



## Deed of partial release for PPSA registered security interests (with guidance notes)

**Description:** This is a precedent deed of release document (including guidance drafting notes) for the partial release of a PPSA registered security interest over personal property

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[Refer to Author's Notes at the end of this preced

## Deed of partial release [OPTIONAL]

**Secured Party:** [insert name of Secured p

**Grantor:** [insert name of Grantor] (C

**Grantor's postal address/email address** [insert address for Secure

**Security Interest:** Any security interest (inclu  
*Personal Property Securit*  
respect of the Released P

[use definition provided un  
Deed including any serial  
commercial property if app

**Date:** [insert date of deed]

**Released Property:** [insert description of Secu

The Released Property is released from the Secu

If the Security Interest is registered on the Person  
the *Personal Property Securities Act 2009* (Comm  
specifically describes the Released Property (in w

(a) register a financing change statement in re  
release within [insert – eg 5] Business Day  
[OPTIONAL: and

(b) send a notice of the verification statement  
soon as reasonably practicable after the t

Nothing in this deed [OPTIONAL: or any related fi  
releases, terminates or otherwise affects any debt  
secured by the Security Interest to the extent that  
date of this deed or arise after the date of this dee

**Executed** by the Secured Party as a deed poll a

[Note: Insert an execution clause **only for the per**  
execution clause for deeds is in the case of individ  
companies the testimonium must have “and delive

### Secured Party Contact Details

Phone number:

Email address:

Reference number:

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Author's notes:

This document is only to be used for a partial release model deed (**model deed**) prepared by the Australian Bankers' Association (ABA) updated in [www.afc.asn.au/afc\\_info/publications.html](http://www.afc.asn.au/afc_info/publications.html) or [www.Securities/default.aspx](http://www.Securities/default.aspx). However if the provision protocol provides that as a condition of the download deed must not represent that the deed submitted

## 1. Description and use

Partial releases generally occur where a grantor is a purchaser. It may also occur where the grantor has a security interest in property (to the secured party and wishes to release the property interest.

This deed can be used for a partial release of collateral

- (1) a partial release of security interest under a security agreement; or
- (2) a partial release of a migrated transitional security interest or other security where the security interest was registered on a register and was in fact registered on the register at commencement time (RCT) under the Personal Property Security Act (PPSA).

For discharges of transitional security interests that were in existence and not required to be registered (RCT), the PPSA is not applicable and the undertaking to register is not relevant. For discharges of transitional security interests, you should continue to use pre PPSA law to determine that the release takes effect despite the apparent non-compliance with section 322.

## 2. The discharge process

The PPSA does not prescribe any requirement to register financing statements or financing charges or security interest in personal property (section 150).

Generally a release is not required and is only a condition of a security agreement. However purchasers or their lenders may have free rules under the PPSA discussed below and will be required to settle. The release also can give comfort to the outgoing secured party will register (if required) to amend the PPS register following the release.

### 2.1 Where the collateral to be released is b

#### (a) Collateral released under a general sec

No release is required but can be provided

If only a portion of the personal property is released, the requirement on the part of the secured party to register and amend the financing statement (section 150)

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*An all present and after-acquired property to be an appropriate description of the property security interest remains over all of the grantor's property.*

*As several industry participants are now doing, it also continues to be an appropriate description.*

**(b) Collateral released under a specific security agreement**

*It may be the case that a secured party enters into a security agreement for a specific personal property for a particular collateral class, for example, 'other than' (or 'not including') (generally for other classes).*

**(i) Prior 'APAP' registration**

*Where there is already an 'APAP' registration of the property secured under the specific registration of a financing change.*

*However purchasers and their lenders may not be in a form of comfort at settlement. One approach is to consider including in their payout agreement an undertaking to remove their security interest from the form of the undertaking states "Upon completion of the further interest in the above mentioned property, the Property Securities register any security interest in the goods." No release will be provided unless given in the context that the grantor has entered into an agreement with another secured party and the property is registered over all its present and future property.*

*This approach however may be problematic for interests under the general security agreement. The potential for the 'APAP' registration to be a definition of 'all present and after-acquired personal property over which the security interest is registered' (PPSR 1.6(a)).*

*If there are two registrations, an 'APAP' registration is incorrect for the first secured party if the first secured party does not have, in that registration, a description of the property of the grantor. It only has a description of the grantor except the property description.*

*Note also that if the second security agreement is registered may also impact on the grantor's security interest in the class. This has the potential for the grantor to be liable under section 151 and damages that the grantor may suffer.*

*This has led to some industry participants using a general security agreement as an exception relates to any asset over which the security interest is registered of 'all present and after-acquired personal property stated in the financing agreement'. This approach allows a financing change to be registered and does not appear to apply the spirit of the PPSR to different collateral classes.*

**(ii) no prior registrations**

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Where there is a partial release collateral class that is being sold release and there is no requirement

Also the PPSA does not require (by way of an application to register 150(2)) as the secured party register collateral (section 151(1)) albeit constantly changing (for example

(iii) *taking free rules*

As described above there are some summary of some of the rules and

- *serial numbered property search of the PPS register registration by reference to perfected security interest*
- *motor vehicles - the day a buyer of a motor vehicle first perfected security interest*
  - *a search of the PPS register previous day would*
  - *the vendor is either another person in right to possession (45).*
- *ordinary course of business person who sells property property of that kind will take interest given by the seller*
- *low value personal property property free of a perfected property predominantly for the market value of the property*

**2.2 Where the collateral to be released is**

A secured party may be reluctant to grant a partial personal property is not being sold and prefer in reluctance arises because it is not possible to change to 'APAP except'. This appears to be a technical considered by the government during the course review of the operation of the PPSA required under

Industry has proposed ways to work around this statement which classifies the security interest as in the definition of an 'APAP except' a qualifier to personal property "except any item or class of property for the interest." This allows the secured party to

- *identify the particular personal property that statement; and*

- execute a partial release (that may also include a release of the grantor if the grantor has no interest in the particular personal property); and

Whilst we do not recommend this approach, it appears that the following additional steps:

- the release may also include an undertaking to provide a financing change statement; and
- registering a financing change statement to the Register.

What is dangerous here is the potential for a priority registration raises the potential for changing the priority of the secured party. It is strongly suggested that the secured party does not register in the [new] financing statement back to the original registration date. This concerns pre PPSA or post PPSA security interests. Temporary perfection stops on migration with the 'except' some time after RCT and the migrated 'A' registration date. There is a gap between RCT and the actual registration date in the financing statement.

#### 4. Grantor may still require notice even if the secured party registers a financing change statement

The Registrar is required to give a verification statement to the grantor on registration of a financing statement or a financing change statement. In some circumstances the secured party is required to give notice to the grantor (section 157(1)) unless the collateral is real property and the grantor has in writing waived the right to receive notice.

If acting for the grantor, you may wish to consider inserting an additional undertaking in the deed of release that the grantor agrees to the verification statement under section 157(1) even if the grantor has security documents, to waive its right to receive notice.

#### 5. Waiver of right to receive notice

If acting for the secured party and it concerns:

- post RCT security interests, where the grantor has agreed to waive the requirement to receive a notice of a verification statement;
- pre RCT security interests that did not include a waiver of the section 157(1) requirement,

you may wish to consider inserting, in the release, an undertaking that the grantor agrees with the requirement to give a notice under section 157(1).

If this is the case, you will need to add the grantor to the deed of release to agree in writing not to receive the notice (section 157(1)).