

2 November 2009

Commercial Law e-alert

Get ready – the PPS scheme is coming!

On 21 October 2009, the Government introduced a further bill into Parliament, which will amend the Personal Property Securities Bill 2009 (“**PPS Bill**”) once enacted. The PPS Bill is expected to be passed by Parliament very shortly.

At a national series of seminars convened by LexisNexis and presented jointly by Hunt & Hunt and the Federal Attorney General's Department (“**Department**”), the Department stated that it expected the PPS scheme to be in place by May 2011.

Background

Over the past 2 years, we have updated you on the progress of the PPS reform. By way of background, the PPS scheme will have significant implications for a variety of sectors, including:

- **Financiers** – who lend money against collateral which is personal property and who will need new lending practices and securities;
- **Businesses** – who borrow money against the value of personal property and who will need to accommodate the new requirements of financiers;
- **Business advisers** – who advise businesses in relation to the structure of their finances;
- **Manufacturers, distributors and suppliers** – who supply goods on the basis that they retain title or possession of goods until payment is made;
- **Freight forwarders and carriers** – who facilitate freight for businesses and who are offered security over the goods being carried to cover their costs and fees;
- **Consumers** – who are contemplating purchasing items such as a car, boat or other personal property.

In our last e-alert dated 24 August 2009, we informed you that the Senate Legal & Constitutional Affairs Committee (“**the Committee**”) tabled its report (“**Report**”) in the Senate endorsing the PPS Bill, subject to a further brief consultation period ending 30 September 2009. The Report also recommended that the Government introduce a consequential amendments bill dealing with required changes to the PPS Bill that are determined during the further consultation period.

The Amendment Bill

The Personal Property Securities (Consequential Amendments) Bill 2009 (“**Amendment Bill**”) largely addresses the recommendations made by the Committee in the Report.

In its second reading speech and the in the Explanatory Memorandum, the Government has stated that the Amendment Bill will:

- Clarify the operation of legislation that will operate concurrently with the PPS Bill once enacted.
- Make minor amendments to the PPS Bill, including measures to harmonise language and concepts in the PPS Bill.
- Support a transition to a single national PPS register by amending provisions in Commonwealth legislation that provide for the registration of security interests on a separate Commonwealth register. For example, the *Shipping Registration Act 1981* will be amended so that creating and registering ship mortgages is within the PPS scheme and existing mortgages over ships will be migrated to the PPS register.
- Amend the *Designs Act 2003*, *Trade Marks Act 1995* and *Patents Act 1990* encouraging registration of security interests in intellectual property on the PPS register and resolving any conflict between the PPS register and the IP registers.
- Reinforce the privacy protections applied to the PPS register.
- Ensure that enforcement action taken under the Commonwealth's maritime and fisheries legislation will not be circumvented by a secured party attempting to enforce a security interest under the PPS Bill.
- Ensure that current rights and interests are preserved after the new PPS scheme commences operation. For example, the priority of certain liens created by operation of law.

Further changes

The Government has also indicated that some additional amendments to Commonwealth legislation will be needed before the PPS scheme commences. For example, Chapter 2K (Charges) of the *Corporations Act 2001* will need to be amended. Prior to the introduction of those amendments the Government will conduct a further consultation process, which will begin shortly.

PPS Workshops

In the last 2 weeks, Hunt & Hunt conducted a national series of seminars and workshops for lawyers in conjunction with the Department on the PPS scheme. These were convened by LexisNexis. We are also proposing to conduct free seminars and workshops for industry early next year in conjunction with the Department. Please let us know if you are interested in attending our sessions.

For further information please contact:

Andrew Hudson, Partner	+61 3 8602 9231	ahudson@hunthunt.com.au
Maria Townsend, Partner	+61 2 9391 3059	mtownsend@hunthunt.com.au
Brendan Sheehan, Lawyer	+61 3 8602 9215	bsheehan@hunthunt.com.au
Nelson Trieu, Lawyer	+61 2 9391 3033	ntrieu@hunthunt.com.au

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