

scoop

entertaining the law



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Goodwill is usually a business' most valuable asset - but it is so often neglected.

In the absence of a contractual restraint, employees are free to solicit staff and clients and may even utilise proprietary and confidential information when they leave.

Have your clients signed key staff to formal all encompassing employment agreements to address these and other risks?



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Personal Property Securities Act – A Game Changer

The *Personal Property Securities Act 2009* (Cth) (known as the **PPSA**) commenced operation on 1 February 2012.

The PPSA sweeps away centuries of laws and reams of Commonwealth/ State legislation. It is the new code for the creation, enforcement and administration of security interests over *all* property other than land.

The PPSA cannot be dismissed as relevant to financiers only. Its operation and effect is vast – it affects all manner of internal and external commercial arrangements made by your clients.

It is likely that many businesses will be severely burnt by the advent of the PPSA unless they and their advisers turn their minds to the new rules quickly and effectively.

In particular, an interest in personal property is at risk unless it is properly registered in accordance with the PPSA.

Immediate Attention Required

The PPSA is a game changer. It affects you and your commercial clients immediately.

Examples of your clients' relationships, documents and transactions affected by the PPSA include:

- Trade terms with suppliers/ customers
- Retention of title arrangements with suppliers/ customers
- Common internal transactions and structures including leasing, bailment and consignment arrangements
- Finance leases *and* operating leases and hire arrangements
- Fixed and floating charges
- Conditional sale agreements
- Hire purchase agreements
- Mortgages over shares and other choses in actions

These relationships, documents and transactions must be reviewed critically by an expert with the PPSA and its registration requirements in mind in order to avoid compromising the legal effect and certainty, priority and security rules that are now relegated to history.

Transitional Arrangements

Transitional arrangements exist for security arrangements that were already in existence on 31 January 2012. However these must be brought into the new PPSA world within 2 years – or the security embodied in those documents and prior registrations is likely to be compromised.

We have prepared overleaf a 'Canary in a Coal Mine' Questionnaire for you to consider in respect of each of your clients. If you answer yes to any question, you should seek expert legal assistance promptly in relation to the PPSA and that client.

We at Baggiolegal regularly advise on commercial documentation and financing/ security arrangements. If you or your clients require assistance in understanding, or adapting to, the PPSA, please contact Andrew Baggio of this office.

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Does your client...

	No	Yes
Utilise trade terms with suppliers/ customers?	<input type="checkbox"/>	<input type="checkbox"/>
Utilise any retention of title clause or retention of title arrangements or have any historic such arrangements in place?	<input type="checkbox"/>	<input type="checkbox"/>
Utilise internal bailment, hire, leasing, consignment arrangements (e.g. separate entities for operations and property ownership) or have any historic such arrangements in place?	<input type="checkbox"/>	<input type="checkbox"/>
Conduct a hire or leasing business or a business that regularly makes such arrangements or have any historic such arrangements in place?	<input type="checkbox"/>	<input type="checkbox"/>
Utilise external bailment, hire, leasing, consignment/ sales agent arrangements or have any historic such arrangements in place?	<input type="checkbox"/>	<input type="checkbox"/>
Have second ranking (or lower) security over personal property (particularly where the higher ranking security is a bank)?	<input type="checkbox"/>	<input type="checkbox"/>
Purport to take any security over another person's property in its dealings?	<input type="checkbox"/>	<input type="checkbox"/>
Have existing fixed and floating charges or security over intangibles (e.g. shares or IP) in place?	<input type="checkbox"/>	<input type="checkbox"/>
Utilise vendor finance arrangements or have any historic such arrangements in place?	<input type="checkbox"/>	<input type="checkbox"/>
Utilise conditional sale agreements or have any historic such documents in place?	<input type="checkbox"/>	<input type="checkbox"/>
Utilise hire purchase agreements or have any historic such documents in place?	<input type="checkbox"/>	<input type="checkbox"/>
Utilise subordination or priority arrangements or have any historic such arrangements in place?	<input type="checkbox"/>	<input type="checkbox"/>
Have any outmoded Commonwealth or State securities registrations in place (e.g. under Bills of Sale or agricultural/ livestock legislation)?	<input type="checkbox"/>	<input type="checkbox"/>
Require assistance in complying with the PPSA or training staff as to how to comply with the PPSA?	<input type="checkbox"/>	<input type="checkbox"/>

If you have answered "Yes" to any of the above, you have identified a client who needs to address the new PPSA legislation.