

# Personal Property Security Act

Are you secured?



The Personal Property Securities Act 2009 (PPSA) came into effect on 30 January 2012, replacing around 70 existing national, state and territory registers (including ASIC Register of Charges and state based Registers of Encumbered Vehicles). The PPSA raises serious risks for many Australian businesses and has triggered profound changes in the way security is taken over personal property. Business owners and directors should understand that usual “asset protection” structures such as trusts and separation of entities may not protect your assets from the reaches of the PPSA in the event of insolvency.

However the practical applications of the Act have wider implications than insolvent companies and insolvency practitioners. This is particularly the case if you or your business lease out equipment or supply goods to other businesses on delayed settlement terms. Financiers, along with businesses operating across all industries – but particularly the **manufacturing, wholesale and retail** sectors - will be affected.

The changes will impact individuals and businesses that utilise certain structures for asset protection; liens; chattel mortgages; sell stock on credit; lease plant and equipment or other assets; or have stock/assets on consignment with third parties. In particular, changes to **Retention of Title** arrangements will allow suppliers to retain title over stock or equipment in the event of default by a purchaser. To ensure your ability to retain title, it is imperative all security interests are registered correctly and in a timely manner.

Early registration is advantageous as administrators will use order of registration to determine priority between secured parties. Individuals and businesses who fail to act may risk losing their claim to assets they consider they own.

## Example

Your business is involved in leasing heavy machinery on extended payment terms. A party to which you leased the machinery to goes into administration.

In the event that you had not properly registered your security interest over the machinery on the new Personal Property Securities Register (PPSR), the equipment supplied could be sold by an administrator and the value realised for the benefit of other creditors. Placing the machinery on the PPSR under correct Retention of Title arrangements will provide recourse for you to retain title over the goods.

### Points to consider

**Review of group structure inc. arrangements and agreements between entities**

**Review terms of supply for inventory**

**Identify affected assets and transactions requiring registration**

**Register security interests on the new register and properly document Retention of Title terms**

**Compile inventories of existing security interests**

**Develop procedures for registering future security interests**

Contact us today to discuss the suitability of your business structures, the process for registering security interests and strategies to protect existing assets.