

# The Personal Property Securities Act (PPSA) and your Business

Our core purpose is  
**'HELPING CLIENTS ACHIEVE FINANCIAL SECURITY'**



MULCAHY & CO | P 03 5330 7200 | INFO@MULCAHY.COM.AU | 300B GILLIES ST NTH, BALLARAT

## INTRODUCTION

Whilst the Personal Property Securities Act 2009 ('the PPSA') commenced on 30 January 2012, it seems many businesses do not understand its broad impact on transactions involving assets.

The Personal Property Securities Act introduces an entirely new system of security interests in property and will impact almost all situations where assets (other than land) are purchased, sold, leased, financed or otherwise dealt with.

The Personal Property Securities Act replaces the previous systems for most security interests in assets, including company charges, retention of title agreements, stock mortgages and motor vehicle securities to name a few.

The Personal Property Securities Act establishes an online register of all security interests under the system. Whilst it is a new and unfamiliar concept, the process is simple and fees are inexpensive.

As this article will explain, the consequences for failing to adequately search the register or register your interests are severe and it is essential that businesses become familiar with the process.

## HOW MIGHT THE PPSA IMPACT MY BUSINESS?

There are many ways that you may be impacted by the PPSA. The following are some examples we see on a day to day basis:

## SELLING GOODS

If you supply goods on retention of title, you must register your interest in the goods to secure the unpaid purchase price. In the event of insolvency of the purchaser, your retention of title clause alone will not be enough for you to claim an interest in the goods. You will be relegated to an unsecured creditor and anyone who has registered their interests in assets of the purchaser will rank above you.

## BUYING GOODS

Before purchasing assets, you must carry out a search of the register to see whether another party has registered an interest over the property. The asset will need to be released before you can purchase it free of a security interest, otherwise you may be purchasing an asset that is legally owned by someone else.

## LEASING GOODS OR LAND

If you lease your assets (or land which contains plant, equipment or other assets) to another party ('lessee') your interest as owner of the assets must be registered, as the assets will no longer be in your possession. If you fail to register your interest as owner of the assets and the lessee became insolvent or bankrupt, a bank or other secured party could seize all assets in the lessee's possession, including your assets.

The same principle applies to business structures where a 'trading' entity leases goods from a 'holding' entity.

If the PPSA applies you must register your security interest or risk losing the assets to a third party, even if you are the legal owner.

## HOW LONG DO I HAVE TO REGISTER MY INTEREST?

There are very strict time limits for registering most interests, you cannot just register if and when something goes wrong. Importantly, if you supply goods on retention of title basis to a purchaser who will on- sell the goods (i.e. they will be the purchaser's stock/inventory), you must register your interest before entering into the contract and supplying the goods.

The register encourages early registration and we recommend that you register your interest during negotiation of any sale, you can always remove it later if the transaction doesn't proceed.

For a sale of an asset which will be used by the purchaser as plant or equipment, you have 15 days from the date of the contract or supply of the goods (whichever is earlier) to register your interest.

## ARE MY TRADING TERMS UP TO DATE?

Most trading terms will now be out-dated and retention of title clauses are no longer effective alone. All businesses should have their trading terms reviewed to ensure they have the ability to register and enforce their security interests.

## WHAT ARE THE CONSEQUENCES OF FAILING TO REGISTER MY INTEREST?

Some practical examples:

**Good Grain Pty Ltd:** is a grain grower who sells grain to International Produce Pty Ltd on retention of title terms. If International Produce Pty Ltd becomes insolvent, Good Grain Pty Ltd will be an unsecured creditor and will stand in line with other creditors to receive a distribution. It is unlikely Good Grain Pty Ltd would receive the full amount of the debt owed.

IMPORTANT DISCLAIMER: This document does not constitute advice. Clients should not act solely on the basis of the material contained in this document. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly and we therefore recommend that our formal advice be sought before acting in any of these areas. This document is issued as a helpful guide to clients and for their private information.

ACCOUNTING | FINANCIAL PLANNING | LENDING | **LEGAL** | INFORMATION TECHNOLOGY

MULCAHY.COM.AU



However, if Good Grain Pty Ltd had appropriate terms of trade setting out their retention of title AND had registered their interest in the grain correctly on the PPS Register, they would be priority creditors. It is likely they would have the ability to retrieve the grain from the silos of International Produce Pty Ltd - even if it has been mixed with the grain of other growers. If the grain had already been on-sold, Good Grain Pty Ltd could obtain the proceeds of the sold grain. Good Grain Pty Ltd is therefore in a much better position.

**Build Co Pty Ltd:** operates a construction business. It leases a forklift under a 2 year lease from The Forklift Specialists Pty Ltd. The forklift is stored in the shed of Build Co Pty Ltd and The Forklift Specialists Pty Ltd has not registered its interest as owner of the forklift on the PPS Register.

Bank Pty Ltd holds a mortgage over Build Co Pty Ltd. If Build Co Pty Ltd became insolvent, Bank Co Pty Ltd could enforce its mortgage and seize any property in the possession of Build Co Pty Ltd, including the forklift owned by The Forklift Specialists Pty Ltd. If The Forklift Specialists Pty Ltd had registered their interest as owner of the forklift on the PPSR, they could retrieve their forklift from Build Co Pty Ltd's shed.

**Caramel Co Pty Ltd:** makes caramel and sells to Lars Pty Ltd. Lars Pty Ltd uses the caramel in its Lars Bars. If Lars Pty Ltd fails to pay Caramel Co Pty Ltd or becomes insolvent, Caramel Co Pty Ltd is an unsecured creditor and stands in line with all other unsecured creditors.

However, if Caramel Co Pty Ltd had an appropriate contract with Lars Pty Ltd and registered its interest in the caramel correctly on the PPS Register, it could trace its rights in the caramel into the finished Lars Bars that are still in the possession of Lars Pty Ltd. Caramel Co would have an interest in the finished product to the value of the debt owed to it.

Further, if Lars sold the Lars Bars to a supermarket, Caramel Co Pty Ltd would have an interest in the money received by Lars Pty Ltd for the sale.

### HOW DO I SEARCH THE PPSA?

Searching the PPSA is straightforward and is simply a matter of entering the details of either the grantor or a serial number of the property (VIN number, manufacturer's number, chassis numbers of vehicles).

### 'SEARCH, REGISTER, SEARCH!'

- When registering your interest, it is essential to first search the register to see whether someone else already has a registered interest over that piece of property, individual or company which may supersede your interest. You may need to reconsider the transaction if another party already holds a security interest which could defeat yours as you might be purchasing something that it legally owned by someone else.
- Register your interest online at [www.ppsr.gov.au](http://www.ppsr.gov.au). Check that all details are correct as any mistakes will render your registration defective.
- Remember, a registration is not effective until it appears on the register, so finish by searching for your registration to make sure it has been processed and check that all details displayed are correct.

### REGISTERING ON THE PPSR

Every registration on the PPSR will be different. In order to register an interest you will need several details in advance:

- details for the grantor including ACN where applicable.
- details of the type of security interest (e.g. if the interest is a PMSI you will need to specify this)
- details of the collateral which will be secured by the interest. Some property must be identified by VIN or serial number. This includes motor vehicles, watercraft and trade marks.

### TERMINOLOGY

**Grantor:** the party that the security interest is registered against.

**Secured Party:** the party who holds the security interest.

**Collateral:** the property which is secured by the security interest.

**PMSI:** a Purchase Money Security Interest. These interests secure an unpaid purchase price and have a higher priority when registered correctly.

One common example of a PMSI is where goods have been sold on retention of title basis. Some leases of goods will also be a PMSI.

**We offer a free no obligation meeting to review your situation. Call us today on 03 5330 7200 and take advantage of this valuable offer.**

### Are You Financially Secure?

At Mulcahy & Co we are in a unique position to provide the expert advice and solutions of accounting, financial planning, lending, legal and information technology all under the one roof. This makes a normally complicated process seamless to help you on your way to becoming financially secure.



[mulcahy.com.au](http://mulcahy.com.au)