

# News with Clout

Providing Corporate & Personal Solvency Solutions

## P.P.S. R.O.T. AND ALL THAT

You are no doubt well aware that the *Personal Property and Securities Act 2009* (PPS) has received Royal Assent late last year and is scheduled to come into play in May 2011. Apart from Western Australia and Tasmania this will be a national program.

In our view this is a great initiative. Apart from real property mortgages all charges, be they specific, floating or other are required to be registered in a central registry which is to be administered by the Insolvency Trustee Service of Australia (ITSA).

Poor old ITSA must have their hands full combining the myriad of registers that currently exist. Although they will have the benefit of a fair lead time within which to iron out most of the potential problems.

From an insolvency practitioner's perspective having all the security information in one place makes the analysis of a potential matter, and therefore the acceptance of a job on a speculative basis, simpler to scope out as to the likelihood of there being any assets available for the benefit of creditors. The same would apply to the lawyers acting on a creditor's petition for liquidation or bankruptcy.

Amongst other things this new legislation sets out rules as to how to perfect a security interest (charge), what constitutes an enforceable charge, how to get collateral (assets) out from under a charge (taking free). It shows how to work out who comes first (priority) where there are competing interests. The PPS also shows special rules for special types of assets. It covers how to enforce security interests and the rules that apply to this sometimes necessary step. The register and the rules and procedures are also given much

Clearly the PPS will be relevant to the bulk of professionals who advise businesses and all business persons generally.

One aspect of note for insolvency practitioners and all who are unfortunate enough to have to deal with them is for the first time it appears that Retention of Title (ROT) clauses will be regarded as security interests (as opposed to just retaining title to goods until they have been paid for) and to retain the absolute priority such arrangements have previously enjoyed, when the liquidator calls, will have had to have been registered with ITSA.

Previously liquidators have not been obliged to seek out ROT arrangements and are entitled to assume that the company owns the stock until advised otherwise. It would appear that if the trade creditors get the documentation and actions correct then they will be afforded much more protection than is currently available to them.

Usual rules apply though as they need to be able to establish that the stock on hand was supplied by them. The PPS even goes into rules as to the application of proceeds and what to do if there has been mixing of items into a finished product.

It should be noted that under the PPS, an ROT charge (and indeed all charges) is effective when it is first able to be viewed on the register by a search. This is providing that either the relevant events have occurred, or there is a written agreement that gives rise to the perfection of the security interest.

As ever we welcome all your solvency enquiries.