PPSA CLAIMS AND CHANGES

What are you doing to avoid a *Personal Property Securities Act* claim?

One of the first LPLC blogs was about the *Personal Property Securities Act 2009* (Cth) (PPS Act) (November 2013) and the three little pigs. The message was that the three little pigs had three goes to get it right but practitioners had only one chance when dealing with the end of the transition period under the PPS Act.

Given that more than three years have passed since the blog and given recent changes to the PPS Act about the definition of a PPS lease, now is a good time for practitioners to review how their firm is dealing with PPS Act issues to avoid a claim. LPLC has received claims every year since the PPS Act commenced in January 2012. Most have arisen in commercial transactions with a small number for mortgages and sale of business matters.

Mistakes include:
- failing to recognise a security interest and the need to register that interest on the Personal Property Securities Register (PPSR)
- failing to register within time
- failing to advise on PPS related risks
- failing to search the PPSR
- failing to secure releases of security interests
- lodging the wrong forms so a security interest is released instead of assigned or partially released
- registering the wrong or incomplete information
- listing the ABN instead of the ACN or vice versa.

Failing to secure releases of security interests

In one claim a practitioner acted for the purchaser of a business. After settlement, the purchaser was contacted by a bank asserting a charge over the equipment sold with the business. The practitioner's file disclosed that he had not done a search of the PPSR. The explanation given was that he simply overlooked this issue because he was busy at the time and about to go on annual leave.

Failing to perfect a PPS Act registration

Examples of this sort of claim can be found in two recent cases.

In *Flown Pty Ltd v Goldrange Pty Ltd* [2016] WASC 419 a lessee's administrator successfully retained ownership of equipment in the leased premises because of a failure by the secured party to register their interest.

Also see *Re OneSteel Manufacturing Pty Ltd (administrators appointed)* [2017] NSWSC 21. In this case a lease of mining equipment was imperfectly registered because the financing statement against OneSteel Manufacturing listed its ABN instead of its ACN.

Recent PPS lease amendments

The *Personal Property Securities Amendment (PPS Leases) Act 2017* (Cth), which came into effect on 20 May 2017, amends s13 of the PPS Act to expand the minimum duration of a PPS lease from one year to two years. It also provides that a lease of an indefinite period is not caught unless the lease term runs for two years or more.

The change means any lease and bailments that were entered after 20 May 2017 will be subject to the new definition.

What is a PPS lease? Refer to LPLC's amended bulletin *Personal Property Securities Act 2009* (Cth) – background and key concept.

Major amendments to the PPS Act announced

The final report on the PPS Act review, which was tabled before federal parliament in March 2015, considers:
- the effect of the reforms introduced by the Act
- the level of awareness and understanding of the Act
- the incidence and causes of non-compliance with the Act
- opportunities for minimising regulatory and administrative burdens including cost
- opportunities for further efficiencies.

An amending Bill is expected to be introduced into parliament this year. ∎

TIPS
- Review office processes to ensure they cover all necessary action relating to the PPS Act, for example a mechanism for double checking that a registration has been made within the time permitted.
- Check regularly if amending legislation has been introduced relating to the PPS Act.
- Use the PPS Act-specific resources on the LPLC website including video of Nick Anson's seminar and the PPS Act bulletin and checklist.

CHANGES AHEAD