

# The countdown is on - calling time on the transitional provisions under the PPSA

*The transitional protections under the Personal Property Securities Act 2009 (Cth) will expire on 30 January 2014. Are you ready?*

## Background

It's been nearly two years since the Personal Properties Securities Act 2009 (PPSA) commenced on 30 January 2012, establishing the Personal Property Securities Register (PPSR) as the single national register for recording security interests.

A 'security interest' under the PPSA means an interest in 'personal property' provided for by a transaction that, in substance, secures payment or performance of an obligation. Personal property does not include land but captures most other forms of property including goods (such as goods obtained under a lease or bailment, hire purchase agreements and or supplied on retention of title terms), intellectual property (such as registered trademarks and patents) and shares.

To give people the opportunity to transition to the new regime, the PPSA contains transitional provisions that preserved the pre-PPSA status of security interests created prior to 30 January 2012. However, this period of protection expires on 30 January 2014.

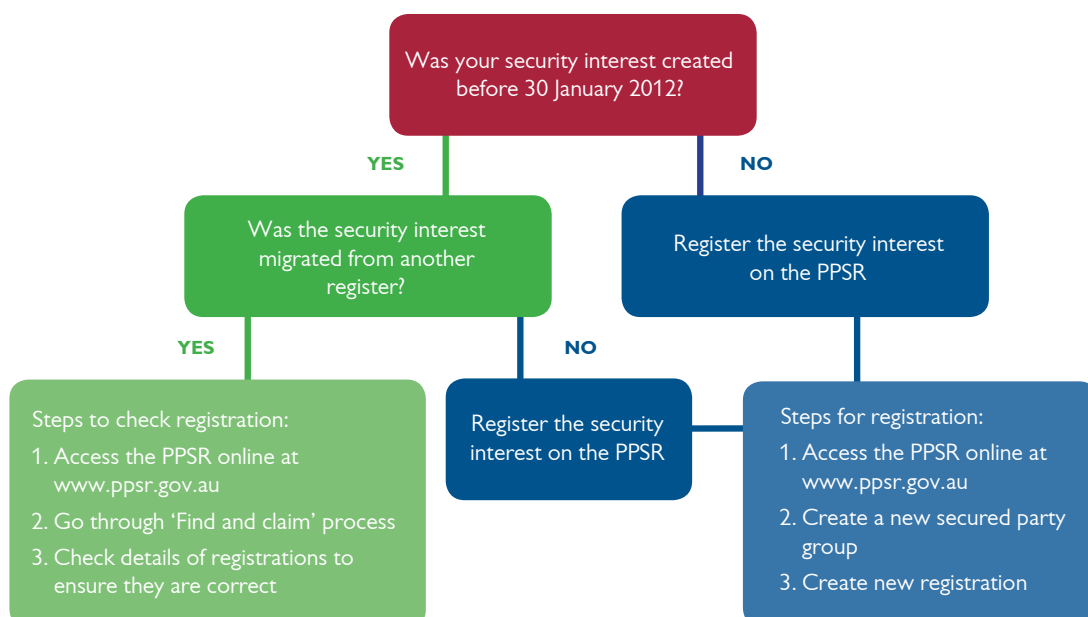
Under the PPSA, it is now the priority of a security interest rather than legal ownership of personal property that is considered paramount. To secure the priority of security interests created prior to 30 January 2012, certain steps need to be taken before 30 January 2014. Security interests that were migrated over to the PPSR from other registers also need to be reviewed to ensure they have been accorded the appropriate priority.

## Migrated Security Interests

A migrated security interest is one that was transferred onto the PPSR from previous Federal and State/Territory registers. These registers included:

- The ASIC Register of Company Charges.
- State/Territory Registers of Encumbered Vehicles or Vehicle Securities Registers.
- State/Territory Bills of Sale Registers.
- The Australian Register of Ships.
- Certain stock and crop lien registers (amongst others).

## Protection of Security Interests:



Migrated security interests are registered on the PPSR, but you may need to take further steps to ensure these are in order. For example, you may now be required to include the serial numbers of goods as part of your registration where that was not required for previous registers.

There have also been other issues that occurred in transferring migrated security interests onto the PPSR, and not all were migrated across, and there are cases where some migrated with incorrect details. You need to review your migrated security interests on the PPSR and ensure that details of the registrations are correct.

To make any changes to a migrated security interest, or discharge the interest, you must go through the 'Find and Claim' process, which is done online through the PPSR.

## Non-migrated Security Interests

Other security interests were not required to be registered on any register prior to the commencement of the PPSA. If you have a security interest that was created prior to 30 January 2012 (or was created under an agreement that existed prior to 30 January 2012) that has never been registered, you need to ensure that it is registered on the PPSR before 30 January 2014.

Common examples of security interests that were not previously required to be registered are:

- The supply of goods on consignment or retention of title terms.
- Personal property of an individual or business used to secure provision of credit or finance (including hire-purchase or finance leasing arrangements).
- Security taken over intellectual property.
- Mortgages (excluding mortgages over land).
- Leases or bailments of goods to others (including in connection with the supply of goods and services).

## What it means if your Security Interest is not registered

If your security interest is not registered by the 30 January 2014 deadline, it may not be 'perfected' for the purposes of the PPSA. The consequences are that:

- Your security interest may lose priority to other competing security interests over the same personal property.
- Your security interest will only be enforceable against the person who granted the security interest to the extent it was enforceable under the law before the PPSA.

- Should the person who granted the security interest become insolvent, your security interest will not be enforceable against an administrator or liquidator. You would only have the status of an unsecured creditor.

The importance of perfecting security interests was reinforced in the recent case of *Maiden Civil (P&E) Pty Ltd Re: Albarran v Queensland Excavation Services Pty Ltd & Ors*, where the legal owner of goods (three Caterpillar excavators and loaders) failed to register its security interest, and subsequently lost ownership to another party that had registered a security interest over the same goods, as the registered security interest was held to have priority over the unregistered security interest. For a more detailed discussion of this case, please click [here](#).

## Post 30 January 2012 Security Interests

If you have a security interest over personal property that was created after 30 January 2012, it already falls under the PPSA. You need to ensure that your security interest is registered on the PPSR to protect its priority.

**If you require any advice in relation to protection of your Security Interests or the PPSA generally, please do not hesitate to contact us.**

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