

WHY ART CENTRES NEED TO REGISTER ON THE PERSONAL PROPERTY SECURITIES REGISTER – THE PPSA REGISTRATION SERVICE

Most Indigenous community art centres (**Art Centres**) sell artwork in one or both of the following ways:

1. directly by sales made to buyers (including galleries); and
2. by placing artwork on consignment with galleries in Australia and overseas.

Both arrangements are now impacted by the *Personal Personal Property Securities Act 2009* (**PPSA**) which commenced on 30 January 2012.

For information on how the PPSA works see the articles published in Art + LAW on [the Arts Law website](#) and the Australian government's fact sheet [Artists: What You Should Know About the PPS Register](#).

In respect of consignments, that factsheet states:

To protect your security interest [in artworks consigned for sale] in the event that your gallery or dealer becomes insolvent, you should do the following:

- 1) *Ensure that you have a written consignment contract with your gallery or dealer that broadly describes the goods that you have consigned, for example, 'art works'; and*
- 2) *Register your security interest on the PPS Register at:*

<https://transact.ppsr.gov.au/ppsr/Home> .

Registration is not compulsory, but it protects your security interest against other creditors.

It is important for Art Centres to consider how they are affected by this legislation and what they can do to protect their interests.

Types of sale arrangements

A. *Direct sale:* Where Art Centres arrange direct sales of artwork to galleries and the galleries pay the Art Centre in full on delivery of the artwork, there is no problem under the PPSA.

B. *Sale on deferred or instalment payment terms:* This is where an Art Centre makes the sale on deferred payment terms, where payment is not due until after a certain period of time following delivery or where payment by instalments is agreed. Although the gallery has physical possession of the artwork, the Art Centre (or its artists) retains ownership rights by stating in the sale agreement that the Art Centre retains title or ownership of the artwork until payment is received in full (**RoT Sale**).

C. *Consignment arrangement*: This is the more common sales arrangement used by Art Centres, where the Art Centre will give the gallery possession of artwork for a specified period of time for the purpose of on selling those works. Usually, if the artwork is not sold within that specified period, the terms of the consignment agreement require the unsold artworks to be returned to the Art Centre. If the artwork is sold, the Art Centre is paid the proceeds of sale less the gallery's commission on sale. With such arrangements, although the gallery has physical possession of the artwork while it arranges any sale, the Art Centre (or its artists) remains the owner of the artwork until sold (**Consignment**).

Before 30 January 2012, in the situation where the gallery had physical possession of the artwork but the Art Centre (or its artists) still owned those works (arrangements B and C above), the Art Centre could rely on the traditional notion of ownership to protect its (or its artists') rights to the artwork on the bankruptcy or insolvency of a gallery.

As a result of the introduction of the PPSA, if an Art Centre enters into a RoT Sale or Consignment with a gallery and artwork is delivered to that gallery, the Art Centre's (or the artists') ownership rights are now treated as a "security interest".

To protect these rights, Art Centres now need to satisfy certain requirements under the PPSA or there is a risk of losing those artworks in the event of the bankruptcy or insolvency of a gallery.

How does the PPSA affect these arrangements?

Generally speaking, the risk to the Art Centres under a RoT Sale or Consignment arises when the art gallery goes insolvent or bankrupt while still holding unsold artworks or artworks for which it has not paid in full.

The question then arises as to whether the artwork belongs to the Art Centre and should be returned to the Art Centre, or the artwork is treated as an asset of the gallery and is therefore available to pay out creditors of the gallery, such as banks or other institutions that have lent money to the gallery in return for security over all of the gallery's assets, including the artwork.

With the commencement of the PPSA, having legal ownership of artwork under these arrangements is, in most cases, no longer sufficient to protect the artwork from the grasp of the gallery's other creditors. Instead, if the Art Centre fails to take steps to "perfect" its security interests in accordance with the PPSA, it faces the risk of ranking behind other creditors or being an unsecured creditor of the gallery.

This may result in an Art Centre losing the artwork to another creditor, even if the Art Centre has retained ownership.

However, if the RoT Sale or the Consignment is validly "perfected", the Art Centre would have a stronger case to require the trustee in bankruptcy or the liquidator to return the artwork (or proceeds from the sale of the artwork) to the Art Centre rather than selling it or using the proceeds to satisfy the debts owed by the gallery to other creditors.

What can an Art Centre do?

Art Centres need to actively consider if their arrangements with galleries are impacted by the PPSA and if so, what they need to do to "perfect" their security interests.

The method of perfection that would generally apply to an Art Centre is registration on the Personal Property Securities Register (**PPSR**). Registration is not a simple process and to assist Art Centres, Arts Law together with our pro bono partner, Gadens Lawyers, have established the PPSA Registration Service.

The PPSA Registration Service provides Indigenous Art Centres with a low cost service to assist with PPSR registrations so that Art Centres can take steps to better protect themselves against the risks associated with the insolvency or bankruptcy of art galleries.

If you wish to access this service, it is important that you read this Fact Sheet carefully.

A general overview of the information which an Art Centre will need to be aware of when seeking this pro bono service is set out below. Art Centre and Artists may wish to obtain specific legal advice on how they can protect their interests under the PPSA.

1. Who can access the PPSA Registration Service?

The PPSA Registration Service is available only to Indigenous Art Centres.

Generally speaking, if the Art Centre:

- (a) consigns the artwork **on behalf of** a member artist the artist remains the owner of the artwork until sale, but the security interest can still be protected by registration in the name of the Art Centre as consignor; or
- (b) sells or consigns the artwork on deferred or instalment payment terms under a RoT Sale or Consignment **as agent of** the member artist, the artist remains the owner of the artwork pending payment in full but the security interest can be protected by registration in the name of the Art Centre as seller or consignor.

If you are unclear about the nature of the specific arrangement between the Art Centre and its artists, contact Artists in the Black for further advice.

2. Security interest under the PPSA - Is the artwork being provided under a RoT Sale or Consignment by an Art Centre?

For security interests arising under the PPSA to be adequately protected by registration, the ROT Sale or Consignment must be evidenced by a **written agreement**, such as a formal agreement or invoice that adequately describes the artwork.

If you proceed with a registration request under this PPSA Registration Service, we and our pro bono partner will assume that the Art Centre's arrangement with the gallery is a RoT Sale arrangement or Consignment which can be evidenced by an appropriate written agreement and which creates a valid security interest under the PPSA.

We and our pro bono partner will not review or investigate the arrangements or documents or the details provided to us and will rely on the information provided in the registration request form completed by you.

You should seek legal advice if you wish to determine whether your agreement or arrangement is sufficient to protect you under the PPSA and confirm if your specific arrangements create security interests under the PPSA. You can get such advice from the [Arts Law document review service](#).

3. The registration process

You can access the registration form for the Artists in the Black PPSA Registration Service [here](#).

The registration form has been designed to obtain the information required in order for registrations to be completed on the PPSR in favour of the Art Centre. It is important that this form is fully completed with the correct information. If you do not provide the correct information, your security interest may not be effective.

The information required includes details of the gallery to which artwork has been sent and details of the agreement(s) entered into with that gallery, including the details of the parties to the agreement (usually the Art Centre and the gallery), as well as the date of the agreement (the date on the consignment or sale note or written agreement).

Two separate registrations will be undertaken on the PPSR for each agreement noted in a registration form to ensure that all artwork provided under the agreements are adequately captured by the registrations. For information on how the registrations are completed, please see section 8 below.

If a **trust or partnership** is noted as a contracting party for a gallery, the form may not be appropriate.

Please contact Artists in the Black if you require guidance with completing the registration request form, or if you are seeking to complete registrations where a trust or partnership is noted as a contracting party for a gallery.

4. Setting up a SPG

For the first registration request, the Art Centre will need to be set up as a Secured Party Group (**SPG**).

Without a SPG, it will not be possible to effect the registrations on the PPSR in favour of the Art Centre. Gadens Lawyers, who are our pro bono partner in the PPSA Registration Service, will assist to set up the SPG for the Art Centre on the basis of the information provided to it by the Art Centre.

Once a SPG has been created under the PPSA Registration Service, the Art Centre will receive its own unique SPG number which can be used for all future registration requests.

To set up a SPG, the Art Centre will need to nominate an address for service for the SPG. This is an email address where all correspondence in relation to the registered security interest will go. The first correspondence should contain an Access Code. Keep the Access Code safe and confidential! The Access Code enables changes to the SPG details and can be used for the discharge of registrations on the PPSR.

If you require guidance with completing a registration request, please contact [Artists in the Black](#).

5. What happens after a registration request is submitted?

Our pro bono partner Gadens Lawyers will assist to complete the registrations on the PPSR.

Once a security interest is registered on behalf of the Art Centre, the PPSR will issue a Verification Statement and a Token. These will be sent to the address for service nominated by the Art Centre on the registration form for the Art Centre's SPG.

6. What do I do with the Verification Statement?

The Verification Statement confirms that a registration has been completed against a particular gallery. The Verification Statement will set out the details of the registration and will note a registration number assigned to that security interest.

Generally speaking, there is an obligation on the Art Centre to notify the gallery against which the security interest was registered that a security interest has been registered on the PPSR, unless the agreement between them contracts out this requirement.

The Art Centre can meet this notification obligation by providing a copy of the Verification Statement to the owners of the gallery (called the ‘grantors’). If there are multiple grantors (such as where a gallery is operated by a couple in partnership), we would suggest any information specific to a grantor should be removed or deleted before the Verification Statement is provided to other grantors.

Notification is not required if there is a term in the Art Centre’s RoT Sale or Consignment agreement stating that the Art Centre is not required to provide such notification. Artists in the Black recommends seeking legal advice in relation to the wording of such a clause.

7. What do I do with the Token?

Keep it safe and confidential! The Token is a code which is used to amend or discharge the registration. This should not be shown to anyone because once a registration is discharged, it no longer exists on the PPSR and the discharge cannot be reversed.

8. How will the security interests be registered?

For each gallery the Art Centre deals with (where the Art Centre is acting either on its own behalf or on behalf of the artist), two registrations will be undertaken to cover the artworks supplied to that gallery under a single RoT Sale agreement or a Consignment agreement. One registration will be for a Purchase Money Security Interest (**PMSI**) and the other for a standard security interest.

The PPSA Registration Service does not investigate the underlying documents or the nature of the arrangements that have been entered into by Art Centres with galleries. Therefore, to mitigate the risk that a PMSI registration may be not be effective, a second registration is undertaken as a standard security interest registration.

9. What happens if I have multiple agreements or no formal agreement with a gallery?

If artworks are provided to gallery under more than one agreement, separate registrations should be completed for **each** agreement to be sufficient to cover all of the artwork provided by the Art Centre to that particular gallery under those agreements.

If there is no formal umbrella agreement with a gallery which governs the arrangements with the relevant gallery, registrations should be completed for **each** invoice or document that covers the delivery of artwork by the Art Centre to that particular gallery.

To avoid the need to do multiple registrations Art Centres should enter into an umbrella RoT Sale agreement or Consignment agreement with the relevant gallery which governs the delivery and sale of artworks from time to time. Arts Law recommends that Art Centres put in place an umbrella agreement with each gallery with whom they regularly deal so that less registrations are required on the PPSR.

10. How much must I pay for the service?

For each agreement in respect of which the Art Centre wishes to complete two registrations against a gallery, there is a one-off cost of \$28.00 (inclusive of GST) for registration for 7 years.

This consists solely of fees charged by third parties (disbursements). Any increase in the fees by these third parties will lead to an adjustment in the costs charged under the PPSA Registration Service.

Neither Arts Law nor Gadens are charging any fee for the legal work involved in registering security interests for Art Centres on the PPSR.

Registration requests will not be processed until the fee of \$28.00 has been paid.

Please note that the registrations will expire after 7 years, unless you take steps to renew them. The PPSA Registration Service will not keep a record of the expiry date for registrations, so it is important that you maintain an internal record so that you can determine if a registration needs to be renewed.

11. When should Art Centres register a security interest?

You should register your security interest as soon as possible, and ideally as soon as you enter into a RoT Sale or Consignment arrangement with a gallery. Don't wait until you become aware that the gallery is in financial trouble.

12. What do I do if a gallery later asks me to discharge or release my security interest registered on the PPSR?

Where a gallery against which an Art Centre registered a security interest on the PPSR later requests that the Art Centre to release or discharge that registered interest, the Art Centre should contact Arts Law or a law firm for legal advice as to the release or discharge. Do not release or discharge your registered security interest without first seeking legal advice because once a registration is discharged from the PPSR, it is gone for good.

13. Does the PPSA Registration Service consider the priority of a security interest?

We and our pro bono partner will not investigate or conduct searches to consider the priority of your security interests or to confirm if there are competing security interests registered by other secured parties on the PPSR in respect of the artworks.

If you require advice on the priority of any security interest that is registered on your behalf under the PPSA Registration Service, please contact Artists in the Black.

Looking for more information on the PPSA Registration Service?

Please contact the Arts Law for more information on this pro bono service.

Please note this fact sheet is only intended to provide a general overview of how the PPSA may impact Art Centres and what Art Centres can do to ensure they are better protected. It is not intended to be comprehensive or to constitute legal advice as each arrangement is unique. You may wish to seek legal advice to ensure your interests are adequately protected.

Need more help?

Contact Arts Law if you have questions about any of the topics discussed above.

Telephone: (02) 9356 2566 or toll-free outside Sydney 1800 221 457

Also visit the Artists in the Black website (www.aitb.com.au) for more articles and information sheets.

Disclaimer

The information in this information sheet is general. It does not constitute, and should be not relied on as, legal advice. The Arts Law Centre of Australia (**Arts Law**) recommends seeking advice from a qualified lawyer on the legal issues affecting you before acting on any legal matter.

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National Arts and Crafts Industry Support



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