



PPS Registrar's roundtable

The main theme emerging from the roundtable discussion was around confusion. Small business appear to fall into three key categories:

- those who don't know about the PPSR
- those who know about it but can't comprehend it as it's contrary to long held views on ownership
- those who know about it but don't understand the complexity of the law or the register.

Lack of awareness

All participants were in agreement that there was generally a lack of awareness of the PPSR amongst the small business community.

Those that are aware of the PPSR may not be aware of critical elements which may have a negative impact. Topics of low awareness levels include:

- scenarios where short term leases move to longer term leases and become a PPSR lease
- the need to ensure a security agreement is supported by documentation
- to enforce a security interest the secured party needs to take action
- registering correctly is essential—your registration needs to be correct to be enforceable
- complexities for some industries such as Agribusiness and the issue of commingled goods.

Participants suggested the following groups need to be targeted for awareness raising:

- people starting a small business
- apprentices who are looking to buy secondhand utes and/or equipment.

Discussion highlighted that the issues affecting small business users depend on how they might interact with the PPSR.

Secured parties (those using the PPSR for risk protection) need tailored messaging of:

- what the benefits of the PPSR are for their business
- what the risks are if they do not engage and use the PPSR (eg. you can lose a piece of equipment you bought and paid for if you haven't registered).

Grantors (those using the PPSR to improve access to finance, or for goods on terms) need to be aware:

- of why a secured party would need to make a registration against them or their goods
- of why they may not be notified that a registration has been made against them or their goods (ie they may have waived their right to receive a Verification Statement from the secured party through agreed contract terms)
- of how a registration might be made to cover the agreement—as it may not be apparent how a registration reflects the contract they have entered into
- that a secured party can create a registration before the contract is signed—so long as they have reasonable belief that there will be a security interest
- that a secured party may create a single registration to cover multiple supplies to the same customer on the same terms.

Lack of support for small business

All participants agreed that the support networks available for small businesses who wish to engage with the PPSR were limited. A range of factors was identified including:

- limited understanding of the PPSR by key professional groups who interact with small business
- absence of basic advice through various channels, including AFSA's NSC and business.gov.au
- lack of training material and trusted training providers with PPSR expertise
- limited support available from peers
- limited access to a simple registration process—especially for ROT suppliers
- limited access to registration support services, as it is not cost effective for B2Gs to compete to provide solutions for small business.

It was noted by participants that these issues are amplified in regional communities.

Complexity

Issues around complexity were highlighted through the Review of the *Personal Property Securities Act 2009* and further discussed by participants.

Complex legislation makes it difficult for small business to register, as they have to interpret rather than just document the details of their contract.

Complexity of the registration process:

- complex terminology not used by small business (eg. personal property, AllPAAP, PMSI, collateral and grantor)
- register is not intuitive and could be enhanced to create more forcing functionality
- party identification is complex and has devastating impacts if incorrect.

Timing can be crucial and has devastating impacts if key dates are missed.

Trusts (outside the PPSA regime, but impacts its function).

Complexity when searching:

- party Identification is complex and can mean registrations are not found
- search results can be complex with large numbers of registrations returned—clutter is adding to the complexity
- search results are not intuitive and easy to understand.

Enforcement

One of the key benefits of the PPSR is the protection it provides. For small business to benefit they need to be able to enforce their security interest. Participants raised a number of barriers.

- Some small businesses are disadvantaged because the law allows grantors to impose contract terms that prevent them from making a registration.
- The power imbalance when dealing with large companies makes it difficult for small business to enforce their rights—especially when insolvency claims are denied.
- Small businesses may not keep appropriate records to support their security interest.
- Small business are missing out on the protections of the PPSR because they are not aware they need to proactively enforce their rights upon their customer's default or insolvency.
- Access to justice when they do need to enforce a security interest can be expensive and out of reach for some small businesses.
- Cost of legal advice is prohibitive to enforcement.