

Review of the Personal Property Securities Act 2009

Summary of First Round Submissions: *Issues Particular to Small Business*

7 July 2014

Introduction

1. This summary sets out the major issues raised in the first round of submissions made to the Review of the Personal Property Securities Act 2009 (the Review). It is intended to provide a high level overview of these issues to assist readers in efficiently using and navigating submissions provided to the Review. Readers are encouraged to consider the submissions individually for further detail.
2. The Review was announced by the Attorney-General on 4 April 2014, and a call for submissions published on 14 April 2014. The first round of submissions formally closed on 6 June 2014 and considered issues particular to small business. The review received 37 submissions from small businesses, small business advisers, industry and professional peak bodies and small business commissioners or ombudsmen.
3. The submissions highlighted three major issues. These were (1) the level of awareness of the [Personal Property Securities Act 2009](#) (Cth) (PPS Act) amongst the small business community, (2) perceptions of the complexity of the PPS Act, and (3) the functionality of the online register. These issues are set out and explained below as they were raised in the submissions.

Awareness of the PPS Framework

4. A large number of respondents commented on low levels of awareness about the PPS Act amongst the small business community. They gave examples which varied from business operators who were unaware of the existence of the PPS Act, to those who were unaware that the PPS Act was relevant to their business operations or that failure to engage with it may have adverse consequences.
5. Awareness of the PPS Act was said to be especially important for suppliers using [retention of title clauses and hire businesses](#). Prior to the PPS Act, such businesses relied on proof of their ownership to recover assets in the possession of their client or customer in the event of the client's or customer's insolvency. Under the PPS Act, a registration reflecting the business's security interest in the assets is now the key issue when determining the treatment of assets in an insolvency.
6. Awareness of the impact of the PPS Act was reported to be particularly acute for these businesses because operators who were unaware of the change or did not modify their business practices became exposed to the risk of loss of those assets in the possession of the client if the client became insolvent. A number of respondents considered that there had been insufficient education, promotion and consultation on the impact of the PPS Act prior to its commencement to assist them in understanding the importance of registration in this context, as well as its broader operation.

7. Several submissions referred to the reluctance amongst small businesses to use written contracts and seek professional advice.¹ A number of reasons were posited for this, including the common perception that insisting on formal arrangements conveyed mistrust, the perceived cost of seeking legal advice, administrative costs and literacy levels.

Complexity and Understanding

8. Nearly all respondents commented that the PPS Act was complex and that this complexity made it very difficult for them to engage with the Act without professional advice, with the cost of such advice considered to be an issue. A small number of respondents suggested that the creation of a factsheet would assist businesses in understanding the PPS Act but very few referred to [the fact sheets and guidance material](#) already published by the Australian Financial Security Authority.
9. Complexity was cited as a barrier which prevented small businesses from understanding the PPS Act and its benefits. For example, some industry peak bodies reported that even though they had provided PPS training to their members, the complexity of the PPS Act and the concepts and issues involved made it difficult for small business operators to develop a sufficient working understanding of the Act to operate their businesses under the new regime. In contrast, where complexity was overcome with effective professional advice, the PPS Act framework was said to be of great benefit. For example, one respondent commented that where businesses had effectively implemented their advice it had assisted the business operator to better understand their business, the applicable legal frameworks and how best to use the PPS Act to improve business performance.

Functionality of Website/Register

10. The functionality of the [PPS website and Personal Property Securities Register \(PPSR\)](#) were identified as key issues for consideration by the Review.
11. A large number of respondents identified registration and searching processes as financially and administratively burdensome for small businesses. Some respondents suggested small businesses are forced to weigh the cost of registration against the risks of not registering. Another respondent indicated that poor understanding lead some businesses to make many more registrations than necessary.
12. The [PPS website and PPSR](#) were reported to be difficult to navigate and the registration and searching processes were described as complex. The use of technical terms, confusion in identifying collateral and the limited availability of explanatory material (other than on the website) were noted as key user challenges. A few stakeholders reported that businesses located in rural and remote communities and other businesses

¹ A security agreement must generally be in writing in order for it to be enforceable against third parties.

which do not use the internet had special challenges accessing the PPSR and explanatory material and assistance which is mostly provided online.

13. Various respondents raised concerns regarding the timeframes to take action to protect their security interests following notice of a particular event.² Typically, the prescribed period for action is 5 business days, and a failure to adhere to this timeframe may have serious ramifications for a secured party. Small businesses were reported to struggle when determining whether they needed to act and to obtain advice within this short timeframe. Conversely, large organisations reported difficulties in initiating the necessary internal procedures to register or alter a PPSR registration on time.
14. Registration of a [Purchase Money Security Interest](#) (PMSI) was described as challenging as it is based on the time when a grantor takes possession, which can be ambiguous or unknown. Particular mention was made of the fact that a registration of a security interest is defective if the registration indicates that the interest is a PMSI when it is simply an ordinary security interest. Some respondents raised concerns about the ramifications this can have for small businesses should an interest be incorrectly identified due to a lack of understanding. Conversely, a respondent from the credit industry was of the view that the position with respect to PMSI registrations should remain due to transparency concerns.

Want to Know More?

15. For copies of submissions received as part of this first round of consultation, and information on the Review generally, please see www.ag.gov.au/ppsareview.
16. A call for a second round of submissions on PPS Act issues generally has been made and will close on 25 July 2014. These submissions will also be published on the website.

² For example, in circumstances where collateral is transferred and an additional security interest is granted, the original secured party's interest will become unperfected unless action is taken to protect the security interest by registration or amendment of the original registration within 5 business days of the collateral transfer (if the original secured party consented), or within 5 business days after the original secured party became aware of the transfer (section 34(1)(c) of the PPS Act).