



Brentnalls SA
With you **for** life.

Brentnalls SA

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Independent, together.

Retention of Title

Under the PPSA

The Personal Property Securities Act (PPSA) came into effect on 30 January 2012. The legislation introduced a national online Personal Property Securities Register which replaced other existing registers and incorporated previously unrecorded security interests such as retention of title arrangements.

Retention of title clauses are often used in contracts when the purchaser takes possession of property but does not acquire title from the vendor until the purchase price is paid in full.

Common situations where this may apply include:

- Sale of grain by farmers
- Sale of animals by farmers
- Sale of stock by manufacturers and wholesalers
- Consignment sales
- Supply of materials for construction projects

Prior to the commencement of the Personal Property Securities Act, some retention of title clauses were found to be ineffective when disputed by liquidators or trustees in bankruptcy. The law provides greater protection but requires that the security interest be registered on the Personal Property Securities Register.

The registration should be made as a Purchase Money Security Interest (PMSI). A PMSI secures your rights over the collateral and takes priority over all other creditors of the purchaser.

When the goods are commingled (such as grain in a silo), your right would be to a proportion of the total commingled goods as your specific collateral would not be identifiable. There would need to be a clause in your contract to that effect.

Where appropriate, the interest can be registered in both the goods and their proceeds. This ensures that if the goods are sold or used to produce something else, you retain a right to the resulting proceeds (money or produced goods of same value).

If the goods supplied are inventory of the customer, the PMSI should be registered prior to delivery of the goods. In other cases, registration should be completed within 15 business days of delivery. Security interests that are not registered within this timeframe are still validly created however will receive a lower priority than those registered within it.

Before registering, businesses should review their terms and conditions to ensure that they are legally enforceable and that the customer is aware of the retention of title prior to the agreement being made. It will not be sufficient to merely print these terms on the back of the invoice. If the retention of title clause is not valid, the business will not be able to register the security interest.

Registration of an arrangement can cover future sales to a particular customer for a period (up to 7 years, up to 25 years or indefinite) without the need to re-register each sale.

If these circumstances apply to your business, **please contact your Brentnalls SA team member** for further information.

Disclaimer

The information provided in this brochure does not constitute advice. The information is of a general nature only and does not take into account your individual objectives, financial situation or needs. It should not be used, relied upon, or treated as a substitute for specific professional advice. We recommend that you contact Brentnalls SA before making any decision to discuss your particular requirements or circumstances.