

## PPSR TRANSITIONAL REGISTRATION PERIOD ENDS 31 JANUARY 2014

The Personal Property Securities Act created a national security interest register that permits people to register a variety of mortgage-type security interests over motor vehicles, business goodwill, business stock, equipment, livestock, crops and other property of a personal nature. The national Personal Property Security register commenced on 30 January 2012.

Prior to the commencement of the national Personal Property Security register there were a number of other bodies that registered personal property security interests eg in NSW the REVS system registered interests over motor vehicles and ASIC registered interests in relation to companies and the NSW Lands Department registered interests in livestock and crops.

However these pre-existing NSW registration systems were abolished when the national registration system was created and the mortgages and interests recorded on the old NSW registers were transferred to the new national Personal Property Security register.

When the new national Personal Property Security register was created, the Act also permitted people to register new types of interests that had never previously been able to be registered anywhere.

For example, when a wholesaler sold stock to a retailer previously, then the wholesaler would often include a retention of title clause in their distribution agreement, to the effect that if the retailer did not pay their account on time, then the wholesaler was permitted to enter the retailer's business premises and retrieve the stock that had not been paid for. In the past, there was no government register that would let the wholesaler record the fact that the wholesaler had the right to retain title in the goods if the goods were not paid for by the retailer.

However, the new national Personal Property Security register does permit a wholesaler to register an interest against the retailer to crystallise and formalise the wholesaler's interest in the goods that have been sold to the retailer but not yet paid for. This type of registration is called a Purchase Money Security Interest, as it permits the wholesaler to record that they will have rights to take goods if they do not receive their Purchase Money from the retailer.

A Purchase Money Security Interest can only be registered if there is a retention of title clause in the relevant contract and if the contract permits security interests to be registered. However Purchase Money Security Interest registrations are not just limited to the wholesaler/retailer relationship, but can also apply to any transaction whereby someone receives goods or equipment on account or on installment payment terms.

Where more than one person has an interest in personal property (eg competing registered security interests OR a competing claim by a liquidator or bankruptcy trustee) then the priority of the interests will often be determined by the date that the security interest was registered on the national Personal Property Security register. It is therefore important to register any interests as soon as possible.

As a concession to business owners, because there was no previous register for Purchase Money Security Interests, the government decided that businesses should be given the opportunity to register the pre-existing interests up until 31 January 2014 as a transitional interest. (Essentially, this

may have been because the government did not want to rush businesses to register the pre-existing interests, which may have resulted in the new register being inundated with registrations all at once). Accordingly the government has provided a 2 year transitional registration period, which ends on 31 January 2014.

Therefore, anyone who, during the 2 year transitional period, registers a pre-existing security interest (of a type that could not have been registered anywhere before the commencement of the new national system), will be deemed to have actually registered their interest on 30 January 2012. This may provide benefits when determining the priority of competing claims over the goods or equipment. But if such interest is not registered prior to 31 January 2014, then such interest could be lost to another creditor whose interest is created later in time.

**Accordingly if you believe you may have transitional security interests, we strongly recommend that they be registered prior to 31 January 2014 in order to ensure that the earliest date of priority is obtained.**