

Personal Property Securities Reform

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August 2007

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Dr James Popple

First Assistant Secretary

**Personal Property Securities
Division**

**Australian Attorney-General's
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Outline

- Why is reform necessary?
- Policy objectives
- Reform strategy and process
- Some issues
- Next steps

Why is reform necessary?

- Existing PPS arrangements reflect ad hoc judicial and legislative intervention:
 - in many jurisdictions
 - over many years
 - with an emphasis on solving the problem of the day
 - without any (or much) attention to coherency of PPS arrangement as a whole

Why is reform necessary?

- PPS arrangements are now very complex
- PPS law and practice now vary according to:
 - the location of the collateral
 - the nature of the collateral
 - the debtor's legal form (company/individual)
 - the legal form of the transaction (eg charge, mortgage, bailment, RoT, pawn, pledge)

Why is reform necessary?

- As a result, PPS law and practice is now unnecessarily uncertain
- Uncertainty imposes costs on certain transactions
- Transactions are either not undertaken, or undertaken at a higher cost to the parties

Policy objectives

- Increase certainty
- Increase consistency
- Reduce complexity
- Reduce costs

Reform strategy

- Take a functional approach to the:
 - creation of
 - priorities among, and
 - enforcement ofpersonal property securities
- Treat security interest differently:
 - only when there are policy reasons to do so
 - not just to reflect the ad hoc development of the law

Reform process

- Cth puts PPS reform on SCAG agenda
- Options paper (April 2006)
- Capital cities seminar series (May 2006)
- Access Economics report (July 2006)
- Policy Development Workshop (July 2006)

Reform process

- COAG (July 2006):
 - added PPS to agreed cross-jurisdictional regulatory reform
 - endorsed development of a national PPS scheme
 - asked SCAG to report back
- Australian Attorney-General establishes PPS Review Consultative Group (September 2006):
 - high-level business, professional, academic and government representatives
 - provides advice on the reform

Reform process

- Discussion papers for public comment:
 - registration and search issues (Nov 2006)
 - extinguishment, priorities, conflict of laws, enforcement and insolvency (March 2007)
 - possessory security interests (April 2007)

Reform process

- COAG agreed in principle to establish a national PPS system (April 2007):
 - to be implemented by 2009
 - funded by the Cth
 - implemented by Cth legislation
 - supported by a referral of power from the States
 - subject to further consideration of financial arrangements

Reform process

- Why a referral of powers from the States?
 - Commonwealth can already use
 - corporations power: lenders (and commercial debtors) tend to be corporations
 - bankruptcy and insolvency power: relevant to most enforcement of security interests
 - banking and inter-state trade powers
 - State referral would cover whatever is left

Reform process

- Commonwealth budget funding (May 2007):
 - \$113.3m over five years to:
 - harmonize PPS laws in one Cth Act
 - develop a single national online register
 - register will recover its own costs once operational
 - funding to be offset by estimated revenue of \$62.9m over Budget period
- PPS Division established in Attorney-General's Department

Some issues

- Duration of registration
- Close or exact match search of the register
- Effectiveness of unregistered security interests on insolvency
- Effectiveness of anti-assignment clauses in contracts for accounts receivable

Some issues

- Notice (eg by an inventory financier) to earlier registered secured parties (eg a general financier) when claiming a purchase money security interest (PMSI).
- Agricultural PMSIs: advances made to finance crops planted in the next six month or currently growing (eg for seeds, planting, care and harvesting a specific crop)

Some issues

- Distinct priority rules in relation to possession and control of investment property (such as shares, interests in registered managed investment schemes and quoted securities)

Next steps

- SCAG to prepare inter-governmental agreement on referral of powers for COAG's consideration
- Exposure draft PPS Bill
- Tender for systems integration services
- Demonstration web site

**Personal
Property
Securities
Reform – A
Financier’s
Perspective**
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Personal Property Securities Reform – A Financier’s Perspective

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- Current law governing PPS in Australia is complex and uncertain and does not meet the needs of any stakeholder. Lenders are exposed to unnecessary cost and risk.
- Substantive law reform is warranted
- Experience abroad indicates that successful reform is achievable
- The potential advantages and opportunities of PPS reform outweigh the risks and challenges – BUT the transition will require careful planning and management

Advantages/Opportunities

- Reduced complexity, greater efficiency, lower costs
- Greater certainty through elimination of some risks
- Competitive benefits
- Access to wider range of property as security
- Trans-Tasman harmonization

Risks/Challenges

- Transitional issues
- 'Re-education'
- Identifying and adapting to changes to risk management
- Customer relations

- NZ experience
- Different outcomes under a PPSA regime – some examples from actual experience

Specific issues

- Duration of registration
- Search criteria
- Inventory financiers vs receivables financiers
- Interaction with the UCCC
- Enforcement of unregistered security interests in insolvency
- Anti-assignment clauses
- Floating charges
- Security over deposits
