

31 March 2011

PPS Law Update

The PPSA commencement is coming!

The *Personal Property Securities Act 2009 (Cth)* ("PPSA") is now expected to come into effect in **October 2011**. All financiers and businesses that supply goods to their customers or distributors, on the basis that they retain title until payment is made, are at risk if they do not appropriately prepare for the PPSA.

What is the PPSA and how will it affect you and your business?

The PPSA is a *Commonwealth Act* that became law at the end of 2009. Hunt & Hunt has been updating those affected in the business community on the progress of the reform since an Exposure Draft of the PPSA was released in 2008. The PPSA was scheduled to come into effect on 1 May 2011 but the Council of Australian Governments recently postponed its commencement until October 2011.

The PPSA replaces over 70 pieces of law in relation to "security interests" in "personal property". Personal property is not just consumer property; it is all forms of property other than land and certain statutory licences. Commercial equipment and stock are common examples of personal property.

Security interests include charges, conditional sale agreements (e.g. consignments and agreements containing retention of title clauses), leases of goods and hire purchase agreements. All of these arrangements will be now under a single Federal regime.

Businesses that do not have possession of their personal property (e.g. stock and equipment supplied or hired to customers) must:

- Have a security agreement in place that satisfies the requirements of the PPSA; and
- Register their security interest on the PPS Register.

Businesses that do not take these and other steps may not have the ability to seize or otherwise deal with their personal property upon a debtor's default.

What businesses will be affected by the PPSA?

The PPSA will affect a variety of industries, including:

- Banks and other financiers and businesses that use finance (e.g. loans to finance business vehicles and other equipment);
- Manufacturers, distributors and suppliers that supply goods;
- Accountants, insolvency practitioners and business advisers;
- Transport and logistics companies that provide transport or warehouse services and freight forwarders and carriers;
- Leasing companies that lease vehicles, equipment or other goods; and
- Factoring businesses.

What do businesses need to do now?

If your business is not already prepared, you will now need to act urgently. The PPSA will require some very significant changes to the way your business operates and it is important that you are ready and understand how the PPSA may affect your business.

To provide you with an example of the operation of the PPSA, if a manufacturer were to supply goods to a business under usual 30 day trading terms and that business were to later become insolvent, the manufacturer's security interest would become void. This applies even though the manufacturer may have title (i.e. ownership) in the goods.

The manufacturer would still be able claim as an unsecured creditor but would rank behind any other financier that had a registered security interest (e.g. a bank with a PPSA equivalent to a registered fixed and floating charge).

The manufacturer can avoid this situation if its trading terms and other documentation comply with the requirements of the PPSA and if it registers its security interest within the PPSA-prescribed time frame. However, if the manufacturer fails to register its security interest within the necessary time frame, it will rank behind other secured parties that have registered their security interest.

Some other brief examples of necessary action are as follows.

- You should be considering reviewing all security documentation to accommodate new terminology and practices.
- There will need to be educational work within organisations to ensure that employees are aware of new terminology and new practices.
- Organisations will need to alter their due diligence and settlement practices to reflect new provisions.
- Organisations will also need to consider the steps it will take to “perfect” its “security interest”. For example, some parties with retention of title arrangements will need to consider whether they will always perfect their interests.
- You should undertake a full review of your trading terms, security registers and other arrangements.

This E-Alert only touches the surface in terms of the impacts of the PPSA. All unsecured and secured transactions will be affected by these changes and the changes are complex. Hunt & Hunt will be conducting more presentations in 2011 in our offices across Australia and will be providing further updates throughout the year the operation of the PPS Register.

Please contact us if you require any assistance in understanding or preparing for the changes.

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