

## Are you ready for the PPSA?

The Personal Property Securities Act (PPSA) passed in December 2009, was expected to commence on 31 October 2011. Recent news suggests the start date is now expected to be delayed to no later than 1 February 2012.

The PPSA is designed to replace over 40 security registers (eg Vehicle Securities Register - SA & Vic, Registers of Encumbered Vehicles – NSW, ACT, QLD & WA, ASIC Register of Company Charges, Fisheries Register - National, Bills of Sale Register - SA) that regulate personal property securities with one register. It will also cover the many rules and regulations relating to security interests.

Whilst the laws governing land, registration of mortgages and water rights remain the same it will impact both tangible and intangible personal property. Where you or your business supply goods on terms other than cash and/or are involved in the lease of equipment, this legislation will impact your business and the manner in which you should handle such transactions.

### What is a security interest?

An interest in personal property (not including land) that has been created by a transaction that secures it's payment and also provides the right to possess, use, sell or otherwise deal with that property.

Examples of a security interest include

- Fixed or Floating Charge
- Hire Purchase Agreement
- Chattel Mortgage
- Lease of Goods
- Sale subject to Retention of Title
- Consignment

### What is covered by the term personal property?

Personal property means property other than

- land; or
- a right, entitlement or authority granted by or under law of Commonwealth, State or Territory and/or declared not to be personal property for the purposes of PPSA

Whilst it covers tangible property such as motor vehicle, plant and equipment, inventory, livestock and crops it also covers intangible property such as intellectual property, contractual rights and shares.

### How does this affect me?

Under PPSA, the concept of "title" has been replaced by that of "security interest". To ensure your interests are protected, you need to register that interest on the Personal Property Securities Register.

Where you don't register an interest in the property, it may result in you or your business having no claim over the asset should the party holding the personal property go into administration, receivership and/or liquidation.

The register will be accessible online 24/7 should you wish to search if there are any security interests held over an item of personal property.

Some existing registered security interests will be migrated to the new PPS Register. For those that are not, there will be a 2 year grace period during which you can register or re-register.

All security interests granted after the commencement date will need to be registered.

With various parties able to register their interest, some interests will hold priority over others. This aspect looks at "perfected" security interest and the point in time they are attached.

### **Retention of Title (ROT) Arrangements**

A well drafted ROT clause is no longer sufficient on its own to protect your claim upon property until full payment is received.

Once the terms have been agreed to in writing, you will need to register the ROT arrangement for each customer before the supply of the goods to which the arrangement relates.

Failing to register your ROT security interest may enable other creditors to rank ahead of you in priority and enable them to seize your goods.

### **What do you need to do?**

- Review your contractual terms with customers and consider redrafting them in light of the new PPSA.
- Review your contractual terms with suppliers and identify where a security interest may be registered against you and what effect this may have on your finance arrangements.
- Ensure you preserve priority of your security interest over the interest of other creditors.
- Consider developing procedures to manage existing interests as well as future interests.
- Train your staff on PPS registration procedures.
- Contact your trusted adviser to determine what you need to do to protect your interests.