

**What implementation has
meant for NZ Creditors,
lawyers and legal
practice.**

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Introduction

- Pre PPSA “quagmire”
 - 1970’s Legal Research Foundation paper quote
 - Type of debtor:
 - Company
 - Natural person
 - Incorporated society
 - Etc
 - Registrability and registration
 - What – some registrable, others not – uncertainty
 - Where – Companies Office, High Court, Motor Vehicles Registry
 - How and when did it come to this?
 - Inheriting tangled web of common law, equity and statute
 - Developed piecemeal over many decades
 - Not responsive to developments either commercially, legally or technologically

Introduction (cont)

- Pre-PPSA Canadian “Jungle”
 - The jungle of our personal property security law has been a century in the making. From seeds planted in Victorian times, the assorted statutes now in our books have grown into a tangled mass, which has survived sporadic pruning and hacking. The urgent need is for a bulldozer to clear away the chaos and for its replacement by a fresh and modern statute
 - Quote from explanatory material accompanying proposals to adopt a PPSA in Ontario

So: the PPSA Bulldozer

- Note Attorney-General's policy objectives
 - Increased certainty
 - Increased consistency
 - Reduce complexity
 - Reduce costs
- Professor David Allan's famous five in a paper written after the 1999 BFSLA conference
 - cheaper
 - faster
 - easier
 - simpler
 - Safer
- Kiwi implementation bears out these five

Simpler

- Bulldoze away "quagmire" and "jungle"
- Replace with "security interest" concept
- Substance over form
- If it looks, feels, smells, acts like, a security interest, treat it as one
- Can retain outmoded terminology and documentation **but** one-off opportunity to simplify:
 - documents
 - procedures
- Marry PPSA with technology:
 - every security document one page?
 - web based incorporated terms and conditions?
 - "assent" of signature/formal execution
- When implementing, seek to look 5 years hence technologically

Easier

- One register regardless of:
 - type of debtor
 - type of security interest
- Totally electronic
- 24/7 registration and searching – no time delays
- Uncluttered:
 - register is "notice" only
 - caveat analogy
- Conceptual consistency
- Demise of floating charge
- Dumbing down? but:
 - understandable to users
 - facilitative of/friendly to product development

Safer

- Simpler and easier ⇨ safer
 - Implementation – lawyer friendly
 - Operation – lawyer unfriendly
- Secured parties protected ⇨ safer
- Certainty
 - search result immediate and definitive unless “seriously misleading”
 - as to priority also
 - can register before settlement/completion

Cheaper

- Two aspects – registration; and legal costs
- Registration
 - New Zealand pre-PPSA
 - \$40 – High Court Chattel Register
 - \$50 – Company Register
 - \$11 – Motor Vehicle Securities Register
 - Upon PPSA coming into force, registration - \$5
 - Now, registration - \$3; searching - \$1
- Legal costs
 - significant amount of ongoing “external” legal work disappears
 - more done “in-house”
 - a lot more work done by other users themselves
- So
 - reduces costs
 - good for business and commerce

Faster

- Registration immediate
- Desktop driven
- 24/7

New Zealand transition successful

- 6-12 month transitional provisions
- Now 5 years experience under our belts
- Practice bears out the AG’s four and the Prof Allan five
- Intimidating?
 - Unlearning the old and learning the new
 - Some resistance to change
 - Extensive education programme

NZ Opportunities Lost

- Greater simplicity?
 - security documentation and implementation
 - market standard priority documentation
- Plain English/more understandable, user friendly?
- Commodity/throughput work technologised?

Improvements to NZ model

- Effectiveness of unregistered security interests on insolvency?
- S36, [Section 15(1) Bond Bill] compliance to be effective against liquidator?
 - My view, should remain effective – but recent C/A decision
- Overly broad description of collateral in a financing statement
 - My view, should not be penalised; keep it simple
- Clarify land mortgage securitisations not under PPSA umbrella
- Possession / control expansion
- Others

Australia – carry on

- There can be no doubt that the PPSA is:
 - modern
 - adaptive
 - facilitative
 - user friendly
- And that it will:
 - increase certainty
 - increase consistency
 - reduce complexity
 - reduce costs
- And that it results in life being:
 - simpler
 - easier
 - safer
 - faster
 - cheaper
- Good modern commercial law reform
- Pick up on NZ's and others' lost opportunities
- Then
 - NZ to follow Australian improvements
 - One Australian wide PPSR – by 2012?

Summary

- Resist lawyerly temptation to over complicate - KISS
- Many bogeys not real
- Push on, even if there are some imperfections
