Radan*

Registration of a financing statement on the Personal Property Securities Register is the most common way to perfect a security interest in personal property under the *Personal Property Securities Act 2009* (Cth). This article explores common registration errors and how these issues have been considered and addressed in recent case law. It then considers

the various mechanisms for correcting registration errors and proposed reforms to address some of the most critical issues identified by small businesses and other stakeholders. .... 442

**The Use of Overseas Case Law in the Australian PPSA – David Brown**

As we mark the passing of a decade since enactment of the *Personal Property Securities Act 2009* (Cth), this article examines how the Australian courts have drawn upon overseas case law, given the Act was clearly modelled, albeit with some key differences, on legislation in New Zealand and Canada, and was ultimately derived from the United States. The article concludes that there are a few key areas where the legislative provisions are identical or substantially similar, and therefore that overseas case law has been relevant and useful in developing the Australian jurisprudence, particularly in the first few years since the Act came into force. .... 461

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