



WHAT PAWNBROKERS AND SECOND-HAND DEALERS NEED TO KNOW ABOUT PPS REFORM

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The Australian Government's personal property securities (PPS) reform is changing the law and practice for secured financing involving personal property.

If you are a pawnbroker or a second-hand dealer you need to know that some parts of your business will be unaffected by the national law reform that will commence in early 2012. The reforms **will not apply** where a pawnbroker takes a security interest over personal property to secure a loan of \$5000 or less and the market value of the personal property does not exceed \$5000. This fact sheet will refer to this as the exemption provision.

However, you also need to know that the new law **will apply to you** if you take a security interest (including a pledge) over:

- A motor vehicle or boat / watercraft of any value providing it has an identification number, or
- Any property where the security or market value of the goods is more than \$5000.

PPS reform

In 2009, the Commonwealth Parliament passed the Personal Property Securities Act 2009 (the PPS Act).

The PPS Act sets out rules relating to the priority and enforcement of security interests in personal property and creates a new national PPS Register on which security interests in personal property can be recorded.

What is personal property?

Personal property is property other than land or buildings. It includes physical goods such as works of art, household items and furniture, electrical goods, jewellery, cars, trailers and boats, machinery and crops, as well as intangible property (for example, rights under a contract).

What are security interests?

Generally, a secured creditor takes a security interest to enforce its rights against particular items of collateral in case the debtor defaults on the obligation. If the debtor is declared bankrupt, a secured creditor takes precedence over unsecured creditor in the

distribution of the property of the debtor who is declared bankrupt.

Under the PPS Act, a creditor would be considered to be a secured creditor if they had met certain requirements, which will generally include registering their security interest on the PPS Register.

What does PPS reform mean for me?

From early 2012, the PPS Register will be the authoritative record of registered security interests in all types of personal property,

It is not compulsory to register security interests in personal property on the PPS Register; however, registering an interest in personal property is a key way to ensure priority of the interest. Priority, as used in the PPS Act, refers to the order of precedence for determining which creditor has the right to be paid first in the case of the default or bankruptcy of the debtor.

Pawnbrokers

It will be a business decision whether a pawnbroker chooses to search the PPS Register before accepting personal property as security for a loan. You should seek advice from a business advisor to be sure about this.

Generally pawnbrokers are unlikely to need to use the PPS Register if they only provide loans of less than \$5000 in return for pledged goods, because of the exemption provision in the PPS Act. However, pawnbrokers should also be aware of PPS implications and may need to use the PPS Register if they accept more valuable goods, such as a car or boat, as pawned goods.

Second-hand dealers

Second-hand dealers may be affected to varying degrees by PPS reform. A dealer may come within the scope of the PPS Act if a dealer sells personal property on terms that extend credit to a customer (such as retention of title arrangements, discussed below) or because a dealer wants to know if the property they wish to purchase is encumbered. Note that the exemption provision does not apply to second hand dealers.



Retention of title

Sometimes property is sold or leased on the basis that the purchaser takes the property but legal ownership, or title, to the property, remains with the seller until the financial arrangement is concluded. Under the PPS Act these types of arrangements create a security interest in the property sold or leased. As a result, a seller's (or lessor's) rights in the property may be at risk if the security interest is not registered on the PPS Register. The terms of supply agreements and leases may need to be reviewed by business owners or their business advisors to determine whether they come under the PPS Act.

Buying personal property

In certain circumstances, the PPS Act provides that a buyer of property will take it free of any security interest; that is, it is unencumbered. For example, where the property is purchased for personal, domestic or household purposes and its market value is \$5000 or less.

In regard to motor vehicles and watercraft which must be registered by serial number, a failure to register by the relevant serial number may result in a purchaser taking the property free of any security interests in that property. In this way, the PPS Register will operate in a similar way to state and territory based vehicle security interest registers, such as REVS and VSR.

List of legislation governing pawnbrokers and second-hand dealers around Australia

- NSW: Pawn Brokers and Second-hand Dealers Act 1996
- Vic: Second-Hand Dealers and Pawnbrokers Act 1989
- Qld: Second-hand Dealers and Pawnbrokers Act 2003
- WA: Pawnbrokers and Second-hand Dealers Act 1994
- SA: Second-hand Dealers and Pawnbrokers Act 1996
- Tas: Second-Hand Dealers and Pawnbrokers Act 1994
- ACT: Pawnbrokers Act 1902 and the Second-hand Dealers Act 1906
- NT: Consumer Affairs and Fair Trading Act

Professional advice recommended

Personal Property Securities could affect you or your business in a number of different ways.

You should seek professional advice in relation to your specific circumstances.

Where can I get further information?

For more information visit the 'Ask the Registrar' page at www.ppsr.gov.au.

Contact us

Visit online www.ppsr.gov.au

Email enquiries@ppsr.gov.au

Telephone 1300 00PPSR (1300 007 777)

Help in other languages

If you have difficulty speaking or understanding English, contact the Translating and Interpreting Service (TIS) National on 131 450 for the cost of a local call. The TIS is available 24 hours a day, seven days a week for over 170 languages.