

“perfect it or lose it!”

Electrical and mechanical services beware!

February 2012

New laws introduced by the *Personal Properties Securities Act (2009)* (the **PPSA**) on 30 January 2012 will directly affect electrical, mechanical and other services in the Construction and related industries.

What is PPSA all about?

The new laws do away with old ideas of ownership and title in goods and introduce a new way to secure interests in personal property.

With the exception of laws and fixtures, the new PPSA laws apply to security interests in all forms of personal property.

This includes goods supplied under retention of title clauses or goods and equipment which are on a building site and in the possession of the builder but which are owned by a subcontractor.

Examples of such goods include electrical cable, temporary power boards, generators, air-conditioning plant, sheds and other equipment.

In some cases unpaid goods will be on site to be incorporated into and form part of building works but are the subject of a retention of title clause.

In other cases goods and equipment may be onsite as part of the subcontractor's

temporary works and will not form part of the works but belong to the subcontractor.

The PPSA provides that unless these goods have been registered under the PPSA, any interest in these goods may be lost if a liquidator is appointed to the debtor.

This means that title or ownership in the goods is not enough to protect the interests of a subcontractor or supplier in unpaid goods from third parties.

What is the key message of the PPSA?

Although the PPSA may be simple to understand there are many parts to the PPSA which are quite complex.

The key message of the PPSA however, is that suppliers and subcontractors must now protect their “security interests” in personal property by registration under the PPSA.

Under the PPSA a retention of title clause on its own is no longer enough!

A claim of ownership in the unpaid goods is also no longer enough!

Unless security interests are “perfected” by registration under the PPSA, those security interests and rights in unpaid

goods may be lost by the true owners in favour of a liquidator or a third party.

What you must do

The laws introduced are serious reforms.

All businesses that buy and sell assets, supply and receive goods, supply goods on retention of title, enter into or grant leases over personal property, lend or borrow money, will be effected.

The PPSA will have wide application and already suppliers are amending their clauses to incorporate PPSA provisions.

Electrical and mechanical contractors and suppliers need to be aware that failure to protect their security interests in personal property under the PPSA may mean that the interest is lost.

As a result of the PPSA, businesses should:

- (a) **Review** existing contracts to determine whether they create a security interest and what steps your business needs to take to perfect those security interests;
- (b) **Identify** what interests in goods and services can and should be registered;
- (c) **Understand** the transitional arrangements;
- (d) **Review** existing transactions to make sure that you register security interests within the 2 year transitional period;
- (e) **Consider** what systems and processes you need to establish to effectively manage registration and your security interests;
- (f) **Use** PPSA language in your documents;

- (g) **Make sure** you know who you are contracting with and obtain all relevant information to enable a valid PPSA registration;
- (h) **Make sure** that there is a person in the business who understands how PPS works and who can answer questions from other staff;
- (i) **Educate** staff on how to register security interests and search the PPSR.

How we can help

We can assist your business by providing:

- (a) **Advice** on any PPSA priority rules including migrated and transitional security interests, extinguishment rules and enforcement provisions;
- (b) **Assistance** on how to complete and register a financing statement to perfect the relevant security interest;
- (c) **A Review** of and suggest changes to your contracts and standard terms of trade;
- (d) **Training** and education to your staff to help your team understand the parts of the PPSA relevant to your business.

If you would like our PPSA Briefing which provides additional details of the legislation or any further information please contact David Glinatsis Solicitor Kreisson Legal phone 8239 6500 or email at david.glinatsis@kreissonlegal.com.au