LexAlia
Property + Commercial Law

PERSONAL PROPERTY SECURITY (PPS) INTERESTS

WHAT MOST PEOPLE MISS

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What Most Business Owners Miss About PPSR Registration

Five Critical Gaps in Business Asset Protection

Questions while reviewing?
Email hello@lexalia.au or book a 15-min chat

You've done the right thing with your contracts. Your terms include retention of title clauses. Your invoices reference your security interest. You're confident that if a customer doesn't pay, you're protected.

Then the customer goes into liquidation, and you discover your contract terms aren't enforceable without PPSR registration. This resource highlights five critical gaps many business owners miss when it comes to protecting their interests.

Five Overlooked Considerations

OVERLOOKED CONSIDERATION 1

Having Retention of Title Clauses But Never Registering Them

This is the most common gap. Business owners have contracts with clear retention of title provisions stating ownership remains with the supplier until full payment. The contract terms are sound, invoices reference the security interest, everything looks right on paper.

But those terms create a security interest under the Personal Property Securities Act 2009, which must be registered on the PPSR to be enforceable against third parties—particularly in insolvency. Without registration, your retention of title clause becomes practically worthless when your customer fails.

Many businesses had these clauses for years before the PPSR existed. Since the PPSA came into effect in 2012, retention of title creates a security interest requiring registration. Many updated their contracts but never established a registration process.

> The consequence: *When your customer becomes insolvent, if your interest isn't registered, you'll be treated as an unsecured creditor. Registered security interests—like banks with all-assets security—rank ahead of you. Unsecured creditors typically receive little or nothing from an insolvent estate.*

> The reality: *Contract terms alone don't protect you. Registration makes your retention of title enforceable. For businesses supplying goods on credit, establishing a registration process after each delivery protects each transaction.*

OVERLOOKED CONSIDERATION 2

Registering Too Late and Missing the PMSI Super Priority Window

Even business owners who understand registration often miss the critical timing for Purchase Money Security Interests. A PMSI can give you super priority—ranking ahead of earlier registered security interests—but only if you register within strict timeframes.

For inventory, register within 15 business days after delivery for super priority. For equipment, register before delivery or within 15 business days after, and provide written notice to any prior security interest holders.

Many businesses register eventually—when chasing payment or hearing about financial difficulty. But the PMSI window has closed. You'll have a registered interest, but you've lost super priority that would have ranked you ahead of the bank's general security.

> The consequence: *Without PMSI super priority, you only get priority from your registration date. If the customer's bank registered 18 months ago and you register today, the bank ranks ahead—even for goods supplied this week. PMSI super priority would let you leapfrog that earlier security, but only within the 15 business day window.*

> The reality: *PPSR registration needs to be part of your delivery process, not something you consider when payment problems arise. For businesses supplying goods regularly, establish a system where registration happens within required timeframes.*

OVERLOOKED CONSIDERATION 3

Not Checking the PPSR Before Purchasing Business Assets

Business owners buying assets—particularly vehicles, equipment, or plant—often overlook conducting PPSR searches before purchase. The assumption is that if you're paying for something, you'll own it free and clear.

But if the asset has a registered security interest, the secured party may have the right to repossess it even after you've paid. This is common with vehicles and equipment that were previously financed or leased.

A PPSR search costs a few dollars and takes minutes. It reveals whether security interests are registered against the specific asset or the business selling it. This simple due diligence prevents expensive surprises.

> The consequence: *Buying an asset with a registered security interest means the secured party's rights travel with the asset. Even purchasing in good faith without knowledge, the secured party can enforce their interest. You might lose the asset, pay the secured debt to keep it, or face legal disputes.*

> The reality: *PPSR searches should be standard due diligence for any business asset purchase. Make it non-negotiable before paying for vehicles, equipment, or machinery—particularly when buying second-hand or from businesses in financial difficulty.*

OVERLOOKED CONSIDERATION 4

Assuming Verbal Agreements or Invoice Terms Provide Security

Some business relationships develop without formal written contracts. You've dealt with the customer for years. There's an understanding about payment terms. Your invoices include standard terms. You've shaken hands on retention of title.

But the PPSA requires a written security agreement to create an enforceable security interest. Verbal understandings don't create registrable interests. Terms on invoices might work if properly incorporated, but many aren't legally effective because they weren't brought to the customer's attention before goods were supplied.

Even with written terms, those terms need proper structure to create the right security interest. Generic retention of title clauses might not create a PMSI, missing super priority. The contract wording matters for both enforceability and priority.

> The consequence: *Without a written security agreement, you have no registrable security interest. You can't register on the PPSR and have no priority claim. You're an unsecured creditor—which means you're unlikely to recover anything significant if the customer becomes insolvent.*

> The reality: *Formal written contracts that properly create security interests are essential. If your arrangements are informal or your written terms outdated, updating documentation should be the first step before considering registration.*

OVERLOOKED CONSIDERATION 5

Missing the Connection Between Contract Terms and PPSR Registration Requirements

Many business owners treat contract drafting and PPSR registration as separate activities. They might have a lawyer review their terms periodically and understand that registration exists, but don't connect the two.

The connection matters because not all retention of title clauses create the same security interest under the PPSA. A well-drafted PMSI clause can qualify for super priority if registered within timeframes. A generic clause might only create ordinary security without PMSI benefits.

Different commercial arrangements create different registration requirements. A lease over 90 days might be a PPS lease requiring registration. Consignment creates security interests. Equipment hire with purchase options creates different obligations than a sale on terms.

> The consequence: *Mismatched contract terms and registration details can render your registration defective. If you register a security interest that doesn't match what your contract creates, or describe collateral incorrectly, your registration may not protect you. Liquidators challenge defective registrations.*

> The reality: *PPSR registration needs to work with your contract terms. Your contracts should be drafted with registration in mind, and registrations should accurately reflect what contracts create. Getting both elements right together provides the protection you're seeking.*

IMPORTANT NOTE

This resource highlights common gaps in PPSR protection strategies that many businesses overlook. Every business situation is unique, and your specific circumstances may require different approaches or additional considerations. Professional guidance tailored to your contracts, trading relationships, and business model helps ensure your security interests are properly documented and registered.

READY TO PROTECT YOUR BUSINESS INTERESTS?

Next Steps: From Understanding Gaps to Implementing Protection

Recognizing these overlooked areas is the first step toward proper business asset protection. The second step is reviewing your current contracts and trading arrangements to determine whether you have registrable security interests that need protection.

I work with business owners Australia-wide on business law matters, including PPSR registration strategy. Whether you need contracts reviewed to ensure they create enforceable security interests, help establishing a registration process for your business, or guidance on registering existing security interests, we can work through what makes sense for your specific situation.

If you supply goods on payment terms, lease out equipment, or want to ensure you're properly protected when customers owe you money, let's discuss your circumstances. I'll help you understand whether these common gaps apply to your business and how to address them effectively.

Ready to discuss your business asset protection with expert guidance? Contact Jackie Atchison at LexAlia Property & Commercial Law to explore how your specific situation can be handled effectively.