



Personal Property Securities Register



Significant commercial law reform will affect Australian small business owners

Personal Property Securities (PPS) reform is part of a national reform agenda aimed at reducing costs incurred by business in complying with unnecessary and inconsistent regulation across jurisdictions. PPS reform aims to provide increased opportunities for access to finance to assist in business growth and increase your protection in operating your business.

As a small business owner that may supply or receive goods on credit, you need to be aware of PPS reform that will commence operation early 2012. PPS reform will make significant changes to the way your business uses secured lending in the supply of goods and services.

To prepare for this reform you will need to review your business documentation to accommodate new terminology and practices. Registration of personal property securities is not compulsory but will provide greater priority should a claim on the personal property be made.

Prior to PPS reform, a business owner may have relied on a statement in an invoice to secure the retention of title in the goods supplied on credit. Retention of title clauses and other title-based securities will now be security interests. Registration of the security interest will provide better protection.

Businesses that do not have possession of their personal property (eg stock and equipment supplied or hired to customers) need to have a security agreement in place that satisfies the requirements of the new PPS legislation.

NEW NATIONAL COMMERCIAL LAW

PPS reform brings the different Australian Government, state and territory laws and registers regarding security interests in personal property under one national system. PPS reform introduces the *Personal Property Securities Act 2009 (Cth)* and a single national online PPS Register.

If you are a business owner or a consumer you may be affected by this law:

- as a buyer of personal property (such as inventory, a motor vehicle, business equipment or farm machinery)
- as a consumer or a business borrower, or
- as an investor who might be contemplating buying into a business

By early 2012, many security registers will be closed and existing registrations migrated to the PPS Register. Examples of the registers that will close are: the ASIC Register of Company Charges, bills of sale registers, and fisheries registers, shipping registers, crop and livestock registers and registers of encumbered vehicles (eg VSR and REVS).

PPS reform will establish a consistent and comprehensive national system for secured lending transactions in personal property.



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WHAT IS PERSONAL PROPERTY?

Personal property is any form of property other than land, buildings or fixtures which form a part of that land. It can include tangible goods such as cars, art, machinery and crops as well as intangibles such as intellectual property, licences, shares, accounts receivable and contract rights. Personal property includes both consumer and commercial property. Examples of the kinds of interests covered by PPS reform include retention of title arrangements, chattel mortgages, fixed and floating charges and assignments of book debts.

SECURITY INTERESTS

To understand PPS reform, you need to understand what a security interest is under the new system. A security interest is created when a person or entity, generally a financier, takes an interest in property, other than land, as a security for a loan or other obligation. Examples of this sort of secured finance are loans secured against motor vehicles, equipment or trading stock and the property of a company. It also includes liens on crops, lease arrangements and factored accounts receivable.

PPS REGISTER

PPS reform will introduce a new national register of personal property subject to security interests, the PPS Register. If you are a finance provider or a business supplying goods on credit, you will be able to check whether a particular item of personal property has already been provided as security for a loan. You will also be able to register your security interest on the PPS Register as notice to other financiers or suppliers of your interest in the collateral.

The new PPS Register can help your business to:

- protect security interests in personal property
- inform you of personal property that may be subject to a security interest prior to purchase
- negotiate business or consumer loans
- provide credit to retailers and manage credit risk in the supply chain, or
- make investment decisions if you are contemplating the purchase of a business.

FURTHER INFORMATION

Visit www.ppsr.gov.au for more information. It is also recommended you talk to your business advisor about preparing for the commencement of PPS reform early 2012 and how it affects your business.