

Your guide to the
PPSA



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The Personal Property Securities Act

The Personal Property Securities Act 2009 (Cth) (PPSA) regulates security interests in personal property – essentially all property – other than land, fixtures to land and some statutory rights. Personal property includes:

- motor vehicles, boats or aircrafts;
- crops, cattle and other livestock;
- stock in trade, artworks and equipment;
- other goods, new or second-hand, whether owned by businesses or individuals;
- intangible property, such as patents, copyright, commercial (not government-issued) licenses, debts and bank accounts; and
- financial property such as shares, cash or cheques.

The PPSA sets out a complex and highly technical statutory regime for the creation, priority and enforcement of security interests in personal property.

The first question for every business owner is whether or not the PPSA applies to their business. This is of critical importance as a failure to comply with the PPSA could result in loss of valuable assets, even if you own them!

Is your business caught by the PPSA?

Typical transactions which may give rise to a security interest in personal property include:

- sale of goods on a retention of title basis;
- leasing and hire purchases;
- bailments;
- mortgages and charges; and
- consignments.









In addition to the above, your business may also be caught by the PPSA if it engages in other non-standard secured transactions or arrangements, including:

- retention of monies and deposit arrangements;
- rights in relation to personal property which arise under contracts relating to land (eg, rights under a lease to seize goods from the property);
- rights under a contract which allow a party to acquire, use or sell property of another party, if that other party is in default under the contract; and
- options, forfeitures and pre-emptive rights in relation to shares or interest in joint venture arrangements.

If your business is engaged in any of the above transactions, you may be subject to the PPSA. If so, it is very important that you comply with the requirements under the PPSA and perfect your security interest. This can be done by reviewing your business systems and processes, ensuring your transaction documents comply with the PPSA and registering a financing statement on the Personal Property Securities Register (PPSR), within the statutory timeframes.

Industry Checklist

The table below lists most common industries and activities that are subject to the PPSA. Even if you don't fall within one of these industries, you may be affected, especially if you are conducting any of the listed activities.

INDUSTRY	ACTIVITY
Agriculture 	<ul style="list-style-type: none"> • Selling or buying livestock, wool, timber, feed or fertilizer, crops, nursery trees. • Leasing or other hiring out of stud or breeding cattle, horses or other animals. • Selling, leasing or purchasing farm machinery.
Arts and Crafts 	<ul style="list-style-type: none"> • Leaving your work (e.g. artwork, jewellery) for sale on consignment with a gallery or other seller.
Construction and Mining 	<ul style="list-style-type: none"> • Selling or buying materials. • Selling, leasing or hiring out construction or mining plant and machinery, either separately or as part of works contracts.
Financial Services 	<ul style="list-style-type: none"> • Selling or buying shares and other investment products, whether for your business or for third parties. • Dealing in or lending on debts (e.g. book debts or receivables). • Lending on security over any type of goods or assets except for land, buildings and fixtures.
Hire and Rental 	<ul style="list-style-type: none"> • You are in the business of leasing, renting or hiring out any other type of plant, vehicles, or equipment.
IT/Research and Development 	<ul style="list-style-type: none"> • Selling or buying goods (as above) but also software and/or licensing others to use software or other intellectual property (e.g. copyright, patents, designs).
Motor Vehicles 	<ul style="list-style-type: none"> • Selling, leasing out or financing cars, trucks, trailers, caravans. • Leasing vehicles to employees; buying second-hand vehicles.
Retail 	<ul style="list-style-type: none"> • Buying goods from wholesalers, wherever they are based, and selling goods to the public (other than for immediate cash).
Wholesale 	<ul style="list-style-type: none"> • Selling goods on terms (other than cash on delivery) to retailers for on-sale to the public, or as materials for use or installation in manufacturing, agriculture or any other process.

Retention of Title Suppliers and the PPSA

A 'retention of title' sale is a conditional sale, where, the supplier remains the owner of the goods being sold, until the goods are paid for in full by the purchaser. For these types of transactions, the PPSA has a profound impact on the rights of suppliers that sell goods on a retention of title basis (ROT Supplier).



Under the PPSA, an ROT Supplier is now a secured creditor of a purchaser and must comply with the requirements under the PPSA, in order to protect their interest in goods sold until they have been paid in full by the purchaser. Generally, these requirements include:

- (a) a written trading terms/supply agreement to govern the retention of title arrangement, that;
 - (i) accurately describes the goods the subject of the retention of title arrangement; and
 - (ii) is signed by the purchaser; and
- (b) the ROT Supplier must register a financing statement on the PPSR, in relation to the interest of the ROT Supplier in the goods being sold. This financing statement must be registered within the statutory time frame, in order for the ROT Supplier to have the maximum protection under the PPSA.

Compliance

If an ROT Supplier complies with the requirements under the PPSA, the ROT Supplier will normally:

- (a) have an enforceable security interest in the goods sold to the purchaser;
- (b) be a secured creditor of the purchaser; and
- (c) hold a special priority for its security interest – which will take priority over other (including earlier) security interests in the goods.

Consequences of Non-Compliance

If an ROT Supplier fails to comply with the requirements under the PPSA, the ROT Supplier could:

- (a) lose its interest in the goods being sold, notwithstanding that the ROT Supplier is the owner of the goods – this is a radical departure from the long-established legal principles which protect an owner's interest in personal property;
- (b) have its rights subordinated to another secured creditor; or
- (c) become an unsecured creditor of the purchaser – this is an extremely bad outcome for the ROT Supplier given the low prospects of any significant return to unsecured creditors of an insolvent purchaser.

It is critical that an ROT Supplier fully understands its rights under the PPSA.

Strict compliance with the requirements under the PPSA is essential in order for an ROT Supplier to protect its statutory rights. Failure to do so will likely result in financial loss for an ROT Supplier, particularly in the event of payment default or insolvency of a purchaser.

Don't Risk It

The ramifications for non-compliance with the PPSA far outweigh the cost of complying with the PPSA. Even if you own valuable assets, you can lose your interest in them, if your business is regulated by the PPSA and your obligations under the PPSA are not met.

Brown Wright Stein provides tailored pragmatic advice and solutions across all areas of corporate and commercial law. Our specialised team assists clients ranging from individuals to large public and private businesses.

In the current business environment, where risk management is a key focus at both strategic and operational levels, there is a greater emphasis on compliance and governance issues. Brown Wright Stein provides quality, practical legal advice on compliance systems aimed at assisting clients with their specific requirements and protecting their businesses from consequences of non-compliance.

If you are in business and you are unaware of your rights and obligations under the PPSA, please do not hesitate to contact the Brown Wright Stein Corporate and Commercial team.

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We offer a strategic, practical and a very personal approach, striving to ensure our advice fits within your business and personal needs. We see the whole picture. We speak your language.

Our team's broad expertise and understanding of business and tax issues enables us to always provide the right solution for you.

The PPSA regulates security interests in personal property and contains a complex and highly technical statutory regime for the creation, priority and enforcement of security interests in personal property.

This guide sets out some matters that should be considered in determining, at a preliminary level, whether your business is subject to the PPSA. This guide is not intended to be exhaustive or a substitute for obtaining considered legal or other professional advice on PPSA compliance. It is to be used to help assess whether there are potential PPSA issues.

If you have an issue which you need considered, please contact Charles Cheah and the Brown Wright Stein Corporate and Commercial team.

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