Fact sheet – First Nations startups

#9 Debt financing & security

First Nations startups may need to secure an external source of funding to establish business operations and subsequently grow. This fact sheet considers debt financing and security. For equity capital raising see **fact sheet #8** and for grant funding see **fact sheet #10**.

Debt financing

Debt Financing is a form of financing where the borrower receives a loan from the lender. The lender will charge interest on the amount of the loan outstanding until the loan is fully repaid. The key benefit of debt financing is that the borrower retains all ownership control in their business. However, borrowers must have sufficient cash flow to make repayments.

Security over land

To ensure (or improve the likelihood of) repayment of the amount owed by the borrower to a lender, it is common for lenders to require that the borrower (or another, for example, a guarantor) provides security over their assets for the benefit of the lender. If the borrower cannot repay the amounts due, the lender can enforce the security which means they can sel the assets that the security is over and use the proceeds to recover the amount owing under the loan.

The most common type of security interest over land is a real property mortgage, which is typically registered on the land title in accordance with the *Land Title Act 1994* (Qld). When a lender registers a mortgage over your land, you remain the legal owner; however, the property becomes encumbered by the mortgage and is subject to its terms and conditions. These terms often include obligations to maintain the land and any improvements, and may impose restrictions on certain activities – such as carrying out works, demolishing structures, selling, leasing, or subdividing the property. Such provisions are designed to protect the lender's interest by ensuring the property retains its value while the mortgage and associated debt are in place. An equitable mortgage may also be created over land. This typically occurs when a mortgage is properly executed but not registered on the land title. Although it still constitutes a form of security, an equitable mortgage provides lenders with less protection than a registered (legal) mortgage, as it does not attract the full range of legal rights and statutory protections available under the *Land Title Act 1994* (Qld), including:

1. "indefeasibility" of title (meaning the lender obtains a legal interest in the land that is protected against most competing interests);
2. a statutory power of sale; and
3. priority over an unregistered mortgage.

Security over personal property

The *Personal Property Securities Act 2009* (Cth) (**PPSA**) regulates security interests in "personal property" (being all property that is not real property). The PPSA established the Personal Property Securities Register (**PPSR**) which is an official government register that shows security interests registered in respect of personal property. The PPSR can be used to conduct searches to find out if certain personal property has a security interest registered against it.

A common form of security over personal property is a general security deed (or agreement). When a First Nations startup enters into such a deed with a lender, the lender obtains a security interest over all present and future property of the startup – commonly referred to as an ALLPAAP (All Present and After-Acquired Property). This may be subject to specific exclusions outlined in the deed however, in most cases, the security extends to all assets owned by the startup, which can include motor vehicles, office furniture, intellectual property, accounts receivable, equipment, and inventory. It is important to note that while these securities do encumber personal property, they are often broadly worded to also secure any real property of the grantor (being the party who grants the security).

An ALLPAAP grants the lender an interest in both the property of the startup at the time the registration is made on the PPSR and the property acquired at any time after the security is granted is made but before it is released.

Alternatively – or in some cases, in addition – a First Nations startup may be asked to grant a security interest over specific personal property under a specific security deed. Unlike an ALLPAAP, which covers all present and future property, this type of security is limited to clearly identified assets. It is commonly used for property that can be individually identified by a serial number (such as a car or boat), shares (either in the startup itself or held by the startup), or other financial instruments.

Guarantees and indemnity

A guarantee is effectively a contractual promise by a party (the guarantor) in favour of the lender (the beneficiary) to discharge the obligations of the original contracting party (the primary party or borrower) in case the original contracting party fails to fulfil those obligations. In this context, the guarantor will guarantee to repay the amounts owing under the loan agreement if the borrower cannot pay. See fact sheet #5 Contracts - external goods and services for more information on guarantees, including warnings regarding directors' guarantees.

A lender may also require the borrower to provide an indemnity. This creates a primary obligation – separate from the borrower's duty to repay the loan – to compensate the lender for any loss or damage it suffers, typically through a payment of money. First Nations startups should exercise caution when agreeing to indemnities, as they can expose the startup / borrower to broader liability, including losses that may not otherwise be recoverable under standard legal principles.

Raisings under the Corporations Act 2001 (Cth)

The *Corporations Act 2001* (Cth) sets out the laws and regulations dealing with business entities in Australia, including how businesses may raise funds from the public. If a company is seeking to raise significant funds from the public, they should seek legal advice to ensure they are complying with their legal obligations.

Please see our other Fact Sheets for First Nations startups here.

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Disclaimer

The content of this fact sheet is current at September 2026 and is intended to provide a general guide to the subject matter only. The fact sheet does not constitute legal advice. Obtaining specialist advice about your specific circumstances is recommended.