



FAQS ON PERSONAL PROPERTY SECURITIES REFORM

What is personal property?

Personal property is any property other than land. It includes tangibles such as goods, crops and livestock, intangibles such as licences, investment instruments, negotiable instruments and accounts.

The *Personal Property Securities Act 2009* (the Act) applies to personal property only if an owner of the property can transfer it to another person (even if the consent of another person is required for the transfer, or some other restriction applies before the property can be transferred).

What is a personal property security?

A personal property security is an interest in personal property that secures a payment or performance of an obligation (without regard to the form of the transaction or the identity of the person who has title to the property).

Under the Act, a security interest in personal property will also be created by:

- a. a transfer of an account or chattel paper
- b. a lease of personal property for a term of more than one year, and
- c. a commercial consignment.

A personal loan that is secured against a motor vehicle is a common example of a security interest. Some other examples of security interests covered by the Act include fixed and floating charges, chattel mortgages, finance leases, margin loans, commercial consignments (including retention of title arrangements) and the factoring of book debts.

Individuals are able to offer as collateral any item of their personal property including cars, yachts, paintings and shares.

Businesses are able to offer machinery, inventory and accounts receivable as collateral. Businesses are also able to grant a security interest in all their present and after acquired property. This means that businesses can borrow money against all the property they currently own or may own in the future – such as their inventory.

Other forms of personal property that may be used to secure a loan include financial products, licences, accounts receivable, crops, and livestock.

Why do personal property securities need to be reformed?

Currently, the law and practice about personal property securities is uncertain. This uncertainty unnecessarily increases the cost of transactions involving personal property securities.

Why is the law and practice about personal property securities uncertain?

In Australia, more than 70 Commonwealth, State and Territory Acts regulate personal property securities. As a result, the law and practice concerning a particular personal property security vary depending on:

- a. the legal form of the grantor (for example, company, individual or other entity)
- b. the State or Territory in which the personal property is located
- c. the legal form of the personal property security (for example, fixed and floating charges, chattel mortgages, finance leases, commercial consignments including retention of title arrangements, and pawns), and
- d. the nature of the personal property (for example, motor vehicles, investment instruments, or crops and livestock).

The Commonwealth Government's personal property security reform involves a single Commonwealth Act which will provide rules for the creation, extinguishment and enforcement of security interests in personal property and for determining priority among competing security interests. The Act would be supported by the creation of a single national electronic register of personal property security interests.

The Act takes a functional approach to security interests in personal property. This means that as far as is practical the rules proposed by the Act do not depend on form of the transaction, the nature of the debtor or the jurisdiction in which the property or parties are located or in which the transaction occurred.

What are the likely economic impacts of the reform?

In 2006 the Australian Attorney-General's Department commissioned Access Economics to report on the potential costs and benefits of PPS reform (*The Costs and Benefits of Personal Property Securities (PPS) Reform*, Report by Access Economics Pty Ltd for the Attorney-General's Department, 6 July 2006).

The Access Economics report anticipated that the proposed reforms had the potential to produce a reduction in lending rate for a loan secured with personal property (as opposed to an unsecured loan) in the order of three to four percentage points.

The new PPS scheme will include a single electronic registry. There will be considerable reductions in the costs of registering interests and searching the registry. A simpler PPS scheme should also reduce the incidence of legal disputes.

The report also identified particular areas of the Australian economy that were likely to benefit from the reforms:

- a. small to medium sized business may find it easier and more efficient to raise debt finance
- b. agriculture in that it would allow crops to be more readily used as collateral, as was the experience in New Zealand, and
- c. small financiers and new players might experience reduced entry barriers.

If I buy a motor vehicle, what do I have to do?

The Act will replace the existing Registers of Encumbered Vehicles (REVS) and Vehicles Securities Register (VSR) maintained by the States and Territories with a single national online register (the Personal Property Securities Register, or the PPS Register).

People who are contemplating buying a car or other motor vehicle will be able to search the PPS Register to see whether anyone has registered an actual or prospective security interest in the vehicle.

If a prospective buyer were to discover an entry on the PPS Register that matches the vehicle, they might consider whether they should proceed with the purchase. Alternatively, they might negotiate with the vendor to either have the registration removed or to reach an agreed adjusted price that reflects the continuation of the security interest in the vehicle.

I run a small business. What's in it for me?

Greater certainty about whether an item of personal property is subject to a security interest should increase the availability of finance and reduce costs for business.

The current arrangements for determining whether personal property is subject to a security interest restrict the ability of individuals and businesses to use their personal property as security for credit.

The Commonwealth, States and Territories all have their own personal property schemes. There are registers for some kinds of personal property, and some kinds of debtors; but not for other kinds of property and debtors. The arrangements differ among the States and Territories. This increases the cost of providing credit.

The range of existing electronic registers include ASIC's register of company charges, the Registers of Encumbered Vehicles (REVS) and Vehicle Securities Register (VSR) as well as a number of instruments, bills of sale and security interests in goods registers maintained by the States and Territories.

The Commonwealth's personal property securities scheme will establish a clear set of rules for ordering priorities between competing interests in secured property (supported by a single national online register).

Will the PPS Register protect my privacy? Do I have a responsibility to protect others privacy?

The PPS Register will contain very little personal information.

A person will be able to search the PPS Register to determine whether personal property is subject to an actual or prospective security interest. Searching the PPS Register for any other reason will be unlawful where the search is conducted by reference to an individual's details. The Act will deem unlawful searches to be a breach of the *Privacy Act 1988* (Commonwealth) which can be investigated by the federal Privacy Commissioner. The Act will also give the Federal Court power to impose a monetary penalty for an unlawful search.

How can I make entries on the Register?

Anyone will be able to register personal property on the PPS Register. Generally, the person who makes a 'registration' will be the secured party or its agent.

It will be possible to make entries on the PPS Register over the internet using a web browser. Business users will be able to submit registrations via a B2G channel employing XML.

Registrants would provide information about the secured party, the person who is or has granted the security interest and the collateral that is or would be the subject of the security interest. The registration will need to describe the property so that it can be readily identified by any other person who searches the PPS Register.

Upon registration, a verification statement will be sent to the registrant showing details of the registration.

How can I search the PPS Register?

Searching the PPS Register will be a key element of the PPS scheme. Users will be able to search by entering their search criteria on the website. They will also be able to undertake a vehicle search using SMS (short message service) or IVR (interactive voice response). Business users will be able to search via the B2G (business to government) channel.

What is the progress of personal property securities reform?

On 2 July 2009 the Council of Australian Governments (COAG) decided that PPS Reform should be implemented in May 2011. In doing so, COAG acknowledged the importance of allowing an adequate transition time for businesses and consumers to accommodate this and other changes, including the global financial crisis.

The Commonwealth and the States entered into an Inter-Governmental Agreement for the referral of powers to the Commonwealth required to support the Bill in October 2008. In 2009, the Parliaments of New South Wales, Victoria, Queensland, and South Australia enacted legislation that refer legislative powers to the Commonwealth in order to support the national scheme. Western Australia and Tasmania are expected to introduce referral legislation in the near future. On 15 December 2009, the Commonwealth *Personal Property Securities Act 2009* came into effect and is in force, although the operative provisions of the scheme will not commence until 2011.

In accordance with the July 2009 COAG decision, the PPS Register will be available for familiarisation from May 2010 in advance of the Register going 'live' in May 2011.

In advancing the reform, the Attorney-General's Department has maintained a program of consultation with States and Territories, interested stakeholders, industry and consumer groups, and delivered public presentations on the topic of PPS reform.

What Personal Property Securities legislation currently exists? What will happen to the existing legislation?

The present law of personal property securities is governed by a number of pieces of legislation in each of the States and Territories. Some of this existing legislation establishes registers of security interests and rules for priority of security interests for various goods and other types of personal property. There is also the Commonwealth Corporations Act and the State and Territory uniform Co-operatives legislation which establish the register of company and co-operative charges. These Acts will either need to be repealed or amended when the Commonwealth legislation commences.

What Personal Property Securities registers currently exist? What will happen to the registers and information that is currently on those registers?

Personal property securities reform will involve the development and operation by the Commonwealth of a single, national electronic register of personal property securities. The PPS Register will replace the existing register of company charges maintained by the Australian Securities and Investments Commission, the register of co-operative charges established under the uniform Co-operatives legislation, the REVS registers maintained by a number of States and Territories, and a number of instruments, bills of sale and security interests in goods registers maintained by the States and Territories.

There will be a transitional period after the commencement of the PPS Act. Security interests recorded on an existing register will be migrated across to the new PPS Register. This will avoid the need to re-register interests in the new system and dramatically reduce transition costs for businesses.