



PPSA client update

Are you ready for the new Personal Property Securities Act? By Leanne Whitechurch, gadens melbourne

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ppsa client update - january 2012

Are you ready for the new Personal Property Securities Act? By Leanne Whitechurch, gadens melbourne

You have no doubt read or heard about the *Personal Property Securities Act 2009 (Cth)* (**PPSA**) which is due to come into full effect on 30 January 2012.

Although the PPSA provides for a transitional period of 2 years, it will nevertheless have a significant impact on businesses immediately.

Whether you are a business which supplies goods on credit, leases machinery or equipment or operates under retention of title provisions, or a consumer purchasing or selling valuable goods for your own personal use, you will be affected.

If you are a supplier, you probably use retention of title clauses to protect your goods in the event of the insolvency of your customers. However, after the 30th of January, it is quite likely that these clauses will no longer be effective in the event of insolvency. This is because the Act will recognise the provision of goods on a retention of title basis as giving rise to a "security interest". If that "security interest" is not registered on the new Personal Property Securities Register (**PPSR**), you will not be able to reclaim the goods in the event of your customer's insolvency.

What is the PPSR?

The new regime is said to replace over 70 pieces of Commonwealth, State and Territory law and 40 existing registers and will introduce one single, national system relating to personal property securities. It will apply to all personal property whether owned by an individual, company, partnership or other entities.

However, despite the advantage of streamlining the current system, it is important to understand that the new regime will also make certain critical changes to the current laws governing security interests and their protection, and change current notions of legal title over personal property. The PPSA will apply to normal security arrangements such as mortgages and charges, but also transactions not previously regarded as 'security' transactions. A prime example is retention of title supply arrangements and most leases and hiring agreements. The result is that businesses can lose title to their goods, even though ownership never actually passed to the party to whom they supplied them.

Implications for business

You will need to review and amend your terms and conditions to make sure that they provide for a registrable security interest in the goods supplied, and otherwise comply with the PPSA. You will also need to ensure that your terms and conditions of sale are in writing and signed by the customer. Retention of title clauses on the back of invoices may no longer be effective.

And most importantly, you need to ensure that all pre-existing "security interests" are registered on the PPSR during the two year transitional timeframe, and that all new "security interests" are accurately registered within the timeframes set down in the PPSA. Otherwise, you may lose your current commercial position in transactions which involve property in which you have an interest.

In order to comply with the PPSA and protect your assets, you should also ensure that you have adequate record-keeping and reminder systems in place.

Action items - how can Gadens help you?

Gadens can:

- help you to review and redraft your terms and conditions to comply with the PPSA;
- assist you with registering on the PPSR (both for pre-existing interests, during the transitional period, and for new interests which arise after commencement);
- assist you to maintain registrations on the PPSR, including amendments, discharges and renewals; and
- assist with searches of the PPSR.

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