Australian Government
Australian Financial Security Authority

PPSR
Personal Property Securities Register

Are you in business?

Are you...

- ✓ Wholesaling or selling on terms?
- ✓ Hiring, renting or leasing out?
- ✓ In building or construction?
- ✓ In agriculture or farming?
- ✓ Buying or selling valuable second-hand goods?
- ✓ In the automotive services or supply industry?
- ✓ Selling art or other goods on consignment?

Important guide for businesses, their accountants, financial advisers and lawyers.

www.ppsr.gov.au

BEFORE YOU SAY "NOTHING TO DO WITH ME"
'Personal property' and 'Securities' are legal terms.
This roughly translates to:

GOODS/ASSETS

~~Personal Property~~

DEBT

~~Securities Register~~

This is a general guide, giving typical examples—note there are exceptions in some circumstances. This guide can help you with the register, but is not legal advice about how the law applies to your particular business and dealings. You may wish to seek professional advice from your accountant, financial adviser or lawyer.

Do you:

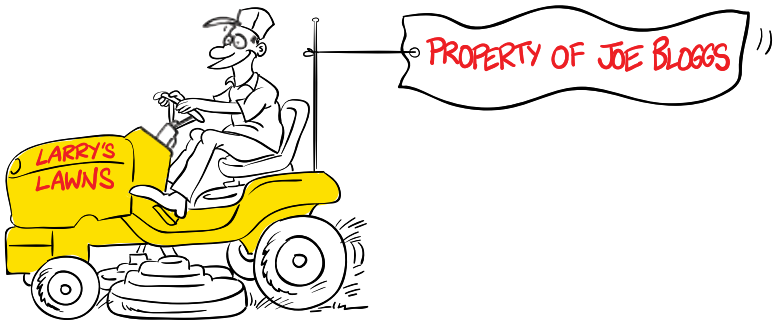
- **Sell goods on retention of title terms?**
- **Hire, rent or lease out goods?**
- **Buy or sell valuable second-hand goods or assets?**
- **Want to raise finance using stock or other assets as collateral?**
- **Work as an adviser to clients who conduct these activities?**

In 2012 a new law, which also established a new national register, was introduced which affects anyone who answered 'yes' to any of these questions. That's a significant proportion of Australian business.

Why do I need to do things differently?

The law has changed and that may mean changes in the way you operate. The national register has also replaced a range of Commonwealth, state and territory registers—such as vehicle security registers like REVS and the ASIC Register of Company Charges. For more information, see section 4, page 48, *Why was this new law introduced?*

This guide is intended to help Australian businesses not familiar with the practical implications of this law. It also explains how you might benefit from using the national online system—the **Personal Property**[1] **Securities**[2] **Register**, also known as the **PPSR**.



[1] Personal property is basically any sort of property that is not land, buildings and fixtures.

[2] Security is a legal term for an interest in personal property which secures payment of debt or performance of another obligation.

Contents

Section 1: for business operators

This section talks about the business benefits available to you.

How can I protect my business? 4
So what does this really mean for my business? 4
Think you're already covered with a contract? 5
What sort of things are noted on the register? 6
I'm buying goods, what's in it for me? 6
I'm selling goods, what's in it for me? 7
I'm leasing, renting or hiring out goods to customers, what's in it for me? 8
Is the register just about risk management? 8
When and how often do I register? 8
How much does it cost to register or search? 9
How do I register or search? 9
Who can give me more help? 9
Ok, but do I really need to use it? 9
Business transaction checklist 10
Industry checklist 11

Section 2: how to use the register

This section shows you how to search and make a registration.

How to use the register 12
How do I search? 13
Who can check the register? 14
What results do I get? 15
How do I get more information about the registration? 15
How do I register? 16
What do I need to create an account? 16
What do I need to create a registration? 17
How do I set up as a secured party? 18
What is address for service? 19
Grantor 19
Collateral 20
Confirmation of your registration 20
Managing your registrations 20
Registration periods and costs 21

Section 3: case studies

This section gives practical examples of businesses using the register.

Case study 1—Commercial lease of office equipment 22
Case study 2—Farmer purchases livestock from another farmer 25
Case study 3—Leasing company leases vehicle to retail business for use as equipment 26
Case study 4—Commercial consignment of craftwork by individual artist to gallery (sole trader) 28
Case study 5—Business supplying serial-numbered property to a consumer on retention of title terms 30

Section 4: the technical info

This section contains more detailed and important information you may need to consider. If you work with an accountant, financial adviser and/or lawyer, make sure they are familiar with this section.

In summary, the benefits of registering and risks of not registering 32
Personal property 33
Security interests 34
Insolvency and time limits 35
Third party protections 36
Priorities and Purchase Money Security Interests (PMSI) 36
Do I have an effective PMSI? 38
Priorities and Agricultural Priority Security Interests 39
Perfection 39
Proceeds 40
Accessions 41
Processed, mixed or manufactured goods 41
Enforcement 42
Glossary—register terms 43
Glossary—terms used in the law 45
Why was this new law introduced? 48

Section 1: for business operators

Every day you may be putting your business at risk when buying, selling, leasing or hiring out goods, or selling valuable goods on consignment.

Do the goods you are buying have money owing on them?

Will you get your goods or money back if your customer goes broke?

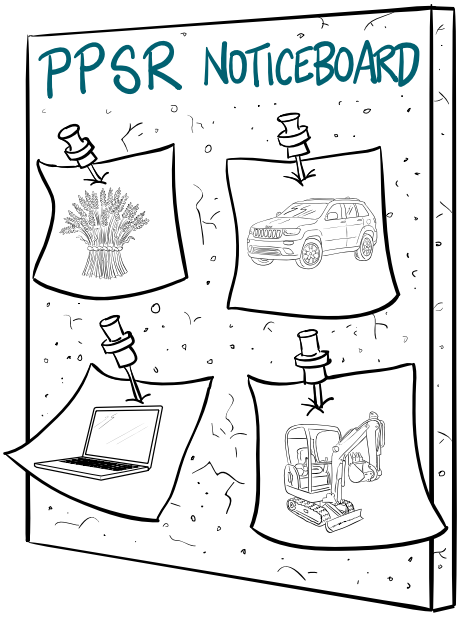
You can't avoid these common transactions, but you can protect yourself.

How can I protect my business?

There is a single, national online noticeboard (the register) that shows[3] you whether someone is claiming an interest[4] against goods or assets[5].

You can also make a registration, so others know when you have retained an interest in goods you are supplying. This means that if your customer doesn't pay, or goes broke, you are in the best position to get your goods, or their value, back.

It's a one stop shop and can be accessed at www.ppsr.gov.au, 24 hours a day, seven days a week.



So what does this really mean for my business?

The register offers your business excellent risk protection. It is also a tool that can help you raise finance using your business goods and assets.[6]

Using the register can protect you in two main ways:

When buying goods—searching the register helps you make an informed decision because you can check whether the valuable goods you want to buy are free from existing financed debt and so safe from possible repossession.

[3] At the time you check.

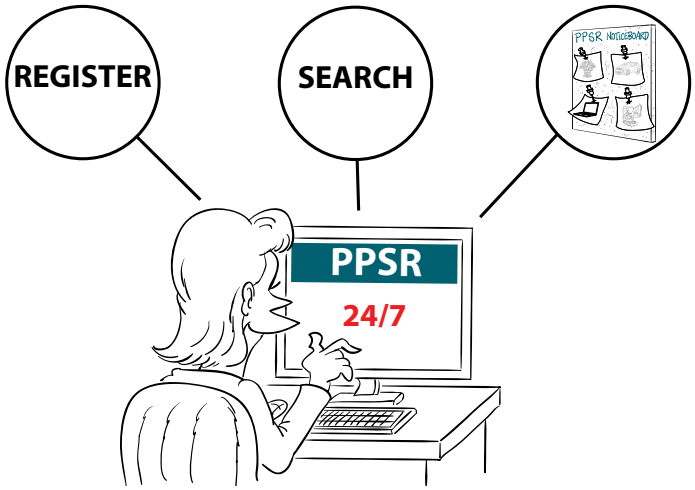
[4] 'Interest' in this publication refers to 'security interest'—an interest in personal property taken to secure payment of debt or performance of another obligation.

[5] 'Goods' and 'assets' in this publication refers to 'personal property'—essentially any property that is not land, buildings and fixtures.

[6] For more information see *Is the register just about risk management?* in section 1, page 8.

When selling on retention of title or consignment, or hiring or leasing out goods—properly registering can protect your interest should any of your customers not pay or go broke.

And if that happens, being registered can mean you're first in line to get your goods or money back, instead of at the back of the queue (and possibly getting little or nothing back after a lengthy insolvency process).



Tip

As a case example, a grain broker recently went broke and the grain growers who had registrations listed against the broker recovered their entire debt owing from the crop. Unregistered suppliers are only expected to get 10 cents in the dollar of the amount they are owed.

Think you're already covered with a contract?

A retention of title clause (indicating that title remains with you until goods are paid for in full) in your contract or invoice, **no longer** protects you on its own.

If you don't make a registration, your retention of title clause is unlikely to stack up against others when you need to rely on it.

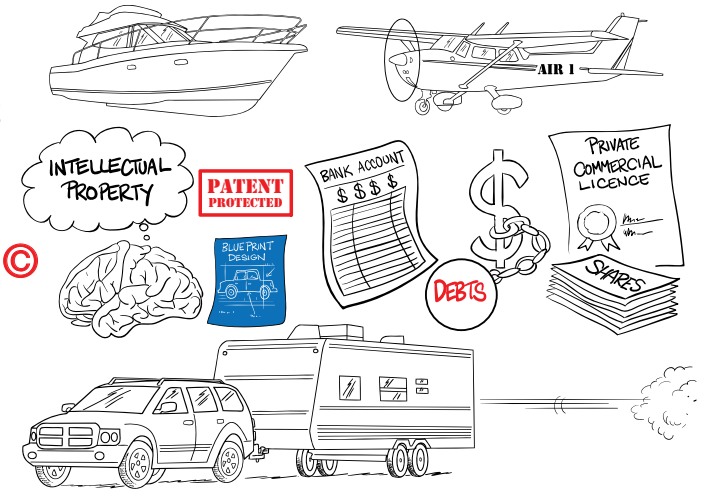
In other words, someone else who **has** registered an interest is ahead of you in the queue should your customer default or go broke.

Make sure you **back up** your contracts by registering your interest.

What sort of things are noted on the register?

The register is a national online noticeboard of interests in almost anything of value—except for land, buildings and fixtures. For example:

- motor vehicles, boats or aircraft
- 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) licences, debts and bank accounts
- financial property such as shares, cash or cheques.

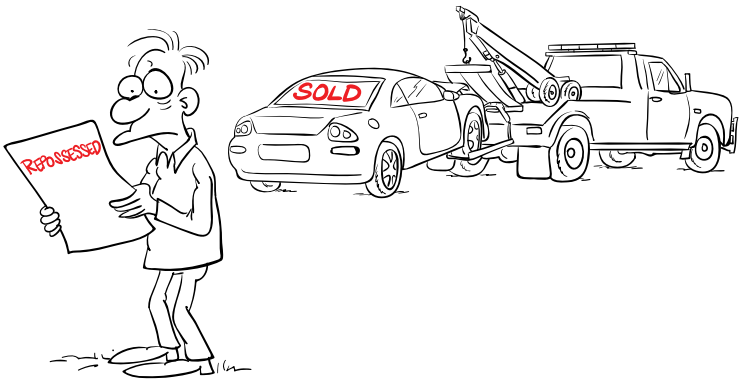


I'm buying goods, what's in it for me?

Searching the register lets you know if the valuable goods you are interested in buying are being used as security for a debt or other obligation. The register won't tell you the value of the obligation, but it lets you know who the obligation is owed to so you can find out more.

For example, someone may try to sell you used goods, such as a van or piece of machinery, without telling you they still have finance owing on it.

And if they stop making payments on the loan there's a very real chance the finance company can turn up on your doorstep and take those goods away, without paying you a cent for your loss.



For $3.40[7] you can check that goods you want to buy are likely to be free of financed debt, and safe from possible repossession.

[7] Fees change from time to time. Check www.ppsr.gov.au for current fees.

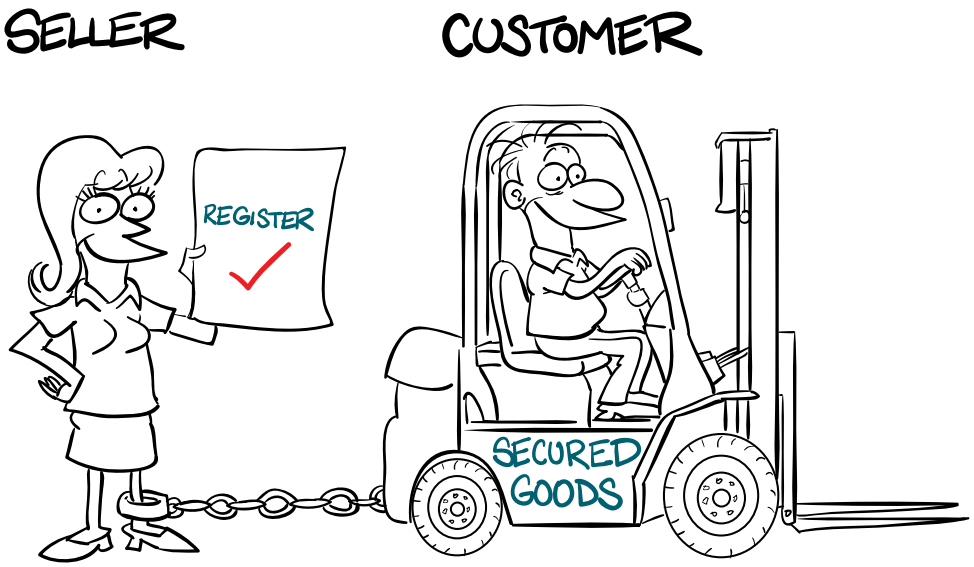
Tip **If you buy from a seller whose ordinary business is selling goods of that kind (e.g. buying a photocopier from a business that sells office equipment) then the law protects the buyer. You would usually take those goods free of any interests, and therefore safe from repossession[8].**

I'm selling goods, what's in it for me?

Making a registration shows searchers that you are claiming an interest in the goods or assets you are selling on retention of title terms, or have consigned to someone else to sell on your behalf. This interest means the goods or assets secure the debt or obligation that someone owes you[9]. The registration protects your interest in the goods or assets should the customer default or go broke.

If you don't make a registration on those goods or assets and your customer goes broke before they have fully paid you, your stuff may be sold to pay secured creditors first. If you are not registered, you will be an unsecured creditor in an insolvency and may not recover much, if anything, of what you are owed.

If you register as early as possible, you stand the best chance of being first in line[10] over other creditors. It also helps you to protect your interest even if the goods or assets are sold on, mixed or installed onto other goods.



[8] For more information see *Third party protections* in section 4, page 36.

[9] Registration helps to protect your interest but does not physically prevent someone from on-selling your goods.

[10] Having priority over other interests. See *Priorities and Purchase Money Security Interests* in section 4, page 36, for more information on how priority works.

I'm leasing, renting or hiring out goods to customers, what's in it for me?

If the lease or hiring arrangement is for at least one year, could last for more than one year, or is for an indefinite period, then this applies to you.

Making a registration helps protect your interest in your goods or assets when they are not in your possession.

It shows you are claiming an interest over the goods or assets you are hiring, renting or leasing out. If you don't make a registration and your customer goes broke—your stuff may be sold to pay creditors.

Is the register just about risk management?

No. The register has other benefits for business.

It's now easier to use your assets to secure lending.

Financiers can view interests registered against the goods or assets of you or your business, and that makes it easier for them to decide whether or not to lend to you.

And as shown in the *What sort of things are noted on the register?*, section 1, page 6, you can offer a wide range of your assets as security for a loan—almost anything of value. The ability for financiers to register an interest on those assets using a single, national register makes the whole process easier for them.

Discuss with your bank or lender what might be used as security (collateral).

Tip

As a case example, a small education provider was able to raise finance on its invoices, giving the business immediate access to working capital, instead of having to wait up to 120 days for its invoices to be paid by a debtor. The financier's registration gave it confidence that its priority was protected.

When and how often do I register?

Register as soon as you know you're going to be dealing with a new customer or with an existing customer on new terms. **Don't wait until delivery of any goods to the customer**. Your rights are protected from the time of registration and first in time equals first in line.

For more information on the benefits of registering as soon as possible, you should read *Priorities and Purchase Money Security Interests,* in section 4, page 36.

Tip **If you are selling the same types of goods to the same customer on a regular basis, on the same terms, a single $6.80[11] registration has you covered for up to seven years.**

How much does it cost[12] to register or search?

To register:

- $6.80 for up to 7 years
- $34 for up to 25 years
- $119 for an indefinite period.

To search:

- $3.40 for one search.

How do I register or search?

Refer to *How to use the register*, section 2, page 12, and *case studies*, section 3, page 22.

Who can give me more help?

If you need more information, talk to your accountant, financial or legal adviser. Visit **www.ppsr.gov.au** or call **1300 007 777**.

Tip **Commercial providers offer services to fill out and make the registration on your behalf.**

Ok, but do I really need to use it?

The law is there to protect you. If someone else registers their interest in the same goods and you don't, you could lose out.

Using the register is optional, but many businesses rely on it as an effective risk management tool. On the next page are a couple of checklists to help assess your situation.

[11] Fees change from time to time. Check www.ppsr.gov.au for current fees.

[12] As above.

Business transaction checklist

Are you entering into transactions concerning goods and assets?

- ☑ This includes stock, vehicles, crops, livestock, debts and shares, non-government licences, and intellectual property.
- ☒ This does not include land, buildings and fixtures on land, water rights or government-issued licences.

Do you have a contract with a customer for *any* of the following?

- ☑ Do you sell goods on 'retention of title' terms (title remains with you until goods are paid for in full)?
- ☑ Do you lease or hire goods out for more than one year (or which could last for over one year), or for an indefinite period?
- ☑ Do you consign goods (e.g. for sale on your behalf) to others?
- ☑ Do you lend money or otherwise give credit, and take security for it over your customer's assets (not including land, buildings and fixtures)?

Tip **If you answered yes *to any of these*, consider using the register to help protect your business.**

Industry checklist

This table covers the most common industries and activities. 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	selling or buying livestock, wool, timber, feed or fertiliser, 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	leaving your work (e.g. artwork, jewellery) for sale on consignment with a gallery or other seller
construction and mining	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	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	you are in the business of leasing, renting or hiring out any other type of plant, vehicles, or equipment
IT/research and development	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	selling, leasing out or financing cars, trucks, trailers, caravans leasing vehicles to employees; buying second-hand vehicles
retail	buying goods from wholesalers, wherever they are based, and selling goods to the public (other than for immediate cash)
wholesale	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

Section 2: how to use the register

To use the register it pays to understand some of the technical terms. The explanation and illustrations below should help.

The register (called the **PPSR**) is a noticeboard listing interests over any goods and assets that are not land, buildings and fixtures (the legal term for such goods and assets is **personal property**).

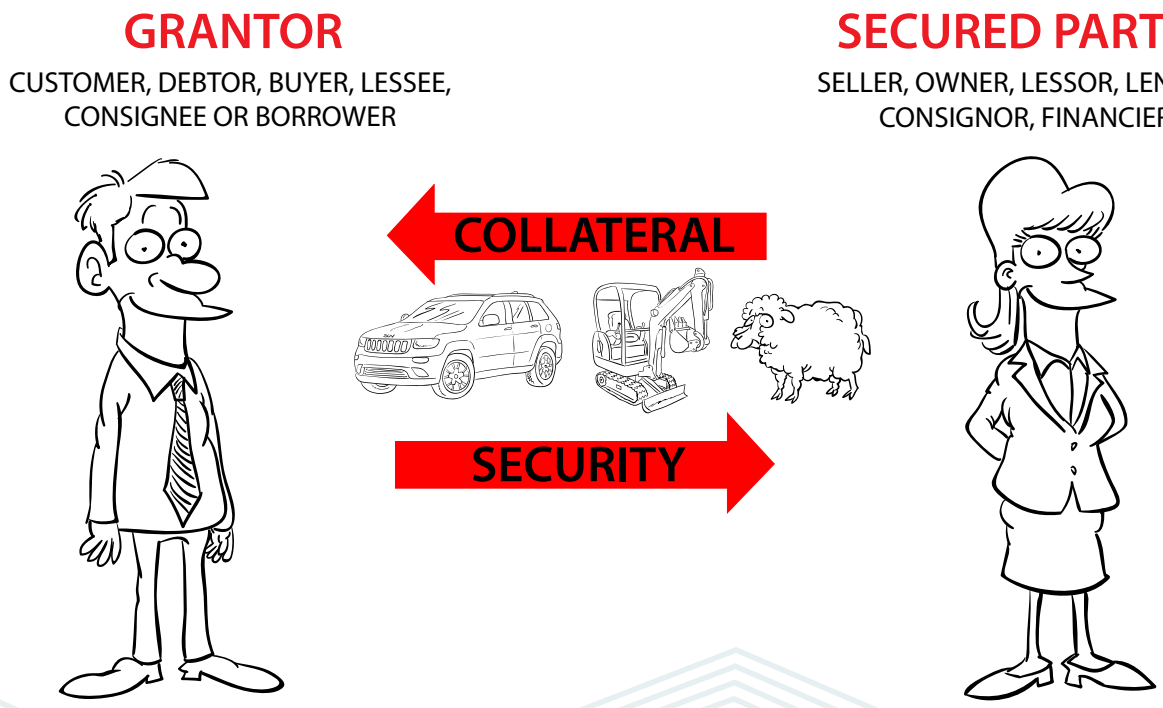
These goods and assets can be owned by an individual or a business.

A business or individual can use them as **collateral** (personal property offered up as security for a debt owed to sellers or financiers). Collateral can include goods leased or hired out, sold on retention of title terms, or sold on consignment.

In such cases, the seller, owner, lessor, lender, consignor or financier (called the **secured party**) has a claim over the collateral (called a **security interest**).

The secured party should register their security interest in the goods or assets to ensure their interest is protected.

The business or individual (customer, debtor, buyer, lessee, consignee or borrower) who offers the collateral as security is called the **grantor** because they grant the security interest over the collateral to the secured party.



How do I search?

How to check the register

Go to www.ppsr.gov.au for information on how to search.

You need a credit card for payment, and the details for the property or grantor you want to search against.

One search costs $3.40[13]

The two keys ways to search are:

- by serial number—for some property only (see below)
- by grantor details—Australian Company Number (ACN), Australian Business Number (ABN) or, in the case of an individual, usually the name and date of birth on a driver's licence.

Serial-numbered **consumer** property can only be searched for against the serial number—a search for the grantor's name will not yield any results.

The types of **serial-numbered property** that can be searched against specified serial number types are:

- motor vehicles, e.g. by vehicle identification number (VIN)
- watercraft
- aircraft
- some types of intellectual property.

More information about what is considered to be a motor vehicle and serial numbers can be found at www.ppsr.gov.au.

Tip **Record your search number in case you need it later as a record of the result generated at that earlier time.**

[13] Fees change from time to time. Check www.ppsr.gov.au for current fees.

Who can check the register?

Anyone wanting to know about security interests can search the register.

There are privacy restrictions for searching and using information you find about grantors who are individuals, so make sure you read the terms and conditions of use.

The most common reasons for searching are a:

- buyer searching to make sure the goods they are looking to buy do not have finance owing against them
- liquidator or bankruptcy trustee searching for existing security interests, because they affect other creditors in the liquidation/bankruptcy
- business, or financier, searching a potential customer as part of their due diligence process.

Tip **You don't need to search if buying a vehicle from a licensed motor vehicle dealer. The law says you'll take the car free of any prior interest.**

What results do I get?

A search on the register returns one of two results:

- no security interest
- one or more existing registrations.

Your search results appear on screen. You can also generate a search certificate which can be used as evidence in any dispute/court.

If your search returns one or more registrations, the result lists details of the **secured parties** and dates of their registrations. Review this information and consider whether it affects your decision to deal with the person or the goods listed in the registration.

Secured party: the seller, owner, lessor, lender, consignor or financier who has a claim over the collateral.

Tip **Take care to get the grantor details or serial number exactly right or you won't find the information you are interested in.**

How do I get more information about the registration?

The grantor, or another secured party, can request in writing that the secured party provide a copy of the security agreement (i.e. terms and conditions). In most circumstances the secured party must—in writing and within 10 business days after receiving the request—supply information about the debt, confirm the collateral secured, and provide a copy of the security agreement.

The secured party is entitled to charge you the reasonable cost of providing the copy and other information. If you think the fee is excessive, you can apply to the court for the fee to be reviewed.

If the registered interests do not support an existing debt or a valid security interest, or if the security is only over some of the collateral against which it has been registered, you can write to the secured party requesting that they amend their PPSR financing statement to reflect this.

For further information go to www.ppsr.gov.au

How do I register?

Go to www.ppsr.gov.au for information about how to register.

You need to create a PPSR account before you can begin the registration process.

You can create a PPSR account as a business or individual.

A PPSR account allows you to:

- create, amend and end (discharge) registrations
- choose your preferred payment method
- set up favourite secured party groups
- create multiple users so others in your business can transact on the same account
- customise the access you provide to users based on the transactions you want them to be able to perform.

There is no fee to set up or maintain an account.

What do I need to create an account?

You will need:

- the **name** of the individual or entity (e.g. company, partnership) who will own the PPSR account
- the **identifier** if a business entity e.g. Australian Company Number (ACN), Australian Business Number (ABN)
- an email and mailing address
- details to create a **key contact** and an **account administrator**. An account administrator is the person who will manage your account (tip: create two in case one goes on holidays).

What do I need to create a registration?

To make registering simple, have this information on hand:

- **secured party** details including the name(s) and identifiers
- **grantor** name or identifier (if applicable[14])
- information about the goods/assets (**collateral**), including the serial number if applicable
- **credit card** for payment—unless you have established alternate payment methods such as pre-pay or a credit account (www.ppsr.gov.au has more information on payment options).

Tip **Make sure you enter all names and numbers correctly. If not, no matter how small the error, you may lose out because a searcher would not be able to discover it on the register.**

You need to select a number of other options as you go through the online registration process. For more information on each option visit **Need Help** at www.ppsr.gov.au.

Tip **If you are leasing, or selling on retention of title or on consignment, you may have a *purchase money security interest* (PMSI) enabling you to claim super-priority. For more information see *Priorities and PMSIs* in section 4, page 36. If you do have a PMSI, you MUST tick the PMSI box when registering.**

[14] Some registrations (e.g. consumer serial-numbered collateral, such as a vehicle) can't be registered against the grantor's details.

How do I set up as a secured party?

A secured party is the individual or organisation who holds the **security interest**. Secured party registrations are managed on the register by secured party groups (SPG).

If you are a first time user, you must create an SPG before you can complete your registration.

The SPG can have any combination of individual or organisational secured parties.

Each SPG is allocated two different numbers:

- a unique **secured party group (SPG) number**
- an **access code**.

Make sure you keep these two numbers safe—**you need them both**.

Once you have created an SPG, it can be used for all registrations relating to that secured party. You can also use these details to amend or discharge any registration that belongs to the SPG.

You can save the SPG as a favourite, or set it as your default so you don't have to re-enter the details each time you make a registration.

You can also change the **access code** to something easier to remember.

Security interest: A claim over the collateral to secure payment of debt or another obligation.

Tip

Once you have set up an SPG, you cannot change the secured parties within it. If you need to add or remove secured parties, or even correct a spelling mistake, you must create a new SPG.

What is an address for service?

You must enter an **address for service** when you create your SPG. The address for service lists contact details for the secured party.

The register sends one notification to the address for service by email and it is the responsibility of the owner of the address for service to distribute this notification to other secured parties in the SPG (e.g. if there is more than one business involved as the seller or lender).

The **address for service** is displayed on registrations that belong to the **SPG**.

People using the register use the **address for service** details to contact the secured parties if they have any questions about the registration.

Keep this information up to date. You must enter an email and mailing address. A physical address is optional.

Grantor

You must include grantor details on all registrations (other than serial-numbered consumer property).

Grantor: The business or individual (customer, debtor, buyer, lessee, consignee or borrower) who offers the collateral as security.

Ensure you use the right information to identify the grantor—this is how people will search for your registration.

Who is your grantor?[15]	You need
an individual	name and date of birth on their driver's licence (check with your customer for these details)
a company	its Australian Company Number (ACN)
a trust, partnership or body politic	its Australian Business Number (ABN)
any other body corporate	its official name

See www.ppsr.gov.au for a full list of grantor identification rules.

[15] You may also use an Australian Registered Scheme Number (ARSN) or an Australian Registered Body Number (ARBN).

Collateral

You must choose from a number of options on the register to identify the collateral class of the goods you are claiming an interest over.

Some common examples are:

- serial-numbered goods—can include motor vehicles, aircraft, watercraft and intellectual property
- agriculture—including crops and livestock
- other goods—if no other description is appropriate, select *other goods* and add a brief description of the collateral in the free text field
- all present and after-acquired property—everything the grantor has now and may acquire in future.

See www.ppsr.gov.au for a full list and description of each collateral class.

Tip **Registering against serial numbers for serial-numbered commercial property, as well as against the grantor's details, will help protect you if the collateral is transferred to others.**

Confirmation of your registration

Once a registration is created, it will be given a unique registration number. This will be included on the verification statement (confirmation of your registration) which will be emailed to you. You will need to provide a copy of this to the grantor. You will also be emailed a token which can be used to manage your registration.

Always check the information on the verification statement to make sure your registration is accurate.

Managing your registrations

To amend any registration you will need to use either your:

- **SPG** and **access code**
- **registration number** and **token**.

As an account user you have access to reports that can show details about your registrations, including when they are due to expire.

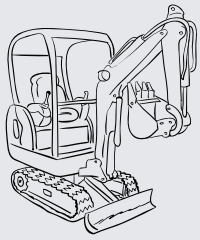
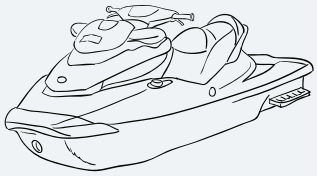
Tip **Keep all these details safe—you will need them.**

Registration periods and costs

You can register a security interest:

- in consumer property or any serial-numbered property, for any period up to 7 years
- in all other cases, for any period up to 7 years, for 25 years or for an indefinite period.

Current charges[16] are:

$6.80 for any period up to 7 years	$6.80 up to 7 years 
$34 for any period up to 25 years	$34 up to 25 years 
$119 for an indefinite period.	$119 for an indefinite period

Similar fees apply to amendments.

Tip **You can extend registrations before they expire, to make sure your protection is continuous.**

[16] Fees change from time to time. Check www.ppsr.gov.au for current fees.

Section 3: case studies

This handful of typical business case studies may help you understand the process and benefits of using the register. It doesn't cover every step of the process but will show you the key things to consider.

Case study 1

Commercial lease of office equipment.[17]

Printernational Pty Ltd supplies heavy duty photocopying and printing equipment to the printing sector. Page and Co is a partnership offering commercial office copying and printing services. It leases a multifunction industrial printer from Printernational for a period of two years.

Printernational emails Page and Co asking them to agree to the standard terms and conditions for the lease. The email also describes the model and number of the printer. Page and Co sends an email response with an electronic signature of the Chief Executive, agreeing to the terms. Before the printer is delivered to Page and Co's premises, Printernational registers a financing statement on the PPSR. Printernational is able to register a purchase money security interest—PMSI—as the lease is for more than 12 months. This is their first dealing with Page and Co. Two weeks after delivery of the printer, Printernational leases an industrial laminator to Page and Co for two years on the same terms and conditions.

One year later Dombank, which has a previously registered security interest over all the assets of Page and Co, appoints receivers to Page and Co to enforce its security interest. Despite this, Printernational is able to repossess both the printer and the laminator, because their one registration protects their interests under both leases and (as PMSIs) they have priority ahead of Dombank in relation to the equipment.

For more information about a *PMSI*, see section 4, page 36.

Tip

Note: the registration covers the laminator supplied two weeks later to the same customer, on the same terms, as it is within the collateral class *commercial property: other goods*, and the *free text* description. Printernational does not need to register again.

[17] This case study does not cover every step of the registration process, but instead highlights some of the key questions.

a

Secured party details

Secured party 1

Secured party: *
- ○ Individual (including sole traders)
- ◉ Organisation (including partnerships with an ABN)

Does the organisation have an ARSN?: *
- ○ Yes
- ◉ No

Does the organisation have an ACN?: *
- ◉ Yes
- ○ No

ACN: *
123456789

b

Secured party group contact details

Recipient name or title:
Contact Person

Email: *

Mailing address: *
123 Street Lane

Suburb / city / town:
Town

State / territory / province / region:
State

Postcode / ZIP: *
1234

Country: *
AUSTRALIA

c

Application details

Registration kind:
Security interest

What is the collateral type? *
- ◉ Commercial
- ○ Consumer

Tip This selection shows when creating a SPG. If you already have a SPG, details will automatically populate when you enter the SPG number.

d1

Collateral 1

Select one collateral class from the categories below: *

Tangible property	General property	Intangible property	Financial property
○ Motor vehicle	All present and after-acquired property	○ Account	○ Chattel paper
○ Watercraft	○ No exceptions	○ General intangible	○ Currency
○ Aircraft	○ With exceptions	○ Intellectual property	○ Document of Title
○ Agriculture		○ Circuit layout	○ Intermediated security
◉ Other goods		○ Copyright	○ Investment instrument
		○ Design	○ Negotiable instrument
		○ Patent	
		○ Plant breeder's rights	
		○ Trademark	

d2

Collateral – step 2 of 6

Collateral item(s) apply to all secured parties and grantors.

Note: Some Apple devices running recent OS updates are no longer able to proceed to the next page. You may wish to use an alternative device for your transaction.

Registration kind:
Security interest

What is the collateral type?
Commercial property

Is the registration transitional?
Not transitional

Collateral 1

Collateral class: *
Other goods (Change collateral class)

Description:
Office equipment (including printers and laminators) leased from Printernational

a Create Secured Party Group: a secured party group is needed to complete a registration

Secured Party Details – for this case study you will need to use Printernational Pty Ltd's ACN number

The secured party identifier is the ACN as it is an incorporated company. For more information, see *How do I set up as a secured party?*, section 2, page 18.

b Address for service

The address is where documents may be served and enquiries made. For more information about *What is address for service?*, see section 2, page 19.

c Create a registration:

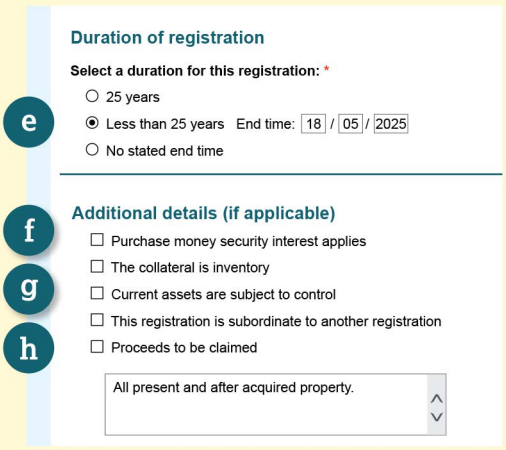
Collateral type – select *commercial*

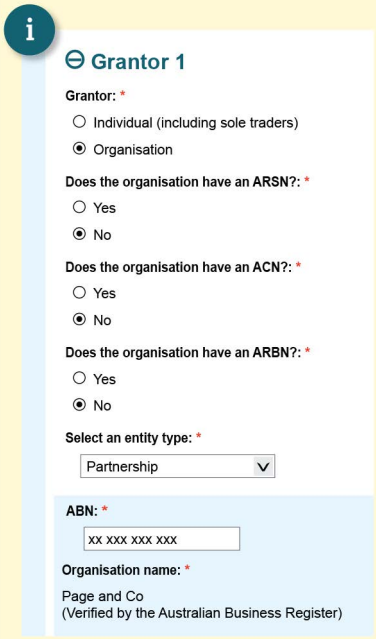
As the equipment is used to further a business it is commercial property.

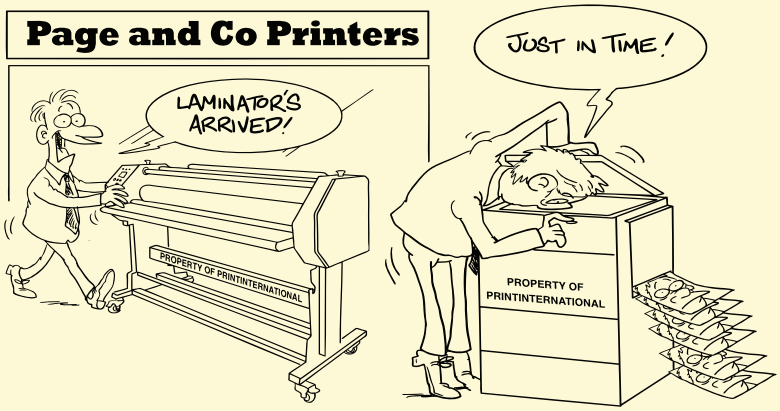
d Collateral class – select *other goods* and use the *free text* field to describe the goods

The printer, for business use, is commercial property. It is 'other goods' because it does not come under the other specified collateral classes in the regulations. Using the free text box in the PPSR financing statement to add more detail about the registered goods is optional. Printernational could state that the collateral is 'office equipment (including printers and laminators) leased from Printernational' because without clarification it could suggest they are claiming security over all Page and Co's 'other goods', which either Page and Co or other lenders may challenge. However, by using the general description 'office equipment' in the free text box, the registration can also cover future leases of other types of office equipment from Printernational to Page and Co (for example, scanners, shredders, and binding machines), and using the words '(including printers and laminators)' ensures leases of these particular types of equipment are covered.

Case study 1 (continued)







e **Registration period –** 10 years

As the printer is commercial property, the registration period can be a fixed period of up to 25 years or indefinite. In this case, Printernational would have chosen to pay for a longer registration than the two-year lease period because it wants to use this registration to also cover future supplies of goods to Page and Co.

f **Purchase money security interest (PMSI)?** tick the box

The lease is for more than one year and so is a PPS lease, which is a super-priority purchase money security interest (PMSI). A lease for more than one year is within the definition of a PMSI. For more information see *Purchase Money Security Interest* in section 4, page 36.

g **Inventory?** leave box blank

To help ensure a valid registration, you must state, in the case of commercial property, whether or not it may form part of the inventory of the grantor (i.e. raw materials, or products or stock which are on-sold, used up or processed in the course of the business; not equipment the grantor uses to carry out its business).

h **Proceeds?** for this case study, the *proceeds to be claimed* box is ticked and the text *all present and after acquired property* then displays in the text box

If Page and Co dispose of the printer—which they would not be entitled to do without Printernational's permission—checking this box enables Printernational to claim the proceeds, whatever their form.
For more information about *proceeds*, see section 4, page 40.

i **Grantor details –** because Page and Co is a partnership, Printernational will use their ABN when it fills in details about the grantor

As Page and Co is a partnership, the ABN must be used.

Case study 2

Farmer purchases livestock from another farmer.

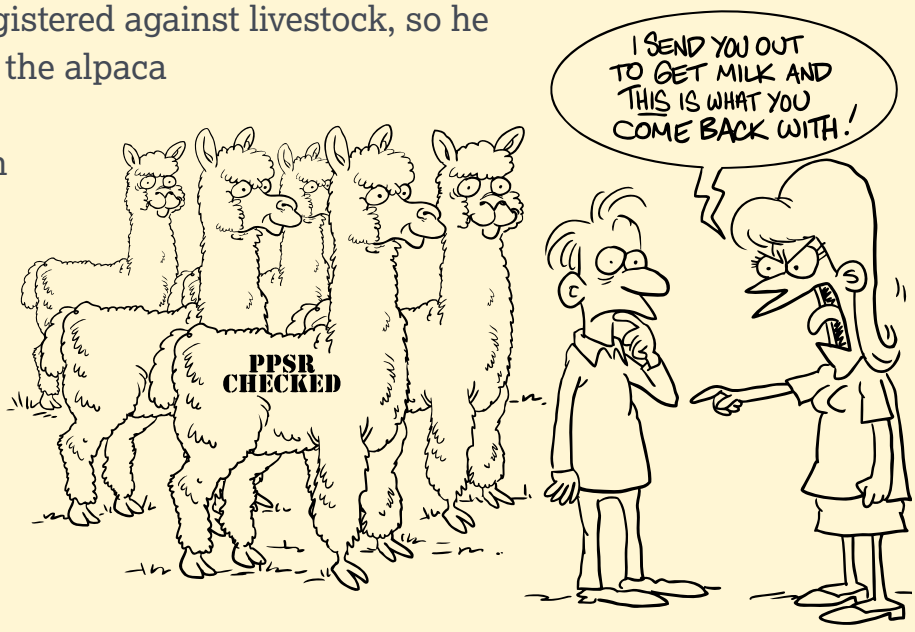
Giles is a hobby farmer who is interested in buying a flock of 20 alpacas advertised by farmer Tom Jones.

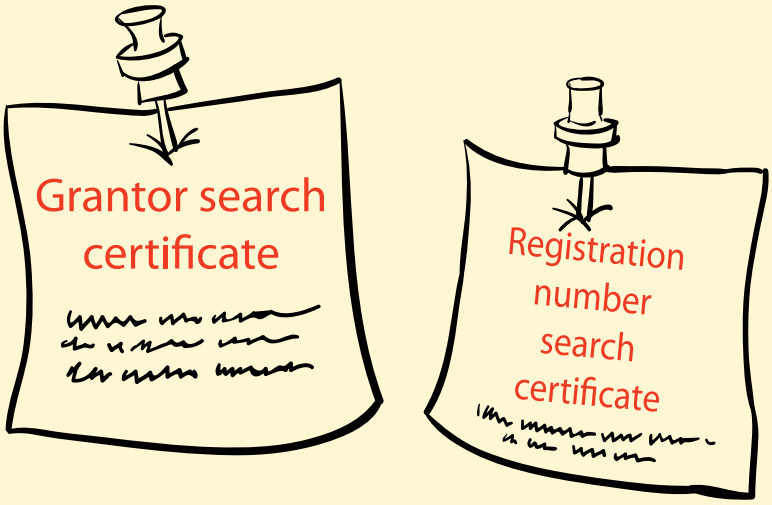
Giles approaches farmer Tom and learns that his farm is run through an incorporated company, Grazewell Pty Ltd. Giles obtains the Australian Company Number (ACN) of Grazewell Pty Ltd. He searches the PPSR and finds only one entry.

It gives the date of registration and the name and contact details of the secured party, identified by an ACN. It states that the collateral is *commercial property: motor vehicle*. Giles receives a search certificate from the PPSR.

Alpacas are *livestock*, within the collateral class *agriculture*. The PPSR permits a single class of collateral only for each registration.

While there is a security interest listed in the search result, no security interest is registered against livestock, so he can proceed to purchase the alpaca flock if he wishes. Giles is happy knowing he can purchase the alpacas free of any other security interests. A registered security interest would have meant there was debt or some other form of obligation owing against them.



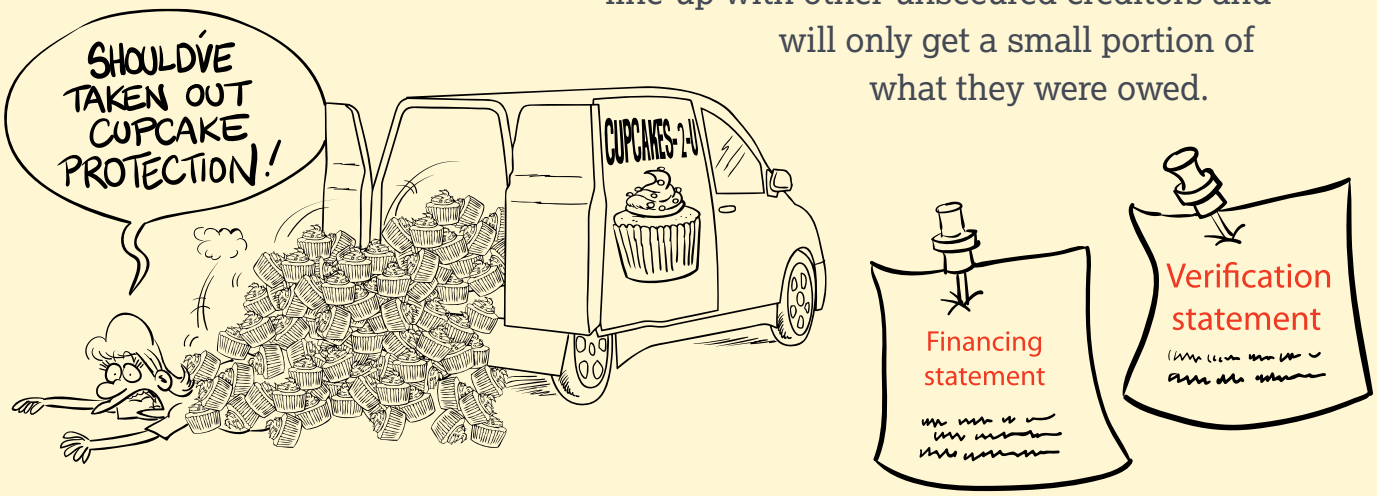


Case study 3

Leasing company leases vehicle to retail business for use as equipment.[18]

Utes-R-Us Pty Ltd leases a delivery van to Cupcakes-2-U Pty Ltd for four years. Both parties sign the lease. Before delivery of the vehicle to Cupcakes, Utes-R-Us registers a financing statement on the PPSR.

Six months later, Cupcakes-2-U goes bust. Utes-R-Us gets their van back, while other similar creditors who didn't register their interest on the PPSR have to line-up with other unsecured creditors and will only get a small portion of what they were owed.



[18] This case study does not cover every step of the registration process, but instead highlights some key questions.

a **Create Secured Party Group:** a secured party group is needed to complete a registration

Secured Party Details – this is the organisation identifier – insert Australian Company Number (ACN) of Utes-R-Us

Utes-R-Us is an incorporated company which means you must use the ACN, not the company name or ABN. The ACN is the number ASIC (Australian Securities and Investments Commission) issues when a company is incorporated.

b **Address for service –** insert the registered office and email address of Utes-R-Us

This address allows searchers of the PPSR to contact the secured party. It will be the address details entered when setting up the SPG. The email 'address for service' receives the verification statement with registration number and token unique to that registration number.

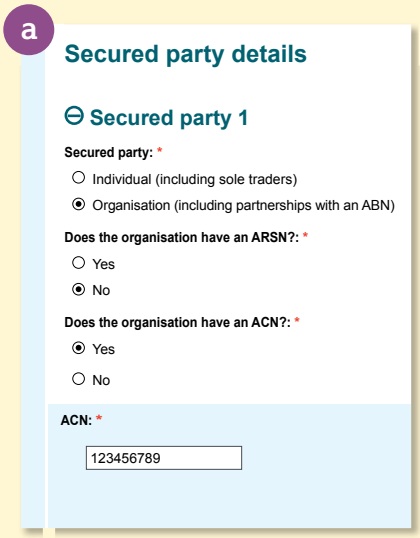
c **Create a registration:**

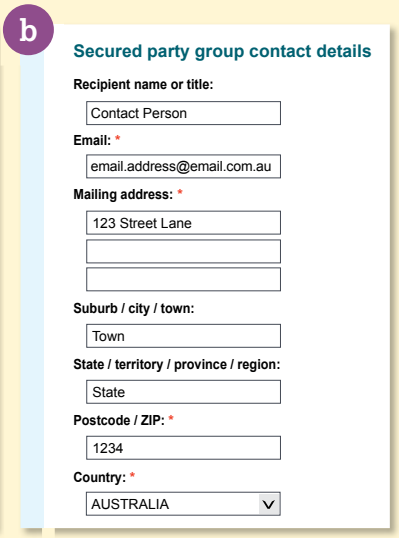
Collateral type – select *commercial*

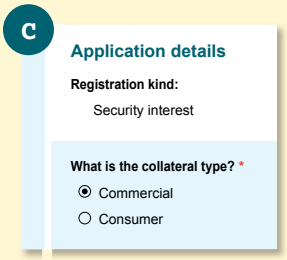
As the van is used to further a business it is commercial property. Note: in this case study Utes-R-Us could register against Cupcakes-2-U which is the customer/grantor without specifying the specific motor vehicle. However, if Utes-R-Us choose this option it will be disadvantaged, should Cupcake-2-U on-sell the van because the third party buyer of the van would 'take free'. For more information about *taking free*, see *third party protections*, section 4, page 36.

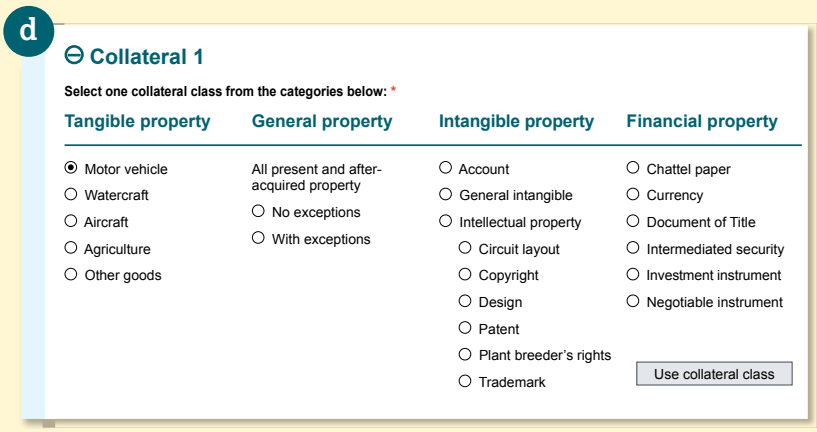
d **Collateral class –** select *motor vehicle*

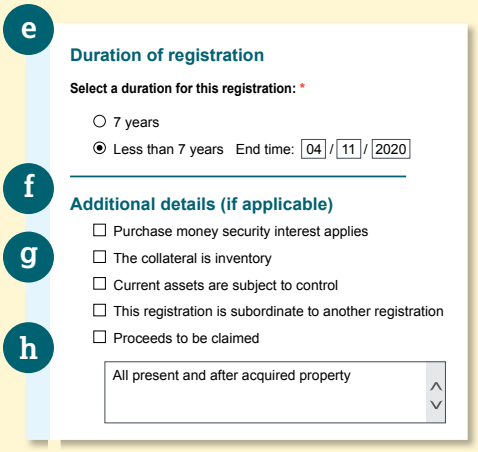
Motor vehicles are a separate collateral class for registration purposes. Note: Utes-R-Us need to select they are registering against a specific motor vehicle and enter the serial number.











e Registration period – for this case study 5 years has been selected

For serial-numbered property, registration can be for any period up to 7 years. In this case, the lease is for 4 years so the secured party may have chosen to ensure that the registration is in place for just longer than the lease.

f Purchase money security interest (PMSI)? tick the box

The lease is for more than one year and so is a PPS lease, which is a super-priority purchase money security interest (PMSI). For more information about a *PMSI*, see section 4, page 36.

g Inventory? leave box blank

You must state in the case of commercial property whether or not it may form part of the inventory of the grantor. As this is a delivery van to be used in Cupcakes-2-U's business, it is not 'inventory'. For more information about *inventory*, see section 4, page 43.

h Proceeds? for this case study, this should appear as automatically ticked and the words *all present and after acquired property* then displays in the text box below

As the 'proceeds' box is automatically ticked this enables Utes-R-Us to continue their security interest into the proceeds of any unauthorised dealings with the van Cupcakes-2-U may enter into, while it has possession, under the lease. The default type of proceeds, *all present and after acquired property*, means Utes-R-Us is protected if Cupcakes-2-U *deals* with the van. For more information about *proceeds*, see section 4, page 40.

Case study 4

Commercial consignment of craftwork by individual artist to gallery (sole trader).[19]

Brett is a jewellery designer who has sold his work for years through a gallery run by Wendy.

Sole-trader Wendy exhibits and sells other craftwork from the region. In Brett's case, all his work is delivered to the gallery based on terms that he and Wendy agreed in writing some years ago. The terms describe the work as *jewellery*, and state that it will be sold on behalf of the artist and after deducting a 10% commission, Wendy will pay over to the artist the amounts paid by her customers.

Brett has been advised by a fellow artist that he should now register the arrangement that he has with Wendy on the PPSR. The fellow artist lost some of his work last year when the owner of the gallery he was consigning to went bust and the fellow artist had not registered. He now makes sure his work is protected from a similar fate. Brett fills in the online PPSR financing statement as follows.

[19] This case study does not cover every step of the registration process, but instead highlights some of the key questions.

a **Create Secured Party Group:** A secured party group is needed to complete a registration

Secured party details – Brett is the secured party in this case study. Use the name in the same form as it is on his driver's licence – Brett Dylan Blackley

If the secured party is an individual, the name should be exactly the same as the person's driver's licence. If they do not have a licence, the regulations to the law do prescribe other documents that can be used instead.

b **Address for service –** you can use Brett's home address and his personal email address

Use the address that you want any correspondence to be sent to.

c **Create a registration:**

Collateral type and class – *commercial property* and *other goods* will be selected for this case study

How the grantor (Wendy) uses the goods defines whether or not it is consumer or commercial property. Since Wendy is selling the work in her gallery as her business, it is clearly commercial. It is 'other goods' as it does not come under any other specified collateral classes for the PPSR. Brett might wish to use the optional 'free text' box to give a collateral description, such as 'artwork consigned by Brett', to stop requests for amendment of the PPSR financing statement. Otherwise it looks like he is claiming security over all of Wendy's 'other goods' and she may be taking artwork, on consignment or otherwise, from other artists.

d **Registration period –** 7 years

As commercial non-serial-numbered property, the jewellery could be registered for up to 25 years, or indefinitely. Brett has chosen a relatively short period. Perhaps he thinks that he will not be producing jewellery in a few years time or not using Wendy's gallery.

a

Secured party details

Secured party 1

Secured party: *
- (•) Individual (including sole traders)
- ( ) Organisation (including partnerships with an ABN)

Given names: *
Brett Dylan

Family name: *
Blackley

b

Secured party group contact details

Recipient name or title:
Contact Person

Email: *
email.address@email.com.au

Mailing address: *
123 Street Lane

Suburb / city / town:
Town

State / territory / province / region:
State

Postcode / ZIP: *
1234

Country: *
AUSTRALIA

c1

Application details

Registration kind:
Security interest

What is the collateral type? *
- (•) Commercial
- ( ) Consumer

c2

Collateral 1

Select one collateral class from the categories below: *

Tangible property	General property	Intangible property	Financial property
( ) Motor vehicle	All present and after-acquired property	( ) Account	( ) Chattel paper
( ) Watercraft	( ) No exceptions	( ) General intangible	( ) Currency
( ) Aircraft	( ) With exceptions	( ) Intellectual property	( ) Document of Title
( ) Agriculture		( ) Circuit layout	( ) Intermediated security
(•) Other goods		( ) Copyright	( ) Investment instrument
		( ) Design	( ) Negotiable instrument
		( ) Patent	
		( ) Plant breeder's rights	
		( ) Trademark	

Use collateral class

c3

Collateral 1

Collateral class: *
Other goods (Change collateral class)

Description:
Artwork designed and manufactured by Brett

d

Duration of registration

Select a duration for this registration: *
- (•) 7 years
- ( ) Less than 7 years End time: / /
- ( ) No stated end time

e

Additional details (if applicable)

- [ ] Purchase money security interest applies
- [ ] The collateral is inventory
- [ ] Current assets are subject to control
- [ ] This registration is subordinate to another registration
- [ ] Proceeds to be claimed

f

g

All present and after acquired property.

h

Grantor 1 – Individual

Grantor: *
- (•) Individual (including sole traders)
- ( ) Organisation (including partnerships with an ABN)

Given names: *
Wendy Patricia

Family name: *
Slyznowicz

Date of birth: *
23 / 04 / 1961

e **Purchase money security interest (PMSI)?** tick the box

This commercial consignment arrangement, with both parties frequently dealing in this way, is within the definition of a PMSI which offers super-priority. For more information see *Purchase Money Security Interest* in section 4, page 36.

f **Inventory?** tick the box

Wendy is selling the jewellery to retail customers, so it is part of her inventory.

g **Proceeds?** for this case study, the proceeds to be claimed box is ticked and the text *all present and after acquired property* then displays in the text box

Brett ensures his security interest continues to be effective over the proceeds of the sale after the jewellery is sold.

h **Grantor details –** as she is a sole trader, Wendy Patricia Slyznowicz is the grantor (customer) in this case study. Her date of birth is also needed for this question. Both need to match the details on Wendy's driver's licence

If Wendy did not drive, her name on an identification card or her passport could be used. For an individual grantor, the date of birth is also required, which should be on the document used for the name. This information can be obtained from the proposed grantor.

Case study 5

Business supplying serial-numbered property to a consumer on retention of title terms.[20]

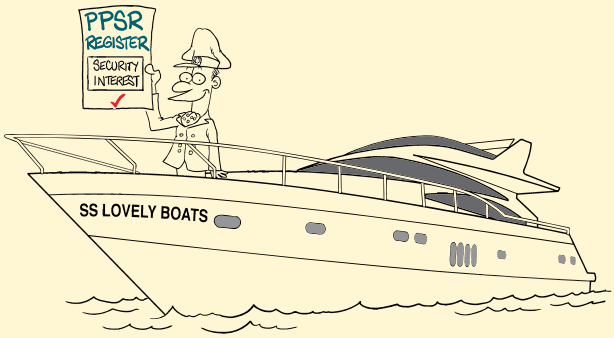
Lovely Boats Pty Ltd builds and sells expensive luxury yachts made to customer specifications and order. For the first time, Lovely Boats sells a yacht to Clive, who collects yachts to use for leisure.

It is sold on Lovely Boats' standard terms and conditions, which require 20% deposit in advance, and the balance to be paid within 60 days of delivery.

The terms include a retention of title clause which states: 'until full payment of all sums due under the contract, title to the boat remains with Lovely Boats'.

Lovely Boats insists that Clive signs his agreement to the written terms and the specifications for the yacht before any work starts, which he does.

When the boat is nearing completion, but well before its delivery, Lovely Boats registers on the PPSR by completing the online financing statement, registering against the serial number of the yacht. Later, when Clive fails to pay the balance on the yacht when due, and also fails to pay his other creditors, Lovely Boats' water-tight registration allows them to proceed with repossession of the yacht.



[20] This case study does not cover every step of the registration process, but instead highlights some of the key questions.

a **Create Secured Party Group:** a secured party group is needed to complete a registration

Secured Party Details – the correct organisation identifier for Lovely Boats is its Australian Company Number (ACN)

As Lovely Boats is an incorporated company, the ACN must be given, not the company name. The ACN is the number ASIC issues when a company is incorporated.

b **Address for service –** use Lovely Boats' officially registered company address and email address

The address is where documents may be served and enquiries made.

c **Create a registration:**

Collateral type – select *consumer*

To help ensure a valid registration make sure you select consumer property, instead of commercial, in the registration process.

d **Collateral class –** select *watercraft*

'Watercraft' is the collateral class used for registration.

a

Secured party details

Secured party 1

Secured party: *
- ○ Individual (including sole traders)
- ◉ Organisation (including partnerships with an ABN)

Does the organisation have an ARSN?: *
- ○ Yes
- ◉ No

Does the organisation have an ACN?: *
- ◉ Yes
- ○ No

ACN: *
123456789

b

Secured party group contact details

Recipient name or title:
Contact Person

Email: *
email.address@email.com.au

Mailing address: *
123 Street Lane

Suburb / city / town:
Town

State / territory / province / region:
State

Postcode / ZIP: *
1234

Country: *
AUSTRALIA

c

Application details

Registration kind:
Security interest

What is the collateral type? *
- ○ Commercial
- ◉ Consumer

e

Collateral 1

Collateral class: *
Watercraft (Change collateral class)

Watercraft identifier *
HIN | Enter number

d

Collateral 1

Select one collateral class from the categories below: *

Tangible property	General property	Intangible property	Financial property
○ Motor vehicle	All present and after-acquired property	○ Account	○ Chattel paper
◉ Watercraft	○ No exceptions	○ General intangible	○ Currency
○ Aircraft	○ With exceptions	○ Intellectual property	○ Document of Title
○ Agriculture		○ Circuit layout	○ Intermediated security
○ Other goods		○ Copyright	○ Investment instrument
		○ Design	○ Negotiable instrument
		○ Patent	
		○ Plant breeder's rights	
		○ Trademark	Use collateral class

f

Duration of registration

Select a duration for this registration: *
- ◉ 7 years
- ○ Less than 7 years End time: 04 / 11 / 2020

g

Additional details (if applicable)

- ☐ Purchase money security interest applies
- ☐ The collateral is inventory
- ☐ Current assets are subject to control
- ☐ This registration is subordinate to another registration

h

- ☐ Proceeds to be claimed

All present and after acquired property

e **Serial number of yacht –** hull identification number

The correct serial number of the yacht must be given. Clive is an individual grantor, but since the yacht is consumer property, Lovely Boats can only register against the serial number, not against Clive's name. A watercraft must be described by its unique hull identification number (issued by a state or territory registration authority, or put on the hull by the manufacturer) or any official number issued by the Registrar of Ships.

f **Registration period –** 7 years

For consumer, or serial-numbered goods, the maximum registration period is 7 years.

g **Purchase money security interest (PMSI)? tick the box**

This retention of title arrangement, with Lovely Boats giving a period of credit to pay the balance, is within the definition of a super-priority PMSI—it is still necessary to tick the box and claim the PMSI. Lovely Boats has complied with the rules for registering PMSIs, because it has also registered well before Clive takes possession of the yacht.

h **Proceeds?** for this case study, this should appear as automatically ticked and the words *all present and after acquired property* then displays in the text box below

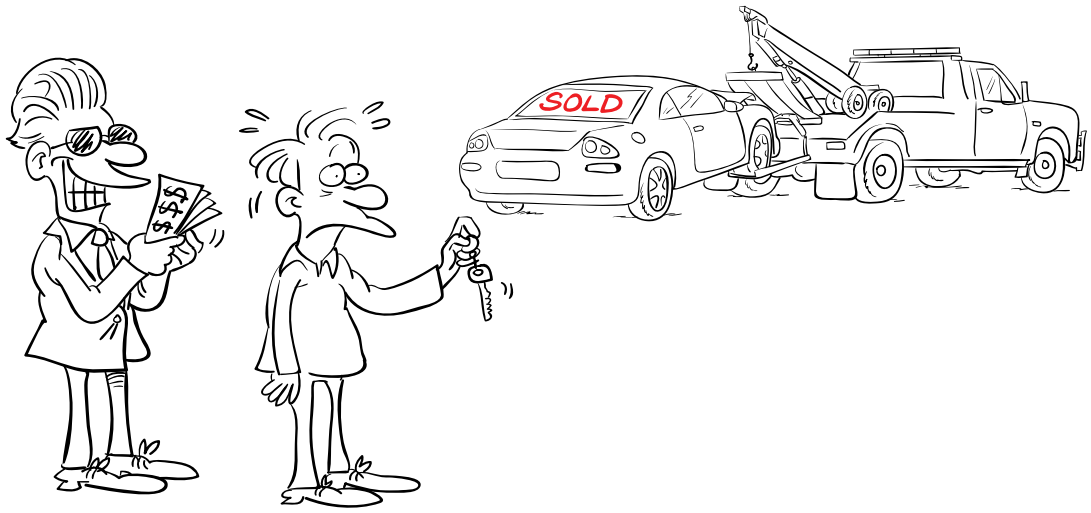
As the 'proceeds' box is automatically ticked this enables Lovely Boats to continue their security interest into any proceeds. The default type of proceeds, *all present and after acquired property*, means Lovely Boats is protected if Clive deals with the yacht, such as Clive on-selling the yacht before he has fully paid for it.

Section 4: the technical info

You may need to consider this more technically detailed information. If you work with an accountant, financial adviser and/or lawyer, make sure they are familiar with this information.

For those who act on behalf of business owners, references to 'you' throughout this section refer to the business owner or operator.

In summary, the benefits of registering and risks of not registering



If you have a security interest in personal property, having your rights in a contract, terms and conditions, or relying simply on ownership (e.g. lease, hiring, consignment or retention of title arrangements), is **no longer enough** to protect your position.

You now need to also register on the PPSR.

If you don't register:

- just when you most need them—if your grantor becomes insolvent (e.g. liquidation, administration, bankruptcy)—your rights will be ineffective
- you will lose out to other creditors who did register, if they enforce their rights, such as banks when they appoint a receiver
- you may also lose rights you might otherwise have had, to recover the **goods** or **proceeds** once they are sold or leased by the grantor to others, or transformed by manufacturing or other processes.

And there are other benefits of registration. If you register, you now have more effective rights if the grantor deals with (e.g. sells or leases) the property. You may be able to continue your security interest into the property if you did not authorise the dealing, and in any case, into the proceeds. You can continue your registered security interest if the goods have been added to other goods, or have been made or processed into something else. These benefits are explained in this section.

You may know and trust your grantors, but many factors could cause them to get into financial difficulty and insolvency.

Tip **Registration of security interests protects you against the grantor's insolvency and helps to preserve your priority position against other lenders or suppliers.**

Some important concepts

Personal property

Personal property, under the law (*Personal Property Securities Act 2009*) does not include land, buildings and fixtures (e.g. an in-ground swimming pool is clearly a fixture, whereas event party hire equipment is not a fixture).

The law doesn't apply to direct water rights, nor to most government-issued licences or rights, nor to most transactions with a pawnbroker.

Personal property covers goods (including crops and livestock), motor vehicles, planes, boats, intellectual property (such as copyright, patents and designs), bank accounts and debts (sometimes known as receivables), shares and other financial property, and private non-government commercial licences.

A particular class of personal property is **serial-numbered property** (includes only motor vehicles, aircraft, watercraft, and some intellectual property rights—designs, trademarks, patents or plant varieties). Serial-numbered property described as consumer property *must* be described in a registration by the serial number only; a registration covering serial-numbered commercial property *may* use the serial number (as well as the grantor's details), but the serial number is not compulsory.

A **motor vehicle** is any vehicle (1) with a vehicle identification number (VIN), or a chassis or manufacturer's number, (2) capable of speeds of at least 10 kph **and** (3) having power of at least 200 W. Attached towed or towable vehicles, such as trailers and caravans, are also classed as motor vehicles.

Security interests

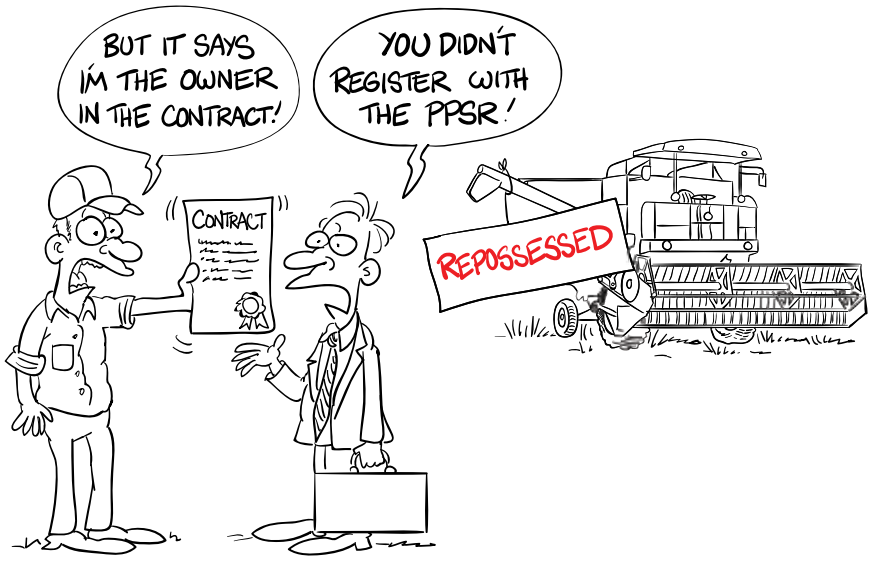
If you are a seller or supplier of goods, your terms and conditions probably give a period of time (credit or account) for your buyer/customer to pay invoices (e.g. 30 days to pay). This, on its own, does not create a registrable security interest in the goods being sold.

But you may also have a retention of title clause in the contract terms and conditions. That clause can no longer be relied on alone to repossess goods and/or proceeds if monies are still due after the credit period expires, especially if the buyer goes into insolvency proceedings. The retention of title clause is treated as a security interest granted by your customer, but other steps must now be taken to protect your position:

- Leasing and hiring businesses, or owners who engage in leasing or hiring as any part of their business, should register an interest if goods are leased or hired out for periods of one year or more, or indefinitely, or on terms that the grantor can, or does in practice, have possession for more than one year.
- Suppliers or owners of goods (e.g. craftwork, artwork or rugs) who routinely sell through, or leave their goods with, a shop or gallery on consignment terms, should register their interest on the PPSR.

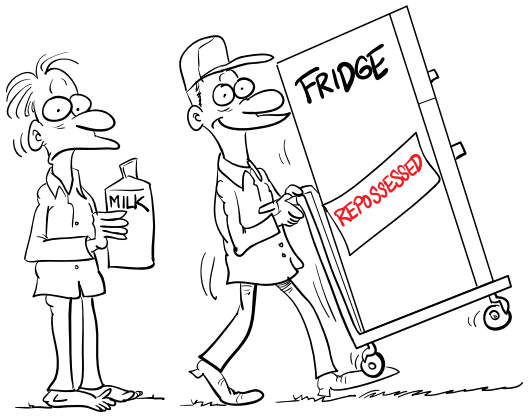
Tip

As a seller on retention of title terms, owner, lessor or consignor, you can no longer rely just on your *title* or *ownership* and *contract terms*. You must also register the security interest on the PPSR.



Security interest over collateral includes a wide range of transactions, including some not previously regarded as security:

- It covers any case where a contract effectively provides for a party to look to collateral to enforce repayment of outstanding debt or contractual obligations. When a grantor goes into insolvency proceedings, a registered security interest gives the secured party rights to seize, and sell or dispose of, the property, and recoup the debt out of the proceeds. Otherwise, the seller/lender/lessor would be an unsecured creditor of the grantor, and may get little or nothing back once available net assets are shared out among unsecured creditors on insolvency.
- Banks and others have traditionally taken charges (fixed and/or floating charges) over some or all of a corporation's property, and in some businesses a pledge or contractual lien (delivery or right of retention of property for the purposes of securing repayment for goods or services) was taken. Now, 'security interest' covers these types of security, as well as now including most leases and hiring arrangements for more than a year (or an indefinite period or which may last more than a year) as well as consignments, and retention of title arrangements.



Insolvency and time limits

You need security over property to protect you in case your grantor enters into insolvency proceedings—bankruptcy for individuals, including individuals operating a business as a sole trader or as part of a partnership—or liquidation, receivership and voluntary administration/deeds of company arrangement for companies.

To ensure you meet all time limits and secure purchase money security interest (PMSI) super-priority, register before the grantor takes possession of the goods. A PMSI is explained on page 36 of this section.

Tip

If your security interest has not been registered by the time the grantor enters insolvency proceedings, the security interest will effectively be void. You would then be an unsecured creditor.

The *Corporations Act 2001* adds a time limit for registration against company grantors, which gives you 20 business days from entry into the security agreement, and which, if not met, makes you an unsecured creditor if the company becomes insolvent within six months.

Third party protections

Tip

Goods intended to be used mainly for domestic, household or personal purposes with a market value less than $5000, no matter who they are purchased from, are usually 'taken free' of any security interests (e.g. secured debts) and if so are free of any possible repossession by another party.

Buyers or lessees of goods are protected in several cases.

Instead of having to search the PPSR every time, they will take free of any unregistered security interests, and can sometimes take free of a security interest even if it is registered.

This applies to 'consumer transactions' of market value less than $5000, to consumers buying cars from a licensed motor vehicle dealer, and to purchasers of certain serial-numbered goods (such as cars, boats) if there has either been no serial number registration (or if the number is misstated to any degree).

In the last case, a searcher would not find the entry if they entered the correct serial number, so should take free of the registered interest.

Importantly, the taking free protections also apply to most sales or leases of property in the ordinary course of the seller/lessor's business, which can apply to both business and consumer buyers or lessees, and covers most retail and hiring transactions. If it is usual that the type of property is sold or leased in that business, the end customer takes free of the security interest in the actual property, so is not at risk of having it repossessed.

Priorities and Purchase Money Security Interests

Priority rules decide which secured party ranks higher (and thus can be paid out first from the collateral). The rules are mostly quite simple: first in time, first in line—in most cases an earlier dated registration beats a later one over the same collateral.

Knowledge or lack of knowledge of the existence of another security interest on the property is irrelevant, what matters is what's registered. Of course, an unregistered security interest loses out to a registered one, and is mostly ineffective on insolvency.

The main exception to the first in time, first in line rule is a **purchase money security interest (PMSI). If properly registered, a PMSI gives priority over earlier registered security interests over the same collateral, such as a bank with an earlier registered security interest over all of the grantor's present and after-acquired property**.

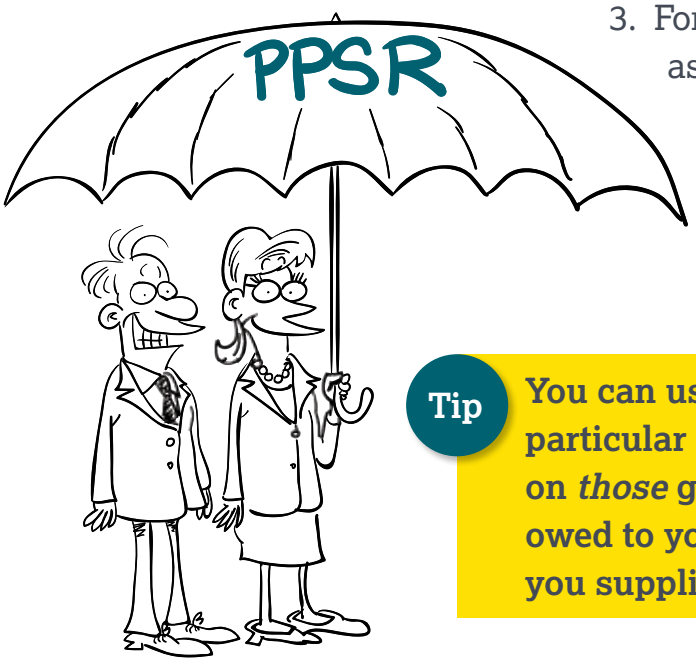
Even though the bank is first in time, the PMSI holder will jump ahead and be first in line.

A PMSI is defined to cover situations where the security interest is granted over particular collateral to secure debt which enabled that collateral to be acquired by the grantor. A properly registered lease and retention of title arrangement are examples, as is a lender who advances funds for the specific purpose of buying new equipment, and where the funds are used for that purpose.

Tip **Any commercial consignment or lease, hiring, or bailment of goods for more than one year—or which may last more than one year, or is for an indefinite period—will qualify as a PMSI.**

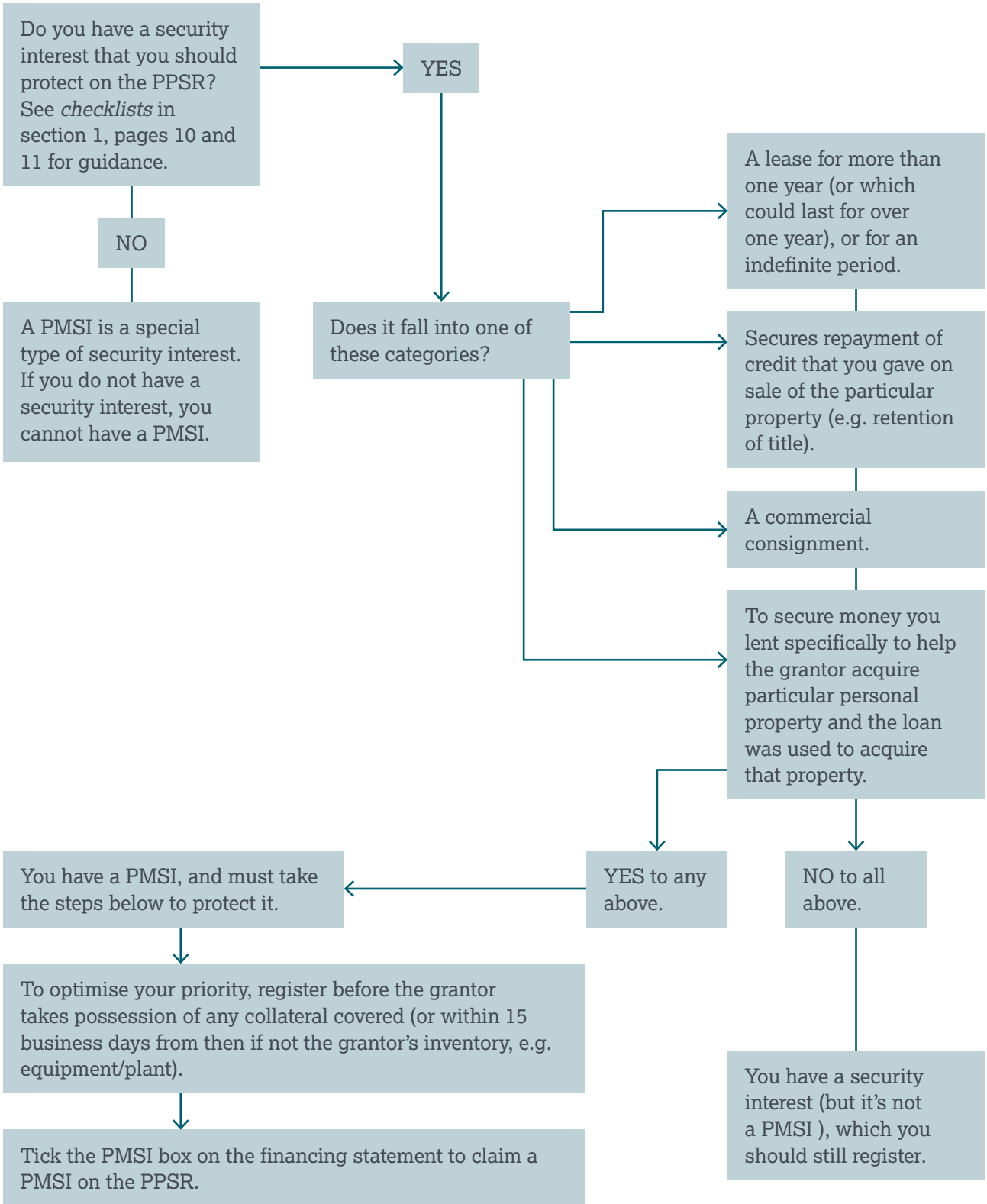
To ensure your PMSI is enforceable you must take these steps:

1. Register and tick the box on the PPSR financing statement to claim a PMSI.
2. For goods you have supplied as part of your customer's inventory, such as stock, or goods for your customer to sell or lease, register before those goods are delivered, or preferably as soon as you enter into terms with a new customer.
3. For goods the customer is going to be using as equipment (not inventory), you have to register within 15 business days of delivery. Again, you can register as soon as you enter into dealings with a new customer, before any deliveries.



Tip **You can use a PMSI (to claim super-priority) over particular goods only for outstanding debts owed on *those* goods, or their proceeds, not for debts owed to you by the same customer for *other* goods you supplied to them.**

Do I have an effective PMSI?



Priorities and Agricultural Priority Security Interests

Another exception to the first in time, first in line rule is that a financier of livestock or crops could claim super-priority over the livestock or crops, even if they are not registered first.

This is limited to situations where finance is provided to enable crops to be grown or livestock to be fed or developed, such as financing fertiliser or feed supplies on retention of title terms.

Perfection

Perfection means giving your security interest the best priority and effectiveness, enabling it to be enforced against liquidators and third parties if and when you need to.

The main form of perfection is registration on the PPSR. You also need to make sure that your security interest is 'attached' (see below) to the collateral, and is properly documented.

You need to register once only for each kind of collateral granted by a grantor on the same terms. The registration is then effective to cover that type of collateral for the selected registration period, and for all subsequent deliveries of that type of collateral to that customer.

Refer to the *case studies* in section 3, page 22, for some examples of perfection.

Tip **If the grantor gives you security over two different categories of collateral e.g. crops and motor vehicles, you need to register two separate PPSR financing statements.**

Attachment and written evidence

Attachment is defined in *Glossary 2*, section 4, page 45. The steps for attachment are not difficult to meet for most businesses.

Your security interest comes from the terms of your contract with the customer. The security interest is attached to the collateral, for most purposes, if:

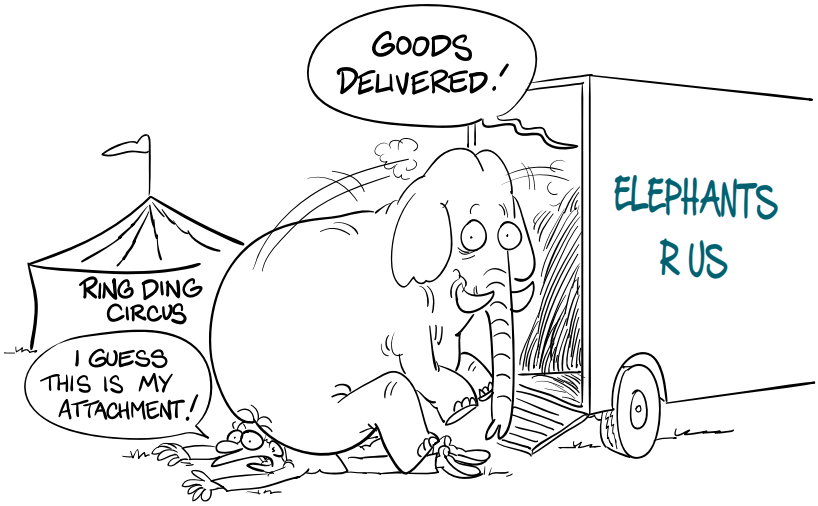
- a contract is entered into to sell, supply or hire the goods specified to be security for a payment or performance of an obligation or
- it is agreed to lend funds to someone who is putting up their existing property as collateral to secure repayment of the loan.

In the case of owners leasing, hiring or consigning goods, attachment usually happens when the grantor receives possession of the goods (e.g. on their delivery).

Although attachment is necessary, registration on the PPSR can and should be done before attachment (e.g. before goods have been delivered to the grantor).

Register your security interest on the PPSR as soon as you are sure that you are going to be contracting with a new customer on terms (or with an existing customer if on new terms) which contain or amount to a security interest in collateral.

You don't have to wait until delivery of any goods—in fact that may be too late.



Your priority and enforcement rights are protected from the time of registration on the PPSR, even though goods may be delivered after that.

There must be written evidence of the security agreement (e.g. terms and conditions), and the grantor must have signed their acceptance of the writing, or done something which shows that they intended to accept (e.g. sending a purchase order before or after receiving your terms on a quote, or dealing with you on the same terms for several orders over time). An email exchange can be written evidence.

The writing also has to contain some description of the secured obligations and identify the collateral. The description can refer to particular items (e.g. a specific vehicle) or a class to which they belong (e.g. apples could be described as fruit).

Proceeds

Proceeds covers cash, insurance, or compensation payments for loss of the property, and any other property that comes from a direct or indirect dealing with the property by the grantor.

If you lease a digger out to a builder for more than one year and the builder, without permission, sells the digger and uses the cash proceeds to buy concrete, your security interest in the digger can be traced into the concrete, as the concrete is indirect proceeds of the digger.

The proceeds must derive from the original dealing and the grantor must have an interest in the proceeds.

If you are a wholesaler (selling or leasing goods to retailers), you have authorised the retailer to on-sell those goods in their business even if you have security over them (i.e. your retention of title clause or rights to repossess under a lease). In that situation you still have continued security in the proceeds of the sale/lease. This allows your customer to *deal* in the goods but gives you their value while you are still owed debt on them.

On the other hand, if you are selling or leasing goods to be used by the buyer/lessee as equipment (as opposed to inventory), you will probably not have agreed that the customer can dispose of it without your permission. In that situation, you now have security over the proceeds as well as possibly over the collateral, up to the value of your debt owed to you for the goods.

Tip

To claim security over the proceeds, tick the box claiming proceeds on the PPSR financing statement. Leave *all present and after acquired property* as the type of proceeds claimed (the default on the drop-down menu) to perfect your claim to any form of proceeds from the original collateral.

Accessions

If you have a registered security interest in goods that are added to other goods, such as tyres installed on trucks, your security interest in the tyres (the **accessions**) continues.

The law provides a mechanism to enforce on default, by removal of the accession, (e.g. removal of the tyres from the trucks), even though someone else has an interest in the trucks as a whole.

In these cases, registration of your security interest in the tyres helps to give you priority over later dealings with the trucks.

Processed, mixed or manufactured goods

Many supplies are processed, mixed together or manufactured in some way, or undergo some transformation in your customer's business so that they have lost their identity in the new item, such as flour used to make bread.

If you have a registered security interest in the goods, you might be able to claim a security interest in the new item, proportionately with any other suppliers whose inputs were also used. This is a difficult area; seek legal advice if you have such a claim.

Enforcement

Enforcement of your security interest in case of default by your customer, whether or not the customer is in insolvency proceedings, should be undertaken only with the benefit of legal advice.

Often, your terms and conditions will contain clauses giving you remedies which may still apply, e.g. a well drafted commercial lease of goods can exclude or modify the provisions or remedies in the *Personal Property Securities Act 2009*.

Where the collateral is used mainly for domestic or household purposes, the Act's provisions cannot be excluded, and the National Credit Code may also apply to the transaction.

You may not have to trigger the Act's enforcement provisions yourself. If your customer goes into receivership your lawyer would usually deal with the receiver and assert any security interest you are claiming in personal property.

However, if you do have to trigger action to enforce your security (e.g. repossess your goods if the customer defaults under their contract with you), then there are several options for remedy:

- for goods or other tangible property, seizure after default, and then disposal by sale or lease
- for intangible property such as accounts (or copyright and other intellectual property) that can't be physically seized, an equivalent of giving notice (e.g. so accounts can be collected and used)
- in rare cases the secured party retaining the collateral (i.e. keeping it for themselves to repay the debt rather than sell it).

The Act also provides for an order or priority for repayment of the sale proceeds, for expenses of enforcement, notices to be given e.g. to the grantor, and for accounts to be kept.

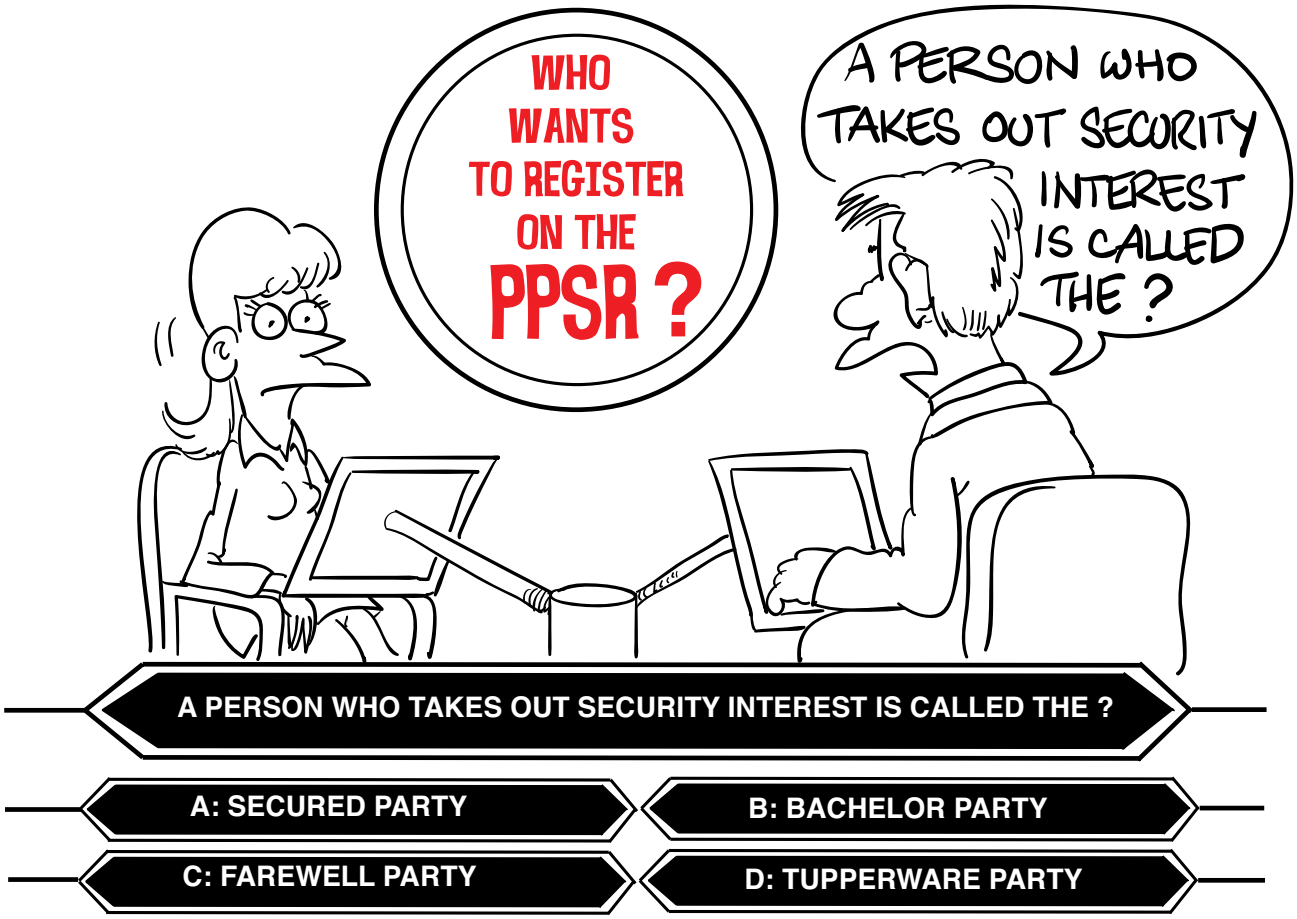
If you have a security interest, you can use the collateral (e.g. sell it) only to recover what you are owed plus the costs, no more. The grantor and other secured parties are entitled to any surplus.

What do these terms mean?

Glossary 1—terms you may come across on the register

collateral	personal property offered up as security for a debt or other obligation owed to sellers, financiers or other secured parties collateral is personal property that has a security interest attached to it and must be described when registering on the PPSR
financing statement	the online statement in which data is entered in an application for registration on the PPSR
giving of notice identifier (GONI)	an optional internal reference number (or text) for the secured party to use to help them identify that unique registration
grantor	the debtor, buyer, lessee or customer who offers the collateral as security someone other than the debtor offering security over their property to secure the debtor's obligations a consignee, lessee, transferee of an account or chattel paper the person registered as the grantor
inventory	commercial property held by a person for either sale or lease to others, is already leased out to others, is property held for, or provided under, a contract of services, or is raw materials, work in progress, or property held, used or consumed as materials
motor vehicles	any vehicle with a vehicle identification number (VIN), or a chassis or manufacturer's number, which is capable of speeds of at least 10 kph and with power of at least 200 W towed or towable vehicles with a separate vehicle identification number
proceeds	identifiable or traceable personal property derived directly or indirectly from a dealing with the collateral (or proceeds of collateral) to which a security interest is attached, including cash, an insurance payment, or other indemnity or compensation for loss or damage to the collateral or its proceeds payments to discharge or redeem certain financial property the right of a licensor of intellectual property to receive payments under the licence agreement

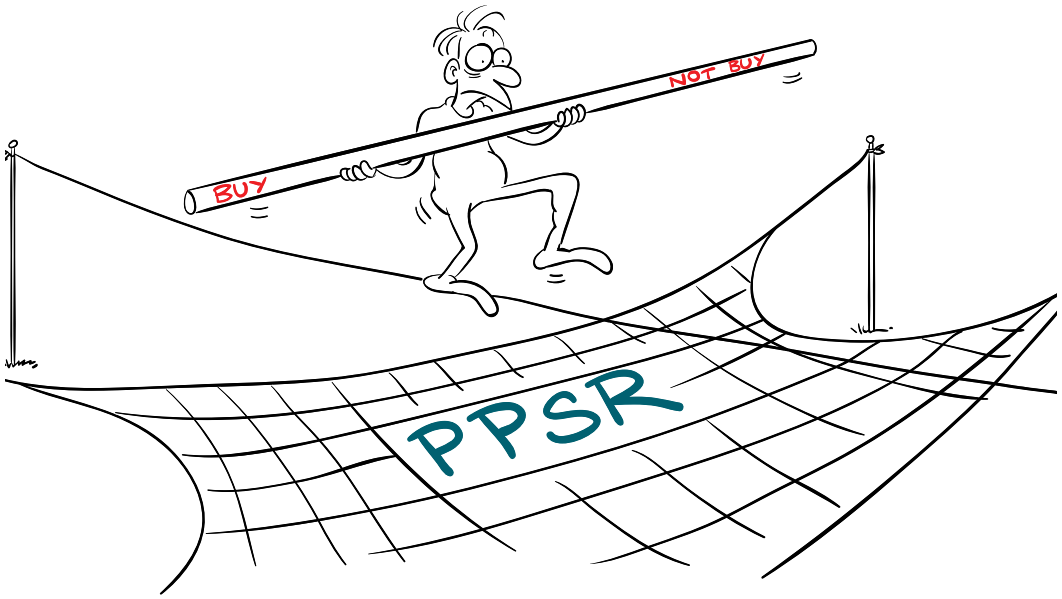
purchase money security interest (PMSI)	a security interest over particular collateral, granted to secure debt incurred in acquiring the collateral in question from the secured party (a seller PMSI), or granted to secure funds lent by a secured party and used by the grantor for the purpose of enabling the grantor to acquire the collateral (a lender PMSI) includes leases, retentions of title and consignments that are deemed security interests under the Act
secured party	the seller, owner, lessor, consignor, financier or any other person who has taken a security interest in personal property (collateral), and includes a person with a registered security interest on the PPSR
serial-numbered property	motor vehicles, aircraft, watercraft, and some intellectual property rights such as designs, patents or plant varieties not any other serial-numbered goods (e.g. computers, washing machines)



Glossary 2—additional terms and concepts you may come across in the law and how it may apply to your business

accessions	goods that are fixed to other goods (e.g. tyres on a car)
amendment demand	written demand (authorised by the Act) from a person with an interest in the collateral, requesting the secured party amend its registration by registering a financing change statement, which may terminate the registration or omit certain collateral if the secured party does not amend the registration the requestor may invoke a further procedure through the Registrar or the court
attachment	a security interest is attached to the collateral when the grantor has rights in the collateral, or the power to transfer rights to the secured party, and either value is given for the security interest or the grantor does an act by which the security interest arises in practice, the security interest attaches if there is a contract to sell, supply or hire the collateral to the grantor, or lend funds to someone putting up their existing property as collateral. For leases or bailments, consignments, or retention of title, it attaches from the time the grantor obtains possession of the goods.
bailment	a situation where a person (the bailee) is voluntarily in possession of goods belonging to another (the bailor) and therefore it's wider than a lease, but is covered by 'PPS lease' for situations where the bailor is regularly engaged in bailment transactions, and where the bailee gives value for the bailment
goods	tangible property including crops, livestock, wool, minerals that have been extracted in any form, but not including financial property
perfection	giving your security interest the best priority and effectiveness, and enabling it to be enforced against the customer and third parties (including on insolvency) if and when needed, by a properly attached and documented security interest being registering on the PPSR less common alternative forms of perfection: possession of tangible property, or control of some financial property

personal property	property, other than land, buildings and fixtures to land; covers goods, motor vehicles, planes, boats, intellectual property (such as copyright, patents and designs), bank accounts and debts (sometimes known as receivables), shares and other financial property, and private commercial licences does not apply to direct water rights, nor to most government-issued licences or rights *consumer property*: personal property held by an individual and not for any use in a business with a ABN *commercial property*: personal property other than consumer property *financial property*: currency, document of title, shares, cheques *intangible property*: personal property (including a licence) e.g. copyright, debts and other receivables, bank accounts, but not goods or financial property
security interest	an interest in personal property taken to secure payment of debt or another obligation; any case where a contract effectively provides for a party to look to collateral to enforce repayment of outstanding debt includes: • most leases and hiring arrangements over one year, or for indefinite term, or which could last more than one year; consignments, and retention of title arrangements • traditional types of security, e.g. banks and others taking security (previously called a charge, or fixed/floating charge) over some or all of a corporation's business assets, and in some businesses giving a pledge or retaining a lien (delivery or right of retention of property for the purposes of securing repayment for goods or services owing).



taking free	where a grantor of a security interest sells or leases collateral, the buyer or lessee takes free of the security interest (the collateral is not encumbered and not subject to the security interest) under a number of taking free rules, most importantly a buyer/lessee of personal property: • for value, takes free of an unperfected security interest • for new value, other than serial-numbered goods, if the property is to be used mainly for personal domestic or household purposes, takes free of the security interest if the market value of the total new value given is $5000 or less (the low value or garage sale rule, though it applies not just to garage sales) • takes free of most sales or leases of property in the ordinary course of the seller/lessor's business. This can apply to both business and consumer buyers or lessees, and covers most retail and hiring transactions. If it is usual that the type of property is sold or leased in that business, the end customer takes free of the security interest in the actual property, so is not at risk of having it repossessed. • takes free of a security interest in serial-numbered property (other than the buyer/lessee taking the property as inventory) if a search against the serial number in the PPSR immediately before the sale or lease does not disclose the registration (either not registered against serial number or number entered incorrectly) • buys or leases a motor vehicle for new value takes free of a security interest if she buys/leases from prescribed licensed motor vehicle dealers and if it is not inventory of the buyer/lessee. each taking free rule has differing exceptions about the state of knowledge of the buyer/lessee but, apart from the first one above, each applies even where the security interest is perfected by registration. see www.ppsr.gov.au for more information on buyer protection.

Why was this new law introduced?

The *Personal Property Securities Act 2009* replaces many state, territory and Commonwealth laws and registers with one national system and register—the PPSR.

State registers, such as vehicle security registers, and national registers such as the ASIC Register of Company Charges—more than 35 registers—are now replaced by one online PPSR.

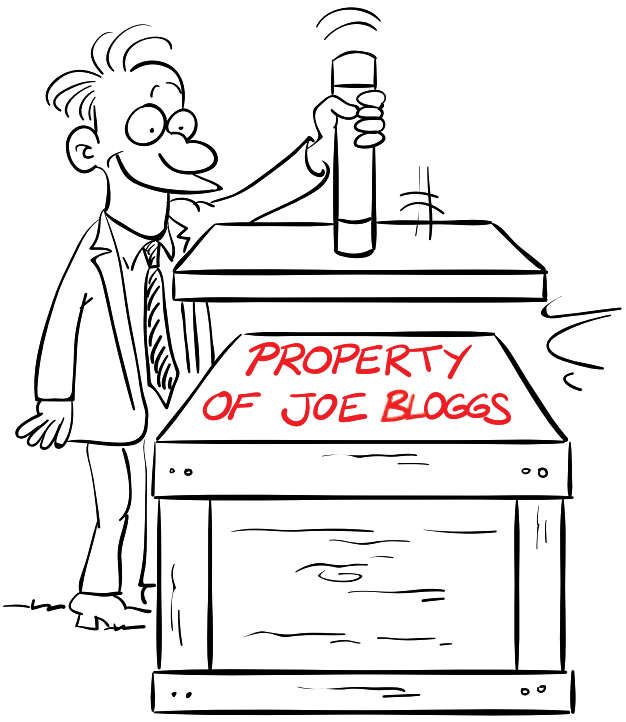
Many interests can be registered now under the PPSR which didn't have to be registered anywhere before—especially some leases, and sales of goods on retention of title terms. As well, the Act replaces much (often uncertain) 'common law' that wasn't in any legislation.

With everything in one place, and a wider coverage of security interests than under the old law, registering and searching is much easier and reduces risk to secured parties and searchers. One register with simpler rules reduces the costs of doing business and should make access to credit easier and wider in the long run.

Sellers, lessors or lenders can use the PPSR to register security over goods.

Buyers and others can check which interests are being claimed and by whom. Their search of the PPSR will help them make a more informed decision about lending to, buying from or otherwise dealing with a particular customer or buying particular goods or property.

This type of system has been in place for many years overseas, e.g. in North America and New Zealand, and is recommended by the World Bank, and other international bodies.



Notes

Where do I go for help?

Talk to your accountant or other professional adviser(s) to see if the PPSR is relevant to you.

Website: The PPSR is available for information, search and registrations 24 hours a day, 7 days a week at **www.ppsr.gov.au**

Email: enquiries@ppsr.gov.au

Telephone: 1300 007 777

Help in other languages

If you have difficulty speaking or understanding English, you may call the Translating and Interpreting Service (TIS) on 13 14 50 for the cost of a local call.

Feedback about this guide can be emailed to media@afsa.gov.au

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