

Protecting your assets under the Personal Property Securities Register

Legal information for community organisations



This fact sheet covers:

- why does your community organisation need to know about the PPS Register?
 - what is the PPS Register?
 - what property is affected and how?
 - can someone register an interest in your assets?
 - does your organisation need to register any property interests?
 - how to register on the PPS Register
 - buying second-hand goods, and
 - searching the PPS Register.
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This fact sheet explains the Personal Property Securities Register and why it is important for community groups to understand how it works.

The Personal Property Securities Register (**PPS Register**) is a system for lenders, suppliers of some goods, lessor of equipment and others to record the security interests they have over assets (other than land) which are physically held by someone else (like a borrower or a purchaser or hirer of goods).

The PPS Register came into effect on 30 January 2012, and replaced a number of State and Commonwealth registers (such as the ASIC register of charges over assets of companies and State based registers of finance owing on cars). There is now just one register for the whole of Australia covering security interests over personal property.

The *Personal Property Securities Act (PPS Act)* and the PPS Register are complex. This information sheet is designed to help you understand the basics about the PPS Register, and the steps your organisation may need to take to ensure its interests are properly registered and protected on the PPS Register. You should seek expert advice in this specialist area if required.

Why does your community organisation need to know about the PPS Register?

You may be wondering why the PPS Act and the PPS Register are relevant to your organisation. The PPS Act and Register have implications for any person or any organisation who deals with assets or

borrow money, including not-for-profit organisations. It is important to understand how the PPS Act and PPS Register can affect your organisation. In short:

- if you borrow money on a secured basis, hire equipment or buy goods on deferred payment terms subject to retention of title, the lender, hirer or seller may have a registered “security interest” on the PPS Register to protect its interests in those assets against other claims.
- Conversely, if you become the lender, hirer or seller in the above situation, you may wish to make appropriate registrations on the PPS Register to protect your security interests.

What is the PPS Register?

The PPS Register is a national online register of ‘security interests’ in ‘personal property’ (these terms are explained below). The PPS Register allows people to record where they have a security interest in assets while those assets are held by someone else.

‘Personal property’ under the PPS Act essentially means property other than land and excludes certain rights or entitlements declared by law not to be personal property. The term ‘asset’ in this fact sheet is used interchangeably with the term ‘personal property’.

A ‘security interest’ is generally an interest in personal property (basically, assets other than land) that secures payment of a debt or performance of another obligation (like an obligation to return equipment at the end of a lease). You should seek expert advice, if unsure, to determine if the PPS Act is applicable to a particular interest.

CAUTION

If you do not comply with the requirements of the PPS Act to protect your security interest by registering with the PPS Register, you run the risk that:

- another security interest may take priority over yours
- someone may acquire an interest in the personal property free of your security interest, or
- your security interest may not survive the insolvency of the person holding the assets, so you risk losing your interest in that property.

What property is affected and how?

The PPS Register covers assets that you may own or have an interest in that are not land: for example, equipment, cars, or merchandise. This means that in some circumstances, if someone else has your assets in their possession, you may need to register those assets on the PPS Register. Registration, provided that other relevant requirements of the PPS Act are also satisfied, is one of the ways of ‘perfecting’ a security interest in an asset. If you do not register, and certain events occur while someone else has your assets, you may lose your title in or interest in those assets (and all the money that it cost you to buy them).

The impact of the PPS Register regime on your organisation depends on whether you have assets or interests that will be affected by the PPS Register regime, the value of those assets and the risks you have of losing the assets to another person who claims an interest in them.

How do I know what property is affected?

Assets may be affected by the PPS Register regime when your assets (or assets that you have an interest in) are held by others but you have a continued right to the assets. Some examples of this are:

- you lease equipment or vehicles that you own to someone else
- you lend money to someone who secures the loan with one of their assets (which creates an interest that you have in their asset), or
- you supply promotion goods (hats, pens etc) to someone to sell for your organisation but they don't pay you for them until after they have sold the goods.

TIP

If you have valuable assets, like cars or expensive equipment that other people hold, you should consider whether to register these goods on the PPS Register. If you do not register and someone in possession of your assets defaults on a loan, or becomes insolvent, you may lose title to those assets.



How is property held by others affected by the PPS Register?

You can lose title to your assets held by others if certain events occur. Some events that can put your property at risk include:

- when the person who has your assets defaults on a loan that has been secured over that person's personal property, or
- when the person who has your assets become insolvent or bankrupt.

If those events occur, and in each case you have not registered your interest in the asset on the PPS Register, you may lose your property to a secured lender or the creditors of an insolvent or bankrupt person. You will have no rights to get it back, and are unlikely to be compensated or be paid for your assets. It can be very hard to know if these events are likely to occur or not, so you should consider registering your interest on the PPS Register (explained later on in this fact sheet) just in case.

Another example where your organisation can be exposed to risk is where you have an interest in someone else's property. For example, you may have provided some financial assistance to a related not-for-profit organisation for them to purchase some expensive equipment. You could have an agreement in place that says the loan is secured by the asset (ie. the asset will be sold and the outstanding amount repaid if there is a default on the loan). In this scenario you have an interest in the property, even though it is not fully 'owned' by your organisation. If the organisation holding the asset became insolvent, and you had not registered your interest in their asset on the PPS Register, the asset may get sold by a bank and you could lose your right over the asset (or proceeds from its sale) despite the existence of the loan agreement providing for the security.

Can someone register an interest in your assets?

If your organisation:

- borrows money (from a bank or any other person) on a secured basis
- purchases goods on terms which allow the seller to keep title until the goods are paid for

- leases machinery or vehicles (including under hire agreements or supply contracts) for a period of two years or more, or
- has contracts where rights to obtain property arise on default (eg, step-in rights)

then the other party to those arrangements (known as the 'secured party') may have a security interest over some or all of your assets or the assets you hold and may lodge a registration on the PPS Register. That information is then available to anyone – such as another lender – who searches for details of your organisation on the PPS Register.

EXAMPLE

Food Co, a not-for-profit organisation, leases a van for a term lease of more than 2 years from Finance Co for making food deliveries. Finance Co is regularly engaged in the business of leasing vans. The arrangement is likely to be a lease covered by the PPS Act and therefore a deemed security interest under the PPS Act. Finance Co would consider registering on the PPS Register.



Does your organisation need to register any property interests?

If your organisation:

- lends money to anyone on a secured basis (ie. with a right to claim assets if the loan is not repaid)
- sells goods where you keep title until you receive payment, or
- owns machinery or vehicles which are lent or hired out to other people

you may have a security interest which you (as the secured party in this situation) are able to register on the PPS Register, against the other person. In the language of the PPS Register, that person is a 'grantor'.

EXAMPLE

Jack's Shirts sells t-shirts on behalf of a not-for-profit organisation (NFP). NFP supplies to Jack's Shirts on terms which say NFP retains title in the t-shirts, until Jack's Shirts pays NFP for them (less Jack's Shirts' commission). NFP could register its interest in the t-shirts, on the PPS Register, as the holder of the security interest, against Jack's Shirts (as the grantor).



Registration of your interest will give you priority over someone who later lends money to that Grantor as they will be able to search the PPS Register and see your interest in the assets.

Having priority means that, if the Grantor becomes insolvent or bankrupt, you may be able to enforce your rights before someone who does not have a registered interest or you may be able to reclaim particular assets, rather than the liquidator or trustee being able to claim them.

Similarly, someone who has made a registration in respect of its interest in a grantor's assets before you, may have priority over your security interest – that's why it's important to think about:

- what activities your organisation does that may create an interest that could be registered on the PPS Register

- whether the value of the assets or interests justify the cost and administration involved in registration, and
- the degree of risk that the grantor will not repay a debt owing to you or return goods which have been hired or lent to them.

There are time considerations and costs associated with registering assets, so your organisation needs to weigh the risks of losing the property against the time and costs involved with registering. A registration currently costs around \$6.80 to \$119 (see here: www.ppsr.gov.au/fees), and you will need one registration for each grantor (eg. each person you have leased your equipment to).

EXAMPLE

Medical Supplies is a not-for-profit organisation that rents wheel chairs, walking frames and shower chairs to people with long term mobility problems (usually more than 2 years). Although Medical Supplies may have security interests in the equipment, each piece is only worth up to \$3000 and it may not be practical to register each piece of equipment each time it is rented out to a client.



If you only have a few lower value assets that may be affected by the PPS Register regime, then you may choose not to worry about registering them. However, if you have lots of affected assets, or a few very valuable things that your organisation could not afford to lose, it may be worth registering.

How to register on the PPS Register

Registering can be complicated, especially if you have not registered before. While the PPS Register was designed to be used by non-lawyers, if you have valuable assets which are the subject of a security interest, it may be worth seeking assistance from a lawyer with experience in using the PPS Register to help you register those assets – in particular to ensure that you choose the correct categories for your registration.

To register an asset using the PPS Register, you need to gather the following information:

- who is holding your property? What is their proper name, ACN, ARBN or ABN (details / identifiers required depend on whether the grantor is a company, partnership, trustee or a body politic and what details are available)? (this is referred to as the “grantor details”)
- what property is being held? (this is referred to as “collateral details”), and
- what are your details (ie ABN/ACN, address, contact person etc) (this is referred to as the ‘secured party details’).

Note that before you can make a registration, you will need to create a ‘secured party group’ number for your organisation by going to www.ppsr.gov.au/create-and-manage-secured-party-group-spg. Once you have a ‘secured party group’ number, you then need to go to the PPS Register online site – at www.ppsr.gov.au and complete the online registration form.

Briefly, the process involves (you may need to get legal advice about this as it can be quite complex and errors in completing may result in important defects in your registration):

1. Going to <https://www.ppsr.gov.au/register-security-interests> and clicking ‘start application

2. Providing your (the secured party's) 'secured party group' number
3. Providing the details of the person who has your property (the grantor): the name, address (including email address or fax number).
4. Providing details about your property ('collateral'), including the following:
 - a) whether the property is 'commercial' or 'consumer' property
 - b) select a collateral class (extra care should be given to selecting the correct class as this may lead to a defective registration)
 - c) if your property has a serial number, then you may (or if the property is consumer property must) include the serial number - this applies to motor vehicles, aircraft, watercraft and certain intellectual property rights
5. The type of 'security interest' (you may need to get legal advice about this as it can be quite complex).
6. You should review the registration application and make any necessary changes and pay the required fee.

Once all steps are carried out, you will receive confirmation of your registration displayed on screen and your verification statement will be emailed to you. It is important that you keep the information emailed to you safe and secure as you will need these details to manage your registration. The PPS Act may also require you to send a copy of the verification statement to the grantor in some instances.

CAUTION

When registering a security interest in the PPS Register, it is imperative to accurately describe the interest claimed. It is not sufficient to claim an interest in "all property supplied by A to B". This may be considered to be too ambiguous to identify property that is subject to a security interest. Not only is it important to accurately and descriptively record your interest in the PPS Register, it is important to maintain up-to-date contact details on the PPS Register and quickly respond to queries through the PPS Register. You should also keep appropriate records of security interests claimed eg, security documents.

Buying second-hand goods

You may be able to use the PPS Register to protect your organisation. If you are buying second-hand goods (such as a car or truck), you can search the PPS Register for details of the seller. This will show you whether anyone else has claimed an interest in the goods you are considering purchasing.

If you buy goods knowing that someone else has an interest in the goods, that person may have priority over you, and may be able to take the goods from you if the seller breaches their obligations to the registered person. Transferring registration with VicRoads (for cars) will not automatically remove the existing registration on the PPS Register.

Always check the register before you purchase, and if there is an interest on the PPS Register listed for something you are proposing to buy, you need to ensure that before you buy it, the seller arranges for

the person who holds the security interest registered on the PPS Register to release it (and check that this has actually happened!).

TIP

The Australian Financial Security Authority (AFSA), the government body responsible for administering the PPS Register, recommends that as part of a good risk management strategy, you consider doing a PPS Register search before you:

- Purchase valuable goods from a private seller (the AFSA recommends this for any goods that exceed \$5,000)
- Provide credit to a person or organisation (a search will allow you to see whether that organisation or person has any existing security interests against them), and
- Invest in, with, or through a person or organisation.

Searching the PPS Register

You can search the PPS Register online to check whether someone has registered a financing statement in respect of relevant property held by a grantor. Also, if you have leased out your property (for example, expensive medical equipment) you can check the PPS Register online to help monitor if anyone has made a registration indicating that the lessee is granting security interests over your property to a third party.

You can search the PPS Register online at www.transact.ppsr.gov.au/ppsr/Home

The PPSR has a variety of ways to search for information. These include searching by:

- Serial number (depending on the type of asset)
- PPS Register Registration number
- Grantor name (both individual and company)

Further information on PPSR search options can be found on the PPSR's website at www.ppsr.gov.au.

Resources

Related Not-for-profit Law Resources

The Not-for-profit Law website (www.nfplaw.org.au) has further resources on the following topics:

- Risk and insurance, at www.nfplaw.org.au/riskinsurance
- Important agreements, at www.nfplaw.org.au/agreements

The PPS Register

- PPS Register – www.ppsr.gov.au

This is the home page for the PPS Register. It contains some helpful links to information regarding the register.

- Search the PPS Register online - <https://www.ppsr.gov.au/search-the-ppsr>
- Registrations – why register <https://www.ppsr.gov.au/registrations>
- PPSR for business <https://www.ppsr.gov.au/business>

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au

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