



## PPSR Joint Stakeholder and Operations Forum

### Minutes

Wednesday 18 November 2020

#### Present:

Peak Body or Industry Assoc Representation
Australian Finance Industry Assoc (AFIA)
Information Brokers Assoc (IBA)
Law Council of Australia (LCA)
Australian Institute of Credit Managers (AICM)
Chartered Accountants Australia New Zealand (CAANZ)
Motor Trades Association of Australia (MTAA)

  

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

### AGENDA

#### 1. Welcome and introductions

- The PPS Registrar welcomed members.
- In his opening remarks, the Registrar highlighted two important findings from recent data analysis provided by AFSA's Chief Economist and Statistician.
- September 2020 insolvency statistics revealed that trade credit debt is almost as high as bank debt in business insolvencies. While bank debt is frequently secured, trade credit is often unsecured which poses a risk for business. This affirms PPSR protection messaging and associated awareness raising activities remain as important as ever.
- The Registrar addressed concerns raised that some small business users are finding PPSR search results difficult to make sense of due to some results returning with pages of registrations against a grantor. AFSA sought to understand and quantify the size of the potential problem. Analysis shows half of all business grantors only have one registration against them, 80% have four or less registrations and only 7% of all business grantors have more than 10 registrations against them. Although this data doesn't suggest a widespread issue, we recognise that for the PPSR to be an effective risk management tool users must be able to understand the information.



As such we have developed resources to help infrequent users understand how to interpret search results.

## **2. Operation of the forum**

Minutes accepted with no changes.

## **3. Operational update**

### **Website redesign**

- AFSA released a new look website and register during August. Layout of the website has significantly changed, moving away from a role-based design (individual, business, B2G) in favour of service-based design (search, registration).
- Feedback from users is generally positive, but we are continuing to monitor and make changes as necessary. These changes include:
  - o refining the site search to make sure the most relevant content is easily found in results
  - o extending the date range users can select in the Business days calculator tool
  - o updating sample search certificate images and including a downloadable PDF version
  - o improving usability of forms pages to include context for using each form and links back to related content.
- Stakeholders noted that the simplified layout and language has improved the user experience.

### **Register enhancements**

- The major enhancement delivered over the last 6 months was the modernisation and branding refresh which was delivered in August.
- These changes have also included market research recommendations to improve calls to action and provide additional information for users (such as how long we expect a transaction to take).
- Upcoming releases will be focussed on the outcome of BETA collaboration. This work will focus on understanding and improving the experience for those people are not regular users of the PPSR.



### **Small business focused awareness raising activities**

- As discussed at the June forum many of our traditional awareness raising and outreach activities have been put on hold, so like many others we've had to pivot and change the way we work.
- A strong focus has been to reach out to businesses most impacted by COVID-19, which include building, construction, wholesaling and manufacturing.
- New tailored resources have been developed and are all available on the [COVID-19 guidance for business webpage](#). The new webpage includes simple case studies that reflect common industry scenarios, as well as our flagship resources, including:
  - o [Trying to get your invoices paid?](#)
  - o [Your customer has defaulted – what happens now?](#)
  - o [Your customer has gone broke – what happens now?](#)
- We have continued to use our 'information multiple network' to help us to reach as many businesses as possible, working with peak bodies, industry associations, advisors and other Govt agencies to leverage their networks to help us with our reach and messaging.
- Thanks to member of this forum who have shared these materials.
- As the Registrar mentioned in his opening remarks, we know that when a lender asks them to explain the results, many cannot identify what the registrations are, and others are not aware of the PPSR and how it's data may be used as part of financier's risk assessment.
- While PPSR data analysis indicates most grantors have very few registrations, we still believe it is important to help those small businesses struggling to decipher the results.
- AFSA has developed a new 'understanding grantor search results' guide, currently titled: *Need access to finance – do you know what's listed on the PPSR?*
- The guide was developed based on feedback from stakeholders that some users are finding it difficult to understand their search results, and this can impact their ability to access finance.
- It aims to help businesses understand how common transactions might result in a registration on the PPSR and explains some of the key data that is returned.
- The guide will be released via the AFSA sandpit 'collaboration platform' for feedback. We encourage you to provide feedback and welcome your support to help us reach your networks.



## **Consumer focused awareness raising activities – launch of new Staycation campaign**

- As international and some state borders remain closed, more and more Australians are booking local holidays and there is increased interest in purchasing second-hand caravans, boats and cars.
- AFSA is working to raise awareness of the risks associated with buying privately and has commenced a paid social media campaign across Facebook and Instagram.
- The 'staycation' campaign is targeted at families and retirees looking to travel 'locally' and can be viewed at [ppsr.gov.au/staycation](https://ppsr.gov.au/staycation)
- The campaign started in late October and will run throughout November, in the lead-up to the school holiday period. To date we have reached almost 100,000 consumers.
- Facebook is relatively new for AFSA, so stakeholders are encouraged to like and share posts to help amplify messaging. We will be looking to expand next year and start targeting small business.

## **Curo matter**

- AFSA discussed the recent decision of the Federal Court in *Curo Capital Pty Ltd v Registrar of PPS & Ors VID 207/2020*. It concerned exercise of the power to restore under s 186 of the PPSA. The boundaries of how best to exercise this power has been something AFSA has been grappling with, since the earlier decision of SFS which found the power to restore a registration extended beyond errors made by the Registrar.
- The Curo matter was decided under the ADJR Act. Although, not flattering of the position we came to it's a useful decision in that it is instructive on what is material in relation to objections from grantors. This will influence some of our practices in that regard, particularly where grantors have been given an opportunity to provide a response – but not done so.
- What it doesn't help us with is where there are searches by unidentified third parties, as that did not form part of the factual scenario in Curo. That's obviously an area that we will continue to manage as best we can – in trying to balance the interests of applicants and the reliability of the PPSR. Having said all that, most decisions since SFS have lent towards restoration being the outcome, as in most cases the



applicants can demonstrate the risk of restoration, once it is established an error was made, is relatively low risk.

- *Undertakings* was released on 17 June 2020. This document provides further detail.

#### 4. **Legislative Review (AGD)**

*PPS Taskforce's progress:*

- Since the previous Stakeholder forum, the Taskforce has passed key milestones for the reform, these include:
  - The release of the Financial Products Consultation Paper which received 12 submissions which the department has reviewed. Submissions were detailed and carefully considered, and we were very pleased to have such engagement. Submissions will be posted on the consultation page shortly. We are now in a position to issue drafting instructions on these matters.
  - The release of an Agribusiness Consultation Paper which is due to close on the 3<sup>rd</sup> of December
  - The commencement of officer level consultation with states and territories.

#### 5. **BETA update**

- AFSA is collaborating with the Australian Governments Behavioural Economics Team (BETA) to better understand and improve the user experience, especially for infrequent users.
- BETA are a research unit focused on applying behavioral science to government programs.
- AFSA's collaboration with BETA to date has focussed on designing behaviourally informed interventions to improve effective use of the register.
- Proposed interventions will then be tested in a real time environment as part of a randomised control trial.
- The evaluation process will identify the effectiveness of each intervention.
- The first round of BETA recommendations is on track to be implemented in mid Dec with the next set of recommendations scheduled for implementation and evaluation during 2021.
- Stakeholders acknowledged the importance of proper evaluation to ensure that any changes made to the register, or registration process, achieves the desired effect.
- No issues were raised by attendees.



## 6. PPSR statistics and data analysis

- AFSA recently released statistics on debts owed by people in business who entered a new personal insolvency in the September quarter 2020. This includes people who have operated as a sole trader, contractor or sub-contractor, or in a management role in a company such as Director or Secretary over the last 5 years, or 2 years for debt agreements.
- Construction was the most common industry that these people worked in. Overall, they owed \$790 million. 32% of the value of these debts were to other businesses. The most common types of businesses that were owed money were:
  - commercial leases and real estate
  - equipment rental and leasing
  - transport
  - accountants
  - lawyers and
  - internet, communications and marketing.
- As discussed at the last forum, searches and new registrations activity fell in April 2020 but recovered quickly, with searches reaching a monthly record of 945,000 searches in June 2020. Searches have returned to average volumes of around 850,000 per month. Searches on motor vehicles drove this volatility.
- New registrations have also recovered. They fell to just over 120,000 in April 2020 and are now around 150,000 registrations per month. This is slightly lower than the same time last year.
- The recovery in new registrations has been fairly widespread in states and territories, except for secured parties and grantors in Victoria (based on Australian Business Register data).
- Where we can identify the industry, activity creating registrations has also been fairly widespread. The exceptions are new registrations in the transport, postal and warehousing and rental, hiring and real estate services. New registrations with secured parties and grantors in these industries have recently fallen. In contrast, mining has had a noticeable rise recently.



## 7. Roundtable discussion

### *Building Industry Fairness (Security of Payment) Act (also called "BIFA")*

In response to the data insights shared by AFSA's Chief Statistician and the pandemic's impact on the construction sector there was a general discussion on recent Qld BIFA law changes and how they can make subbies and builders secured creditors.

### *Corporate Insolvency Reforms and the Personal Property Securities Act 2009*

Forum members discussed the proposed new small business restructuring process and the required amendments to the vesting provisions of the PPS Act (Section 267).

## 8. Outcomes and action items

<b>Date Raised</b>	<b>Details</b>	<b>Comments</b>
18 November 2020	AFSA to send AFSA Sandpit instructions to access new 'Understanding Grantor Search results'	Completed – email sent 24 November 2020
	AFSA to revise and update our short enforcement guides to ensure they reflect the simplified insolvency reforms (which are slated to become effective 1 January 2021).	Completed
	AFSA to liaise with the LCA (Greg Rogers) to explore avenues to promote our materials with the legal practitioner community (i.e., links to our resources from the LCA landing webpage, short messages in their newsletters which contain embedded links etc).	AFSA to action

## 9. Next meeting

Wed 16 June 2021 (TBC)