



## Personal Property Securities

### PPS is Coming!!

***What is PPS? PPS Stands for Personal Property Securities. Arguably, it is the most fundamental change to company law since the introduction of the voluntary administration regime in 1993. It is set to commence in October 2011.***

### Major Change to Registering Security Interests – Personal Property Security Interests – Personal Property Securities Reform

For some time now the Federal Government has been seeking submissions from the business community regarding reforms to the laws concerning financing of personal property, particularly those laws concerning the registration of a financier's interest in the personal property.

Legislation has been proclaimed known as the "Personal Properties Securities Act, 2009" (PPSA). Whilst initially it was anticipated that the PPSA would be effective from May 2011, the commencement date has been pushed out until October 2011. Although commencing in October 2011, a two year transitional period will allow new security interests, not registered, to be recognized.

The legislation refers to "Personal Properties", however, the definition of personal property is quite broad. Essentially, it deals with financing of property (both tangible and intangible).

The need for reform is self-evident. The PPSA will create a register ("PPSR") that will replace twenty State and Territory based registers and three Commonwealth registers dealing with property. For example, the SIC register of company charges will be migrated into the PPSR. Other examples include the migration of the REVS NSW (and intestate equivalents) into the PPSR.

Interestingly, similar reform has already occurred in the US, Canada and New Zealand.

One expected advantage of the legislation is to improve the ability of individuals and business, particularly small to medium business to use more of their property in raising capital.

The Insolvency Trustee Service of Australia will administer the PPSR and a Registrar of the PPS has recently been appointed.

There are traps for the unwary arising from the legislation. For example, property that may be owned by one party may vest in another party in certain circumstances.



To illustrate, if a company owns an asset, and it is regarded as having a security interest in that asset and the company has not “perfected” that security interest, the company may lose the asset on the insolvency of the entity in possession of that asset. The owner of the asset may then just become an unsecured creditor.

The PPSR will be computer-based, updated in real time and accessed publicly.

The PPSA adopts terminology and concepts which the business community will need to familiarise come to terms with, including the following:-

1. **Personal Property:** Any form of property other than land or buildings and fixtures that form part of land. Examples of personal property include goods, inventory, motor vehicles, agricultural property, crops, livestock and intangible property (eg. Intellectual property and contract rights). It incorporates both commercial and consumer property.
2. **Security Interest:** An interest in personal property created through a transaction that secures the payment or performance of an obligation. Includes a right in the personal property (i.e. the right to possess, use, sell or otherwise deal with the property). Examples of a security interest include fixed and floating charges, chattel mortgages, conditional sale agreements (including retention of title) and hire-purchase agreements, amongst others.
3. **Secured Party:** An individual or organisation that has a security interest in a grantor’s collateral.
4. **Grantor:** An individual or organisation who owns or has an interest in the personal property to which a security interest is attached. Examples include a person who receives goods under a commercial consignment.
5. **Collateral:** Personal property to which a security interest is attached.

## The Personal Property Securities Register

The PPSR will allow lenders and businesses to register their security interests. Secured parties, potential buyers and other interested parties can search the PPSR to find out if a security interest is registered over the personal property.

## What has to be Registered?

The actual security agreement creating the security interest is not registered. Instead a financing statement (notice of the security agreement) is registered. The financing statement will contain the following data:

- Secured Party details;
- Collateral details, including class and description of collateral;
- Grantor details, except where collateral is consumer property and able to be registered by serial number (see below);
- Registration details, including the end time for registration, whether it’s a transitional security interest and other relevant information.

## How do I Register?

Online users will be able to log in as a “casual user” to register a security interest but Secured Parties will also be able to submit registration in hard copy.



The Grantor must be informed by the Secured Party of registration against the Grantor's personal property as soon as reasonably practicable. Grantors will be able to request changes to the PPSR.

## Searching the Register

The PPS will be able to be searched for genuine purposes. Section 172(2) of the PPSA contains a list of persons who may search and for what purpose. Those wishing to undertake searches on an individual will be required to make a declaration that they are undertaking the search for an authorised purpose.

There are penalties for unauthorised searches or improper use of the PPSR.

Users will be able to search by serial number for certain types of property (examples include consumer motor vehicles, watercraft) or by Grantor details.

Serial number registration is compulsory for certain collateral, acceptable serial numbers include VIN, Chassis or Manufacturer number for motor vehicles and Hull ID or Official number for watercraft.

Non-mandatory serial number registration applies to designs, patents, trademarks and can be searched by the number issued by Intellectual Property Australia.

The PPSA will bring wholesale changes to the way many industries operate. It will be imperative to ensure you not only register your own interest (if they wish to be able to rely on their security interest) but are also able to understand and address PPSA issues arising with customers and suppliers.

***If you need advice on any of the matters addressed above, please feel free to contact John Bateman, Michael Battersby or Scott Johnson on (02) 4731 5899 or email us at [commercial@batemanbattersby.com.au](mailto:commercial@batemanbattersby.com.au) if you require further assistance. Further information is also available in the Business Law section of our website: [www.batemanbattersby.com.au](http://www.batemanbattersby.com.au).***