



Brentnalls SA
With you **for** life.

Brentnalls SA

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Independent, together.

The Personal Property Security Act

Background

Legislation called the Personal Property Securities Act (PPSA) came into effect on 30 January 2012. The legislation introduced a national online Personal Property Securities Register (PPS Register) which replaced other registers including the ASIC register of company charges. The act covers security interests over all forms of property other than land and buildings or fixtures which are a part of land. So whilst the term "Personal" is used in the Act title, it is not just personal in nature.

The purpose of the legislation is improve the ability of businesses to use all their property in raising capital, as well as to clarify the position of competing creditors in an insolvency situation.

A personal property security is when a secured party takes an interest in personal property to secure payment or performance of an obligation. Examples include:

- The right of a supplier to recover goods for non-payment (i.e. retention of title clauses);
- Financing or operational leases of personal property;
- Consignment arrangements; and
- Licensing agreements for intellectual property.

Under the PPSA, the concept of "title" is irrelevant and has been replaced by the term "security interests". Title itself will not equate to rights over property unless "security" over them is "perfected" in the PPS Register. *Effectively, if you own assets which you do not have possession of (e.g. inventory sold to a customer for which you are still owed the money), you are at risk unless your interest in the asset is registered.*

Generally a security interest over personal property will be ineffective unless registered on the Personal Property Securities Register. Where retention of title clauses are not registered, the clause will be ineffective if disputed by a liquidator. This is particularly true for companies, whereby non-registered security interests will vest in the company upon liquidation. The effect of this would be that the secured party could not seize the collateral on the liquidation and their only recourse would be to prove the debt against the liquidator and be paid out as an unsecured creditor. **In effect, without registration, any retention of title arrangements you have may not be enforceable.**

The Online PPS Register as well as further information about the register can be found at www.ppsr.gov.au.



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.



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Checklist

1. Review Group Structure	Review your group structure, paying specific attention to agreements between entities including leases and loans. This is particularly important due to the irrelevance of "title" under the Act. If security over property has not been properly "perfected" by a related entity in the PPS register, separation of entities may not protect your assets as it previously did.
2. Review Terms of Trade	Review your terms of trade if you supply inventory to other entities, especially if you have retention of title ("ROT") clauses in your contracts. If you have ROT clauses, ensure that these terms are in writing, signed by a person with appropriate authority and that the terminology accords with the concepts in the Act. These signed agreements should be in place prior to the supply of goods. Implied terms will not be sufficient to ensure priority under the Act.
3. Review Existing Finance Arrangements	Review your existing financing arrangements for registered and unregistered security interests. These may include financing and operational leases, consignment arrangements, personal/directors' guarantees, loans secured against personal property (eg. motor vehicles), margin loans and factoring of accounts receivable.
4. Register existing ROT terms and consignment arrangements on the PPS Register within 2 years	If you sell goods with ROT terms or on consignment, you should register existing arrangements in the PPS Register. The period of registration (up to 7 years, 7-25 years or indefinite) will depend on whether you will have future transactions with the buyer and whether you want to register each time you make a sale. Sellers are able to register a single registration against buyers for multiple future sales.
5. Register existing leasing arrangements on the PPS Register within 2 years	If you lease or bail personal property to others for more than one year (or indefinite periods), you should register existing arrangements in the PPS Register. If you lease real property to others, you should ascertain if personal property is included in these leases. If so, you will need to register these as a security interest. Ensure that all lease agreements are in writing, signed by a person with appropriate authority and that the terminology accords with the concepts in the Act.
6. Register other existing security interests	If you lend money or secure obligations, ensure that your security documents accord with the concepts in the Act. Register the interest on the PPS register.
7. Review on credit policies & standard registration procedures	<p>Review your credit policies for new customers and develop standard PPS registration procedures to be implemented. This may include but not be limited to:</p> <ul style="list-style-type: none">• amend your credit policies to ensure that you are collecting the information necessary to register your retention of title arrangements;• have existing and new customers sign a written agreement accepting your terms of trade;• review documents provided to customers including credit applications, invoices, quotations and terms and conditions to ensure they clearly establish a security interest that is capable of registration and where possible, include clauses to minimise your obligations under the Act;• determine the procedure of your business for identifying and registering security interests on a timely basis; and• ensure staff are trained and systems are in place in preparation for these changes.



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8. Check the PPS Register for migration from other registers	Check the PPS Register to ensure that all security interests recorded on another register have been successfully migrated to the PPS register. If the security interest is missing or incomplete, contact the PPS Contact Centre on 1300 007 777 to find out what action may need to be taken.
9. If you buy goods, check the register regularly & review new terms of trade carefully	<p>If you buy goods:</p> <ul style="list-style-type: none">• Suppliers may seek to register security interests against you. Check these registrations regularly and ensure that they do not put you in breach of any bank covenants or clauses.• You may also be asked to sign new terms of trade which, unless carefully reviewed, may override your own terms of trade and prevent them from having any effect.• If you buy a motor vehicle or other significant goods, search the PPS Register to see whether anyone has registered a security interest in the goods. If you discover an entry on the PPS Register, consider whether you should proceed with the purchase or alternatively you might negotiate with the vendor to either have the registration removed or to reach an agreed adjusted price that reflects the continuation of the security interest in the goods.



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Registration Process

1. Create a secured party group	Create a secured party group by going to the PPSR website and submitting details of your organisation including names, addresses and phone numbers. Record the secured party group number and access code.
2. Create a registration	<p>Create a registration on the PPSR website. You will need the following information to create a registration:</p> <ul style="list-style-type: none">• Collateral type – consumer or commercial (consumer property is property held by an individual and not held in carrying on a business)• Your secured party group number• The class of collateral (eg. motor vehicle) and a description including serial number, if applicable• Duration of registration (options will vary depending on class)• Description of the proceeds to be claimed. If you want the registration to apply to all future proceeds, include the words "all present and after acquired property" under the field "proceeds to be claimed".• An indication of whether the interest is to be a purchase money security interest (eg. retention of title clauses, most leases and commercial consignments)• Giving of notice identifier (this is a number to help identify the new registration, such as a customer reference number)• Details of the grantor of the security interest, ensuring you have the correct entity details particularly when dealing with trusts.
3. Pay a fee	The fee payable will depend on the duration of the security interest.
4. Forward verification notice to the grantor	Once the registration is complete, you will receive a verification notice via email or post. You must provide a copy of the statement to the grantor of the security interest as soon as reasonably practicable after the registration.