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New Zealand's Personal Property Securities Act -  
some of the difficult issues



***SME Associates Pty Ltd***

**NZ PPSA – Difficult Issues**  
***Commentary from an Australian***  
***perspective***

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# Mike Gedye's Paper

- An excellent paper, building on policy basis and concepts into practicalities
- PPSA = a sound concept that has had some implementation and drafting problems
- Lessons for Australia
  - description of collateral & parties
  - associated search protocols
  - enforcement rights

# Basis for this commentary

- Key clients include the Australian Finance Conference (AFC) & the Australian Equipment Lessors Association (AELA)
- Surveyed Association members who have operations on both sides of the Tasman
- Gauge merits and impact of NZ PPSA reform

# Initial overall impressions

- Detailed responses from 2 banks and 3 equipment financiers (2 general and 1 vendor)
- Enthusiastic
- Beneficial, but could have been done better
- Accepting of it, but perhaps benefits overstated
- Opposition

# Opposition in context

- Business opposing PPSA writes only leases and rental agreements of equipment
- Pre-PPSA no registration obligations
- Therefore, PPSA regarded as inefficient and no benefit because new processes and regulation that not there before PPSA
- Recommends that PPSA should not apply to title retention – cf. economic substance fundamental PPS concept

# Issues surveyed

- ✿ Impact on efficiency (internal/external)
- ✿ Key difficulties/challenges with implementation/transition
- ✿ Key benefits to business & customers
- ✿ Whether PPSA an improvement
- ✿ Comparison between NZ PPSA and Australian regimes
- ✿ Suggested changes

## Q1 – Impact on business

- Improved business operational efficiency – but some registry operations not meeting requirements concerning search and reporting
- Confidence in taking, protecting, enforcing security – perhaps a little early to assess, but inconsistency in registering, e.g. description of collateral and parties, and collateral type – need for courts to provide guidance

## Q1 – continued

- Product development – none attributable to PPSA
- Provision/availability of finance – improved, especially for partnerships and trusts – better security position leading to changes in credit policy
- Legal fees & other business costs – huge implementation costs re systems, processes, legal – but ongoing legal costs much reduced – concerns about high PPSR search costs

## Q2 – Difficulties so far

- Key difficulties/challenges in implementation, during transition and since
- Training, lack on knowledge of PPSA (still partially evident) among some creditors and law firms – transition a major project – finding and verifying security details a challenge – major workload involving deeds of subordination and priority agreements (now largely standardised) – no monitoring body for PPSR

## Q3 – Benefits

- Key benefits to secured creditors & to customers – in addition operational efficiency
- Real time registration and management through one process, rather than 3, and more creditor control
- Greater ability to take and give security over extended range of collateral

## Q4 – Compared to before

- Is NZ PPSA regime overall improvement to the regime it replaced?
- Overall, yes. Improving with experience
- But, with plenty of room for ambiguity in description of collateral, parties, etc, detracts from how good it could be
- Pre-PPSA described as quagmire by bank – however, equipment financier less enthusiastic about gain

## Q5 – How things compare in a Trans-Tasman sense

- Given similar laws between Australia and re-PPSA, felt Australia would benefit
- NZ PPSA may not solve all current problems with secured lending, but experience to date in NZ suggests vast scope for improvement

## Q 6 - Changes

- If anything could be changed about the NZ PPSA regime, what would be suggested?
- At this stage in life of NZ PPSA, mainly register and financing statement related – simplifying searching, reducing search fees, descriptions and need for greater standardisation
- Too early for priority rules to have been tested in court

# Meaning?? – Part 1

- Things in life never seem to be as clear cut as one would like
- Mike Gedye concludes that NZ PPSA is a fundamentally sound commercial law policy
- However, a better outcome could have been achieved by closer attention to detail and better consultation – a reflection of most significant commercial law reform
- The deficiencies can be fixed

## Meaning?? – Part 2

- Australia has much to learn from the NZ experience with PPSA reform
- The lessons identified by Mike Gedye will be most useful in developing the detail of the policy and law
- While reaction mixed, Australia has the promise of greater operational benefits
- Consider NZ - 3 registers/laws into one
- Australia – over 20 registers/laws

# Australian scene

- With over 20 registers and supporting laws, Australia experiences the regime dated from Victorian times mentioned at p.2 of Mike Gedye's paper
- Those registers and laws are spread across 9 jurisdictions
- With Cwlth & State taxes underpinning strong and growing demand for mortgages and charges, highlights existing inadequacies and impediments

# Aust. law reform status

- BFSLA subcommittee
- Formerly headed Prof David Allen
- Now headed by Prof Ralph Simmonds
- Draft PPS Bill
- Bond University Workshop April 2002 and subsequent report
- Promoting consideration by governments, creditors, business & consumers
- Some way to go – meanwhile stresses show in existing law



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