



## PPSR Joint Stakeholder and Operations Forum

### Minutes

Thursday 18 June 2020

#### Present:

Australian Financial Security Authority (AFSA)
Attorney-General's Department (AGD)

<b>Peak Body or Industry Assoc Representation</b>
Australian Finance Industry Assoc (AFIA)
Information Brokers Assoc (IBA)
Hire & Rental Industry Assoc (HRIA)
Law Council of Australia (LCA)

### AGENDA

#### 1. Welcome and introductions

AFSA welcomed members.

#### 2. Operation of the forum

Minutes accepted with no changes.

#### 3. Operational update

##### Website redesign

- AFSA's digital team is on track to deliver the new website.
- Beta (test) site will be delivered in late July and production during August. The production date will be dependent on any feedback during the beta process.
- There has been a strong focus on delivering simple content in plain English. While it can sometimes be challenging, the team are working hard to make it happen.
- The overall design and site navigation will move away from the current structure, which is focused on the persona or user to align with the service you are accessing. This approach is

based on user research and will mean you will see headings such as Search and Register, rather than Individual or Business.

### Recent release

- Release R7.1 was successfully deployed on the 13 June 2020.
- The release delivered a simplified and streamlined account setup process for new users, which for first time users is their first interaction with the register. The process was designed in response to recent market research. It also included new data integrity measures such as requiring all users confirm their secured party group (SPG) email address.

### Current priorities

- AFSA is currently undergoing a brand refresh and these changes are being incorporated across PPSR website
- Increasing availability of the register – AFSA is seeking to deliver future releases in a maintenance window instead of scheduled downtime.

## 4. Small business roundtable new small business resources

- On 5 March AFSA held the second small business roundtable event with representatives from a range of public and private organisations to discuss issues facing small business in Australia.
- This year AFSA focused on the impact caused by major events like the bushfire crisis and the emergence of the COVID-19 pandemic.
- Participants agreed that key themes from earlier discussions remain relevant and include low awareness of the PPSR, concerns about its complexity, lack of support and enforcement.
- AFSA shared the findings from recent market research which was based upon three tiers of consultation and engagement:
  - interviews with small businesses to understand the issues they're facing
  - analysing user experience for potential users, casual users and regular users
  - behavioural insights review of erroneous registrations, with a focus on grantor details.
- In regards to low awareness levels, AFSA sought to determine whether lack of awareness was a driving factor in businesses not using the PPSR. We found that once a small business operator understood the PPSR, the majority wanted to use to the PPSR to become a secured creditor – in the event of their customer's insolvency. This highlighted that many small businesses lacked sufficient understanding of how the PPSR could be applied in their business context.
- In response, AFSA has developed a new *How to become a secured creditor* guide to help address this need. The guide includes practical tips to help people understand the 'two-step process'

required to successfully make themselves a secured creditor when providing trade credit (e.g., contract terms, registration).

- Participants agreed there's a need for guidance for small business to help them navigate through the complex insolvency process.
- In response AFSA has developed a new PPSR enforcement process guide. This guide aims to help small business understand the key steps they need to take to proactively enforce their security interest. The guide titled, *Your customer has gone broke and an IP has been appointed – what happens now?* covers the four basic steps to help a business to get their goods – or their value – back.
- The guide reinforces the message that enforcement is not automatic and includes a range of practical tips such as how to put the insolvency practitioner on notice of a claim and what to ask for when making contact.
- AFSA has also developed a new guide for insolvency practitioners titled *PPSR: Tips for insolvency practitioners*. This guide aims to help practitioners harness PPSR data to assist with the efficient administration of an insolvency and includes tips for when the insolvent company is the secured party (i.e., they're the creditor or financier) and also the grantor (i.e., the debtor or customer).
- These documents have been a collaborative effort and AFSA would like to acknowledge both Associate Professor David Brown and ARITA for their expert assistance.

## 5. Compliance – PPSR misuse

AFSA discussed how the Registrar uses various tools to deal with and deter misuse of the PPSR.

- a) **The Amendment Demand process.** Common dispute resolution process, where a written demand is sent to a secured party, demanding a change to a registration. If the secured party doesn't comply, the applicant can then ask the Registrar to decide.
- b) **General discretion to remove data.** General discretion to remove data on the grounds that it's frivolous, vexatious or its retention is contrary to the public interest. Used in more serious cases and doesn't require someone to apply to the Registrar. Sometimes used after seeing evidence through the normal amendment demand process.
- c) **Caution letters.** Used for those who never had a security agreement or never had a reasonable basis for believing they would ever have a security agreement at the time they register.
- d) **Statutory notices.** Sent when a matter requires further investigation, and there are reasonable grounds to compel production of relevant information. It may lay the groundwork for further compliance or enforcement action.

- e) **Suspension of normal business rules.** Where there is repeated misuse, AFSA can suspend normal rules, and force a user to submit their application for manual review before it being entered onto the Register.
- f) **Monitoring.** AFSA monitors for questionable transaction with a number of different characteristics.
- g) **Civil / criminal proceedings.** The Registrar may seek civil penalties in relation to PPSR use. Criminal matters have been referred to law enforcement, mainly in relation to alleged dishonesty offences.
- h) **Enforceable Undertakings.** Under the PPS Act and the Regulatory Powers Act, the Registrar may accept a written undertaking that a person will take or refrain from taking specified action.

AFSA noted that a new version of *Registrar's Practice Statement No 3 - Investigations, Civil Penalties and Enforceable Undertakings* was released on 17 June 2020. This document provides further detail.

## 6. Legislative Review (AGD)

### *PPS Taskforce's progress:*

- Significant progress has been made on the draft bill with only a small number of recommendations outstanding and requiring external consultation.
- Progress was slowed recently in the wake of the COVID-19 pandemic and the Government's urgent responsive measures being given priority in these unprecedented times.
- Three officers from the Taskforce were redeployed to Services Australia and Industrial Relations in order to deal with COVID-19 measures.
- The Taskforce is committed to seeing the reform through to its conclusion.

### *PPS Register*

- The Taskforce has held regular workshops with AFSA to discuss recommendations from the Whittaker Report that impact on the Register.

### *Timing*

- It is up to Government to decide the timing of an exposure draft bill.

## **7. COVID-19 impact analysis and discussion**

- The Australian Bureau of Statistics have released a range of statistics to provide insights on the impact of COVID-19 on households, employment and industry.
- PPSR activity has been subdued since March 2020. Both searches and new registrations fell in April, then recovered in May. Total searches and new registrations are lower than the same period last year, although searches of motor vehicles in May this year were higher than last year. Motor vehicles drove the rise in new registrations in May 2020 compared to April 2020. There were rises in new registrations in all collateral classes except agriculture and financial property.
- We will publish our June quarter 2020 statistics on 23 July 2020.

## **8. Roundtable discussion**

### **COVID-19 industry impacts**

- Further to the trends tabled by AFSA's Chief Statistician, representatives from AFIA noted a recent uptick in demand for new leases reflecting a more positive demand driven trend as we approach the end of the financial year.
- Other representatives agreed with this observation and also noted a rise in overall PPSR searches for the period.

### **Exclusion clauses that prevent some secured parties registering on the PPSR**

AFSA noted that there had been recent commentary in the press about a larger grantors requiring secured parties in their supply contracts to not register on the PPSR. This issue has also been raised with AFSA through the small business forum. AFSA noted that while the issue was not one dealt with by the PPS, AFSA is interested in any views on this practice. There may be issues relevant to other regulators or policy departments. AGD agreed it appeared to be a matter of broader government policy interest, including how the practice might relate to the intent of the PPS Act. AGD was interested in the reasoning behind companies wishing to limit registrations by suppliers. Some representatives expressed competition policy concerns about larger grantors potentially subordinating the interests of smaller secured parties. Greg Rodgers from the Law Council noted that there is a range of legitimate reasons why exclusion clauses might be agreed to, such as when there is a commercial reason for keeping supply contracts confidential. AFSA and AGD agreed they would discuss issue further. AGD offered the opportunity for representatives to provide feedback to them on the issue.

**9. Outcomes and action items**

<b>Date Raised</b>	<b>Details</b>	<b>Comments</b>
18 June 2020	AFSA to send pdf versions of the new PPSR guides	Completed – email sent Thurs 18 June 2020

**10. Next meeting**

Wednesday 18 November 2020