



THE PERSONAL PROPERTY SECURITY ACT AND REGISTER

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The introduction of the *Personal Property Security Act* has changed the way that security interests are governed. This article will outline how the *Personal Property Security Act* works and discuss how individuals are able to register their interest on the *Personal Property Security Register*.



A. WHAT IS THE PERSONAL PROPERTY SECURITY ACT ('PPSA')?

The *Personal Property Security Act 2009* (Cth) ('*PPSA*') is a federal law that came into effect on 30 January 2012. Its introduction resulted in changes within the *Corporations Act 2001* (Cth) and has led to the replacement of over 40 state registration systems with one Commonwealth register for security interests in personal property. Based on laws in New Zealand and in Canada regarding personal property security, the *PPSA* aims to deal with how security interests in personal property are governed. It affects most types of commercial transactions and allows parties to act in a transparent manner.

B. WHAT IS PERSONAL PROPERTY?

Personal property refers to all types of property except:

- Real property (ie. land and fixtures); and
- Government-granted rights, entitlements or authorities (whereby they declare that it is not to be regarded as personal property under the *PPSA*).¹

C. WHAT IS A SECURITY INTEREST?

A security interest generally arises through contracts and agreements between parties.

There are two main types of security interests: an in-substance security interest and a deemed security interest.

An in-substance security interest refers to an interest in personal property provided for by a transaction (through a consensual dealing) that, in substance, secures payment or performance of an obligation.² This interest is secured without any consideration or regard being given to the type of transaction or the identity of the person with title to the property.³

A deemed security interest on the other hand refers to certain interests that are considered to be security interests regardless of whether or not the transaction secures payment or performance of an obligation and includes:⁴

- A transferee's interest under a transfer of an account or chattel paper;
- A consignor's interest under a commercial consignment; and
- A lessor or bailor of goods interest under a personal property security (PPS) lease.

D. WHY IS THE PPSA IMPORTANT AND WHEN DOES IT APPLY?

The *PPSA* is important because it provides for commercial dealings to be conducted transparently between businesses and consumers.

This can be seen through the *PPSA* encompassing rules relating to:

- Creating and enforcing security interests;
- Extinguishing security interests;

¹ *Personal Property Securities Act 2009* (Cth) s 10 ('*PPSA*').

² *Ibid* s 12(1).

³ *Ibid*.

⁴ *Ibid* s 12(3).



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- Registering security interests; and
- Settling priority disputes between competing security interests.

E. HOW IS A SECURITY INTEREST ENFORCED?

A security interest can be enforced against third parties if the following has occurred:

- The security interest has been attached⁵ as a collateral (usually through value being exchanged);
- There is a written security agreement in place that has been signed by the grantor; and
- The security interest has been perfected⁶, through:
 - Registration on the *Personal Property Security Register* ('PPSR');
 - The secured party taking possession of the collateral; or
 - The secured party taking control of the collateral.

F. REGISTERING A SECURITY INTEREST ON THE PERSONAL PROPERTY SECURITY REGISTER (PPSR)

A security interest can be registered (as a notice) on the *Personal Property Security Register (PPSR)*. This will show that the secured party has rights over personal property which may or may not have a debt or obligation secured to it. The secured party is the party that holds a security interest in personal property. It is important that they register the security interest because registration will protect the interest in the event that the grantor becomes bankrupt or insolvent. Failing to register may mean that other lenders and/or suppliers obtain priority over the interest instead.

Registering a security interest can be done through the application form online on the *PPSR* website (click [here](#)). The application consists of a financing statement that must include the details of the parties, collateral and security interest.⁷ If the application has been correctly filed, it will be approved and entered into the *PPSR*.

Once it has been registered, the secured party will receive a verification statement which they can use to prove that the security interest has been registered.⁸

The *PPSR* is a noticeboard only - it flags that a secured party is claiming a security interest against the personal property of a grantor. It is not a registration of actual documents. Neither is it a register of title. A typical security interest that may be registered on the *PPSR* is that of a car which still has finance owing on it.

You can place a notice on the *PPSR* to show that you have enforcement rights over personal property. You should only register a security interest on the *PPSR* if you have a security agreement evidenced in writing. A searcher may contact the secured party to request more information so as to understand the underlying security agreement. For instance, an individual purchasing a used car may search the register and find that there is a debt owing on it. Accordingly, they may contact the secured party to obtain more information about the value of the debt.

G. CONCLUSION

The introduction of the *Personal Property Security Act (PPSA)* has changed the way in which commercial transactions in personal property are governed. It is important that the secured party registers their interest on the *Personal Property Security Register (PPSR)*.

Comasters Law Firm is able to assist clients with registering their security interest and in dealing with priority disputes with other lenders and/or suppliers.

⁵ Ibid s 19(2).

⁶ Ibid s 21.

⁷ Ibid s 153.

⁸ Ibid s 156.

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