

Personal Property Securities Reform – Impact on the IT Sector

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The *Personal Property Securities Act 2009 (PPS Act)* will overhaul the formation, registration and enforcement of securities in Australia. The reforms will create a single national system for the registration of security interests in personal property.

The PPS Act will also introduce new rules for determining priority between competing security interests in the same personal property.

What is PPS?

The PPS Act will apply to almost all forms of securities in personal property, other than land and certain licences. This includes some arrangements that are currently not classified as creating a registrable security, such as a supply of goods or a lease.

The PPS Act will apply to, for example:

- fixed and floating charges;
- retention of title arrangements;
- hire purchase agreements;
- leases of goods;
- security interests in some licences;
- assignments; and
- transfers of title.

How will the PPS reforms affect members of the IT industry?

As the PPS Act will affect all businesses that take securities, the reforms will have a large impact on IT industry members that:

- sell or buy equipment with retention of title clauses;
- sell or buy equipment under consignment arrangements;
- lease equipment for a term of more than one year;
- lease equipment under hire purchase arrangements; or

- give or take a security interest in software licences.

What will change for the IT industry under the PPS reforms?

The PPS reforms will rewrite some established principles relied on by the IT industry. It will:

- affect the types of commercial arrangements that are regarded as registrable securities;
- affect the parties and goods against which a security interest can be registered. For example, it will now be possible to register an interest in goods owned by a foreign entity but located in Australia;
- affect the ability of parties to rely on the terms of the contractual relationship in relation to the security. This may, for example, require the adoption of new systems and procedures to ensure that the security interest is taken and priority is maintained;
- affect the process of formation and registration of security interests;
- change the rules for determining priority between competing security interests; and
- affect the process of enforcement of security interests, including allowing some parties to contract out of the enforcement protections in the PPS Act.

What do affected IT industry members need to do?

IT industry members need to review business practices to ensure compliance with the new PPS regime and to exploit any commercial advantage offered by the reforms. This includes:

- identifying affected transactions and arrangements;
- reviewing and redrafting documentation in relation to security arrangements;
- implementing arrangements to ensure that existing securities are validly migrated to the new register;

- reviewing and rewriting commercial practice, including policies, systems and procedures in relation to the:
 - taking of security, including registration of security interests;
 - maintenance of security interests and priority of security interest;
 - enforcement of security interests; and
 - ongoing compliance with the new regime, and
- educating and training staff that will be involved in taking, maintaining or enforcing security interests.

When do IT industry members need to start preparing for the reforms?

Immediately. The PPS Act is due to commence on 1 May 2011, but early preparation is the key when such big changes are ahead. IT industry members that start preparing now will minimise disruption to business as usual practice and ensure a seamless transition to the new regime.

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