FARMING AND AGRICULTURE: WHAT YOU SHOULD KNOW ABOUT THE PPSR

December 2014

New personal property security (PPS) laws introduced by the Australian Government may make it easier for farmers and agricultural producers to borrow against crops, livestock, farm machinery, agricultural products and other assets (other than land).

PPS reform is an overhaul of the current Australian Government, state and territory systems for using personal property as collateral when obtaining finance. Having commenced on 30 January 2012, the Personal Properties Security Act 2009 (Cth) (PPS Act), applies to Australian agricultural producers.

The changes allow for greater simplicity as all personal property provided as security is now recordable on a single online PPS Register, rather than the former array of Australian Government, state and territory registers, such as registers of stock and crop mortgages, and ASIC's Register of Company Charges.

Crops and livestock are personal property under the PPS Act and may be used as collateral. Benefits may include making it easier to obtain finance to buy seed and to purchase farm machinery.

Importantly, certain leases and bailments are treated under the PPS Act as having created a security interest in the property leased or bailed. The Lease and Bailment factsheet contains further information.

What's in it for agricultural producers?

The PPS Act supports a number of financing arrangements which now make lending to agricultural producers an attractive proposition for financiers. For security interests related to the purchase of particular goods to be used for growing crops, such as seed, fertiliser and pest control, financiers are now able to obtain priority over a general security interest which also covers the crop.

This will lower the risk where financiers lend for this purpose.

The PPS Act also contains special rules for crops and livestock under which priority would be given to an otherwise lower-ranking interest where value is given for the purpose of growing, feeding or developing the crops or livestock.

For example, if a bank provides finance for a farmer to feed livestock, the bank's security interest would have priority over another security interest in the same livestock granted by the same farmer for the purposes of obtaining working capital.

However, for this rule to apply, the livestock must be held by the farmer when the security agreement is made or the livestock be acquired by the farmer within the period of six months after the day the security agreement is made (see further section 86 of the PPS Act).

What is the PPS Register?

The PPS Register provides a single means for registering security interests in personal property. It is available to search and register 24 hours a day, seven days a week, allowing potential purchasers to buy with confidence. Financiers now have greater protection over their interests which have the potential to open the market to farmers to obtain finance.

Under the PPS Act, arrangements under which farmers supply produce and retain ownership of it pending payment are likely to create security interests. Farmers should seek professional advice whether they should record such interests on the PPS Register.

PPS reform will affect the supply chain and retention of title arrangements.

For example, vegetable growers may sell their vegetables and fruit to local markets directly. Quite frequently they supply their produce to canneries or to food wholesalers for co-mingling with other goods to become processed foods. Goods such as vegetable crops supplied or purchased on retention of title terms are considered 'security interests' under the PPS legislation. The holders of these interests (i.e. suppliers) are no longer able to rely on their legal title to protect their interest in the goods and will no longer have automatic priority over other secured parties.

Suppliers may continue to include the retention of title clause in their terms of trade, orders and invoices. However, to be enforceable against third parties, the purchaser must have signed or accepted the documents which incorporate the retention of title and title holders (suppliers) must have registered their interest on the PPS Register.

If used correctly under the PPS Act, a supplier using a retention of title arrangement has the opportunity to provide themselves a much higher level of protection under Australian law.

Case study I: Financing livestock

Nathan owns a cattle station in the Northern Territory.

Nathan has granted a security interest to Northern Bank over all his current and future personal property to secure a working overdraft.

Later Nathan decides to increase the size of his herd. Agri-Finance lends money to purchase the additional stock on the basis that Nathan grants a security interest in that stock to Agri-Finance. This gives rise to a purchase money security interest (PMSI) in the additional stock. A PMSI is a security interest in collateral created by a person who finances or provides the value to purchase the collateral.

Agri-Finance is happy to lend to Nathan because it knows it will have first claim to the additional cattle if Nathan defaults, providing it records its security interest on the PPS Register.

Case study II: Retention of title clauses

Vegetables Ltd is a supplier of fresh produce to a range of food markets.

Vegetables Ltd supplies its produce on a retention of title basis. That is, it retains ownership until the buyer pays for the produce.

The retention of title clauses add a substantial amount of complexity to the terms under which both Vegetables Ltd and its customers are required to work.

Furthermore, as Vegetables Ltd's terms are unique to them, liquidators and creditors of Vegetables Ltd's customers need to be persuaded of Vegetables Ltd's rights in each case.

The new PPS Act will treat Vegetables Ltd's retention of title based rights as security interests because they secure payment for the produce supplied. As security interests they will need to be perfected by Vegetables Ltd, most usually by registration on the PPS Register, to be fully effective under the PPS Act.

Generally after PPS commencement a single registration in respect of each customer will cover ongoing supply agreements with that customer.

Once Vegetables Ltd's interest is perfected, it will be able to rely on clear, statutory rights in the produce, and, if it is sold, in proceeds from its sale.

Finally, the PPS Act provides Vegetables Ltd with nationally applicable statutory enforcement processes that it can rely on to validly exercise its rights.

Professional advice recommended

This fact sheet provides general information about the Personal Property Securities Act and Register and does not constitute legal advice.

Seeking professional advice in relation to the specific issues affecting your business is recommended.

Where can I get further information?

For more information visit the 'Ask the Registrar' page at www.ppsr.gov.au.

In addition, refer to the Retention of Title and Leasing Fact Sheet. If you would like further information regarding agistments the Lease and Bailment Fact sheet may be of interest.

Contact us

Visit online http://www.ppsr.gov.au

Email enquiries@ppsr.gov.au

Telephone 130000PPSR (1300 007 777)

Help in other languages

If you have difficulty speaking or understanding English, contact the Translating and Interpreting Service (TIS) National on 131 450 for the cost of a local call. The TIS is available 24 hours a day, seven days a week for over 170 languages.