What is a PMSI?

Under the Personal Property Securities Act 2009 (Cth) (PPSA), the purchase money security interest (PMSI) is a special type of security interest which has “super priority” over other security interests if it is registered on the Personal Property Securities Register (PPSR) within the required timeframes.

Four kinds of PMSI

There are four types of PMSIs:

- A security interest taken in collateral, to the extent that it secures all or part of its purchase price.
  
  **Example:** Andrew sells goods to Ben on retention of title terms. Andrew has a PMSI in the goods.

- A security interest taken in collateral by a person who gives value for the purpose of enabling the grantor to acquire rights in the collateral, to the extent that the value is applied to acquire those rights.
  
  **Example:** Corinne finances the purchase by Ben of goods from Andrew, secured by a security interest in the goods. Corinne has a PMSI in the goods.

- The interest of a lessor or bailor of goods under a PPS lease.
  
  **Example:** David leases equipment to Elizabeth under a 36 month lease. David has a PMSI in the equipment.

- The interest of a consignor who delivers goods to a consignee under a commercial consignment.
  
  **Example:** Fiona consigns goods to Gary to sell for Fiona under a commercial consignment. Fiona has a PMSI in the goods.

The “purchase price” and “value” given includes credit charges and interest. In other words, a PMSI does not only secure the principal amount financed.

Three things that are not PMSI's

There are three types of interest that are not PMSIs, even if they would fall into one of the four types above.

- An interest acquired under a transaction of sale and lease back to the seller.
  
  **Example:** Harriet sells goods to Isabella then Isabella leases the goods back to Harriet. Isabella does not have a PMSI in the goods.
• An interest in collateral (as original collateral) that is chattel paper, an investment instrument, an intermediated security, a monetary obligation or a negotiable instrument.

  **Example:** Jordan finances the purchase of shares by Keith, secured by a security interest over the shares. Jordan does not have a PMSI in the shares.

• A security interest in collateral that (at the time the interest attaches to the collateral) the grantor intends to use predominantly for personal, domestic or household purposes, except if the collateral is required or permitted to be described by serial number, such as a motor vehicle.

  **Examples:**
  Lance sells a TV to Mike on retention of title terms. Mike intends to use the TV for personal purposes. Lance does not have a PMSI in the TV.

  Nate finances the purchase of a motor vehicle by Oscar from Pearl, secured by a security interest over the vehicle. Oscar is buying the vehicle for personal use. Nate has a PMSI in the vehicle.

**Agri-PMSIs**

For crops and livestock, there is a variant on the PMSI which operates in a similar way, sometimes called an “agri-PMSI.”

• **Crops:** A perfected security interest in crops or the proceeds of crops has priority over any other security interest granted by the same grantor in the same crops or proceeds if:
  o the priority interest is granted for value to enable the crops to be produced, and
  o either the security agreement providing for the priority interest is made while the crops are growing, or the crops are planted within 6 months after the security agreement is made.

  **Example:** Ron, a farmer, buys seed from Sam, an agricultural supplier, on credit terms, secured by a security interest over the crop, which is planted one month later. Sam perfects his security interest by registration on the PPSR. Sam’s security interest has priority over any other security interest in the crops – even a PMSI.

The agri-PMSI for crops is slightly different to the agri-PMSI for livestock, because the agri-PMSI for livestock does not have priority over a regular PMSI.

• **Livestock:** A perfected security interest in livestock or the proceeds of livestock has priority over any other security interest (other than a PMSI) that is granted by the same grantor in the same livestock or proceeds if:
  o the priority interest is granted for value to enable the livestock to be fed or developed, and
  o either the livestock are held by the grantor at the time the security agreement is made, or acquired by the grantor within 6 months after the security agreement is made.

  **Example:** Ron, a farmer, buys feed from Sam, an agricultural supplier, for his cattle, secured by a security interest over the cattle, which is held by Ron at the time of purchase. Sam perfects his security interest by registration on the PPSR. Sam’s security interest has priority over any other security interest in the cattle – except a PMSI.

These agri-PMSI security interests are different to regular PMSIs in the following ways:

• Unlike a regular PMSI, an agri-PMSI cannot be described by registration as a PMSI.

• In essence, the agri-PMSI is about security for financing the development of agricultural products, while the PMSI is about security for financing the acquisition of property.

**Mixed securities**

If a security interest in collateral secures purchase money obligations and other obligations, the security interest is a PMSI only to the extent that it secures the purchase money obligations.

**Example:** Nate gives Oscar a personal loan to finance the purchase of a motor vehicle by Oscar from Pearl. Nate takes a security interest over the vehicle. The security interest secures the personal loan and also
secures any other debts owed by Oscar to Nate. The security interest of Nate in the vehicle is a PMSI only to the extent that it secures the personal loan.

If a security interest is granted in personal property that secures a purchase money obligation, together with other collateral, the security interest is a PMSI only to the extent that it is granted in the purchase money collateral.

**Example:** Nate gives Oscar a personal loan to finance the purchase of a motor vehicle by Oscar from Pearl. Nate takes a security interest over the vehicle as well as another motor vehicle owned by Oscar to secure the personal loan. The security interest of Nate is a PMSI only in relation to the vehicle being purchased and is not a PMSI in relation to the other vehicle.

**Renewal etc.**

A PMSI keeps its PMSI status even if the purchase money obligation is renewed, refinanced, consolidated or restructured (whether or not by the same secured party).

**Example:** Quentin refinances the loan from Nate in the previous example, taking the vehicle as security. Quentin has a PMSI in the purchased vehicle.

**Application of payments to obligations**

What happens if the extent to which a security interest is a PMSI depends on the application of a payment to a particular obligation?

**Example:** Robert provides a working capital facility to Sharon, secured by a security interest over all property of Sharon. Sharon buys equipment with an advance from the facility. Robert wants to register a PMSI security interest in the equipment. Can Robert apply Sharon’s loan repayments to the non-PMSI advances first?

The PPSA says that if (as in this example) the extent to which a security interest is a PMSI depends on the application of a payment to a particular obligation, the payment must be applied:

- in accordance with any method of application to which the parties agree, or
- if the parties do not agree on a method—in accordance with any intention of the debtor manifested at or before the time of the payment.

If the loan agreement provides for an order of application of payments, as is often the case, then this should determine the result.

If neither of the above applies, the PPSA says that payment must be applied:

- first, to obligations that are not secured, in the order in which those obligations were incurred,
- second, to obligations that are secured, but not by PMSIs, in the order in which those obligations were incurred,
- third, to obligations that are secured by PMSIs, in the order in which those obligations were incurred.

**Registration of a PMSI**

To obtain the “super priority” status of a PMSI, the secured party must register the security interest as a PMSI on the PPSR. In the online registration process for the PPSR, a tick box is provided to choose when the security interest is a PMSI.

Just because a security interest is shown as a PMSI on the PPSR does not mean that it will have the super priority of a PMSI, however: it will only have the super priority if it has been registered within the required timeframes (see below).

On the PPSR it is not possible to register as a PMSI a security interest over:

- consumer property (except serial number goods); or
- commercial property in the collateral classes of:
  - all present and after-acquired property,
  - all present and after-acquired property EXCEPT,
If a registered financing statement indicates that a security interest in the collateral is a PMSI (to any extent) and the security interest is not a PMSI (to any extent) in the collateral, this will be a defect in the registration. The consequence of the defect is that the registration will not be effective at all.

**PMSI registration timeframes**

A PMSI in inventory or its proceeds will take priority over other security interests if the PMSI is perfected by registration as a PMSI at the time the grantor (or another person at the request of the grantor) obtains possession of the inventory (in the case of goods), or when the PMSI attaches to the inventory (for any other property).

A PMSI other than in inventory or its proceeds has priority if it is perfected by registration as a PMSI before the end of 15 business days after the day the grantor (or another person at the request of the grantor) obtains possession of the property (in the case of goods), or the day the interest attaches to the property (for any other property).

**Priority between competing PMSIs**

Not all PMSIs have the same priority. The PMSI of a financier will have a lesser priority to the PMSI of a seller, lessor or consignor if both PMSIs are perfected and the PMSI of the seller, lessor or consignor is perfected within the timeframes for PMSI priority.

**Example**: Tamara sells inventory goods to Umberto on retention of title terms. Umberto finances the purchase with a loan from Vladimir. Tamara perfects her security interest before Umberto gets possession of the goods. Vladimir perfects his security interest before Tamara. Tamara’s security interest nonetheless has priority over Vladimir’s security interest.

**Non PMSIs in accounts – priority over PMSIs**

A security interest that is not a PMSI in an account will in some cases take priority over a PMSI in the account. An “account” is basically a receivable.

Under the PPSA, the transferee of an account has a security interest in the account. So if a supplier (Retailer) sells its receivables to a financier (Financier), Financier has a security interest in them. The account could at the same time represent the proceeds of inventory, if the receivable arises from the sale of inventory by Retailer. Retailer may have granted a security interest over its inventory and proceeds of inventory to another secured party, such as its supplier (Wholesaler) under a PMSI. In this situation Financier and Wholesaler have competing security interests in the same collateral. The security interest of Financier granted for new value over the accounts will take priority over the PMSI of Wholesaler if:

- the security interest of Financier is perfected by registration before the earlier of the time at which the PMSI is registered or otherwise perfected, or
- Financier gives prior notice to Wholesaler, at least 15 business days before the earlier of the day on which it registers its interest in the account occurs and the day that its interest attaches to the account. The notice must be in the approved form, or contain a description of the inventory to which the notice relates, and set out the effect of this provision of the PPSA.

**Applications for extension of time**

If a secured party with a PMSI has missed the timeframes for registration, it may be able to get relief from the courts. A court may make an order extending the number of business days for perfection of a PMSI, priority between competing PMSIs, or the priority between a non PMSI and a PMSI, if it is satisfied that it is just and equitable to do so.

**Priority of PMSI in processed or commingled goods**

A perfected PMSI in goods that continues in the product or mass has priority over a non PMSI in the goods that continues in the product or mass, and over a non PMSI in the product or mass given by the same grantor.
**Example:** Warren has a perfected PMSI as a supplier of plastics to Xerxes, a manufacturer of computers. Xerxes has also given a security interest over the plastics to Yolanda and a security interest in the computers to Zachary. The security interests of Yolanda and Zachary are not PMSIs. The security interest of Warren in the computers has priority over the interests of Yolanda and Zachary.

**Enforcing a PMSI**

The enforcement provisions of the PPSA generally apply in the same way to PMSIs as they do to other security interests.

There is only one mention of PMSIs in the PPSA enforcement provisions, in relation to seized collateral that a secured party proposes to retain. If the security interest of the retaining party is a PMSI, notice of the proposal to retain the collateral must be given to any secured party over whom the retaining party has priority (but only if there is a registration that describes the collateral), as well as to the grantor. On the other hand, if the security interest of the retaining party is not a PMSI, notice must be given to each secured party who has a registration that describes the collateral, as well as to the grantor.

**Opportunities with PMSIs**

PMSIs allow a grantor who has given security over all their present and future property to obtain financing from another creditor secured by new assets. This is the policy rationale for PMSIs. The PMSI secured party can take priority over the existing secured party in relation to the new assets, so the PMSI provides an opportunity for different sources of finance.

However, the existing secured party with security over all assets may provide in its security agreement that the creation of PMSIs by the grantor is prohibited or restricted. General security agreements often have those provisions, so that the grantor may be in default under its existing security agreement by allowing a PMSI to arise. At least the PMSI secured party will be protected in that situation, with its super priority. In practical terms, then, the benefit of PMSIs is more for secured parties than grantors.

**Challenges with PMSIs**

**PMSI registration periods:** Probably the main challenge with PMSIs is making sure that they are registered within time. This is particularly an issue when the PMSI is over inventory and its proceeds. Perfection by registration as a PMSI over inventory must be made before the grantor (or another person at the request of the grantor) obtains possession of the inventory (in the case of goods), or when the PMSI attaches to the inventory (for any other property). Supplier and financiers need to have processes in place to ensure that their PMSI registrations are made on time. One way of doing this is to have inventory supplied in the future to be covered by an existing continuous registration. For example, with leasing arrangements, having a master lease agreement under which various items of equipment may be supplied under lease from time to time. A PMSI registration can be made of the security interest created by the master lease, and the security interest in all equipment supplied will be perfected before it is supplied.

**Defective PMSIs:** If a security interest is registered as a PMSI and it is not (to any extent), the registration is not effective. This is a serious consequence. Secured parties need to be very careful here. They should ensure that only PMSIs are registered as PMSIs. If they want to preserve an effective registration, they may also need to amend the registration if the security interest ceases to be a PMSI: for example where the security interest is only a PMSI to some extent, and the PMSI component is satisfied. Alternatively, a policy of separate registration of PMSI interests may be desirable so that subsequent amendment is not necessary.

**PMSI priorities:** A PMSI will not always come first. A PMSI can be trumped by another PMSI (the seller’s PMSI over a financier’s), a security interest in an account, and an agri-PMSI in crops. Secured parties should be aware of these exceptions.

**Transitional PMSIs:** Some types of PMSIs were not considered security interests before the PPSA: retention of title arrangements, leases and consignments. Such interests created before the commencement of the PPSA (known as transitional security interests) have a 24 month temporary perfection period under the PPSA, to enable secured parties to register those existing arrangements. Some secured parties have been slow off the mark to register their transitional security interests (and in some cases, to understand that they have registrable security interests). If a grantor becomes insolvent before the secured party has got around to registering its transitional security interest on the PPSR, the secured party may have practical difficulty in establishing its claim as a secured party.
About the Author

Patrick is a corporate and commercial lawyer experienced across a range of industries, with a focus on the financial services sector. He advises on the acquisition and disposal of businesses, financing transactions, commercial agreements, corporate governance, design and delivery of financial products and services, and regulatory compliance.

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