



# ALPA

# Submission

## Review of the Personal Property Securities Act 2009

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**To:**  
Attorney-General's Department:

**Email:** [ppsareview@ag.gov.au](mailto:ppsareview@ag.gov.au)

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#### HEAD OFFICE

Level 6, 2 Barrack Street SYDNEY NSW 2000  
Telephone: 02 9262 6633  
Fax: 02 9262 6422  
Email: [admin@alpa.net.au](mailto:admin@alpa.net.au)  
Chief Executive Officer:  
Andy Madigan

#### NORTHERN REGION

PO Box 2178 TOOWONG QLD 4066  
Telephone: 07 3310 8977  
Fax: 02 9262 6422  
Email: [nthadmin@alpa.net.au](mailto:nthadmin@alpa.net.au)  
Northern Regional Manager:  
Andrea Lethbridge

#### SOUTHERN REGION

PO Box 5637 WAGGA NSW 2650  
Telephone: 02 6921 1700  
Fax: 02 9262 6422  
Email: [sthadmin@alpa.net.au](mailto:sthadmin@alpa.net.au)  
Southern Regional Manager:  
Liz Summerville

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## **ALPA GENERAL INTRODUCTION**

On 4 April 2014, the Attorney-General, Senator the Hon George Brandis QC, announced a review of the Personal Property Securities Act 2009 (PPS Act). The review is to be completed by 30 January 2015.

The Australian Livestock & Property Agents Association Ltd (**ALPA**) submission is in response to this review.

### **Australian Livestock & Property Agents Association (ALPA)**

**ALPA** is the national peak industry body for livestock and property agents.

**ALPA** represents more than 1,200 agency businesses across Australia.

Collectively this group plays an important role in livestock, wool, merchandise and rural property sales and marketing.

**ALPA** members handle in excess of 97% of rural agency business Australia wide.

**ALPA** is one of the largest national organisations of small rural business men and women, relied on to protect the interests of agents and producers nationally.

**ALPA** membership includes Elders, Landmark, Ruralco and private livestock agencies across Australia.

**ALPA** appreciates the opportunity to provide this submission.

## ALPA COMMENTS

**ALPA** understands that this review calls for written submissions from interested organisations and individuals to the review on the matters set out in paragraphs a) to i) of the terms of reference. Consistent with the terms of reference, the review is interested in particular in receiving submissions on:

- whether the PPS Act has achieved clear and appropriate outcomes for small business.

**ALPA** believes that the PPS Act has not achieved a clear and appropriate outcome for small business; rather it has created a raft of uncertainty, misrepresentation and total confusion for all small business operators in Rural Australia.

- ways in which the language of the PPS Act can be simplified without compromising desirable policy objectives.

**ALPA** believes that the language of the PPS Act can be simplified without compromising desirable policy objectives.

**ALPA** believes that this review is very timely.

**ALPA** members have had conflicting advice from various sectors on the auction sale of livestock. Some advice is that these auction sales need to be registered on the PPS and some say no they do not.

- **ALPA** members sell approx 10 million cattle (av \$700) worth in excess of \$7 billion, 55 million sheep & lambs (av \$70) at a value close to \$4 billion a year. Agents facilitate livestock sales across Australia exceeding some \$11 billion. It must be pointed out that these figures do not include pigs, goats, horses, and other livestock sales that agents are involved in.
- **ALPA** members collect MLA Levies on these sales to approx \$82 million pa.

**ALPA** members would like the language of the PPS Act simplified giving clarification on the topic of livestock auction sales, as the PPS Act has not achieved a clear and appropriate outcome for small business. Livestock are sold by auction to processors who generally pay the agent in 7 days and the livestock are killed in some cases the next day. The livestock sold at auction are sold under Terms & Conditions, part of which is listed below.

**15. The buyer of livestock must pay the agent the full amount of the purchase price in immediate funds on receipt of a tax invoice. Payment is required prior to delivery unless some other time for payment is specified in a written agreement between the buyer and the auctioneer that was made before the fall of the hammer. If, before delivery, payment has not been made then clauses 20 to 23 apply.**

**20. If delivery is made to, or possession obtained by, the buyer or its representative before full payment of the Price, then until full payment is received, the buyer:**

- (a) does not acquire title to the livestock;**
- (b) holds the livestock as bailee only for the vendor;**
- (c) must act in a fiduciary capacity in its relationship with the vendor;**

**(d) must store the stock separately or so that they are readily distinguishable from other livestock owned by the buyer;**  
**(e) is responsible for the safety and well being of the livestock;**  
**(f) may make a bona fide sale for market value of any or all of the livestock. As between the buyer and the subsequent buyer, the sale shall be made by the buyer in its own name and not as agent for the vendor, however as between the vendor and buyer, the sale shall be made as bailee and agent for the vendor; and**  
**(g) must keep and account for the proceeds of any subsequent sale separately from its other money and hold those proceeds, together with the benefits of any rights against subsequent buyers, on trust for the vendor.**

**21. In addition to clause 20, if payment is not made according to clause 15, but delivery has been made to, or possession obtained by, the buyer or its representative:**

**(a) The vendor or its agent may repossess and resell the livestock and enter property owned or occupied by the buyer or its representative if necessary to do so; and**  
**(b) Interest may be charged at the rate usually charged by the agent for overdue accounts on any amounts which remain owing at any time.**

**22. The buyer may not make any claim against the vendor for actions by the vendor or its agent under clauses 20 or 21 and indemnifies the vendor and its agent against any loss, damage, costs, expenses, penalties, fines or claims suffered by the vendor, the agent or any person or entity arising from the vendor exercising its rights under clauses 20 or 21.**

**23.1. Clause 23 applies whenever the agent pays the vendor before being paid by the buyer, which the agent is not bound to do. The agent is then the delcredere agent of the vendor at law.**

**23.2. The vendor hereby gives notice to the buyer of the assignments referred to in clause**

**23.3. When this clause applies, in addition to any rights of the agent that arise by operation of the law, the parties agree that, subject to clause 23.6 the agent is subrogated to all rights of the vendor under these terms and conditions against the buyer.**

**23.4. Title to the livestock does not pass to the agent or a nominee of the agent unless the agent, by written notice to the vendor, notifies the vendor that it is to be transferred to the agent or a nominee of the agent.**

**23.5. The vendor acknowledges that the agent may take enforcement, repossession or other action to recover any livestock for which the buyer has not paid in full, or the Price of such livestock, owing by the buyer under these terms and conditions:**

**(a) when this clause does not apply, as agent of the vendor (including by reselling the livestock); and**  
**(b) when this clause applies, on the agent's own behalf exercising the rights of the vendor by subrogation or assignment under these terms and conditions (whether in the vendor's name or not) and, where title to the livestock has not passed to the agent, by selling the livestock as agent of the vendor without the agent having to account to the vendor for the proceeds of sale.**

**23.6. The agent may at any time, assign, transfer, securitise or otherwise dispose of all or any of its rights under these terms and conditions and any debts created pursuant to it (including, without limitation, the rights assigned to it under clause 23.3).**

**23.7. The vendor hereby irrevocably appoints the agent as the vendor's attorney to:**

**(a) do at any time and in any manner as the agent thinks fit all acts necessary or desirable to perfect or improve the rights and interests afforded, or intended to be afforded, to the agent under these terms and conditions; and**  
**(b) appoint one or more sub-attorneys to do anything that the agent may do as the vendor's attorney.**

**23.8. These terms and conditions do not render the agent liable to the buyer as vendor nor entitle the buyer to set off against the agent any right the buyer may have against the vendor or otherwise.**

**23.9. The buyer acknowledges that the provisions of this clause 23 are intended solely for the benefit of the agent (and its assigns) and the vendor. The liabilities and obligations of the buyer will not be in any way affected:**

**(a) by this clause 23, other than as it expressly provides; or**

**(b) by the failure of the agent or the vendor or either of them to comply with the terms of this clause 23.**

**23.10. The buyer must pay all amounts payable to the vendor or the agent under these terms and conditions without any deduction, withholding, set off or counterclaim whatsoever, whether the benefit of a deduction, withholding, set off or counterclaim is alleged to exist in favour of the buyer as against the vendor or the agent in any capacity whatsoever or any other person including any assignor.**

**ALPA** members have an understanding and an important point, that the register is only about secured agreements which are best known as a mortgage, lien or retention of title. If agents just lend money to someone by way of credit or a normal 7 day livestock trading account without any security or other protection then there is nothing to register from the auction sale.

**ALPA** understands that to register on the PPSR you must have a security over the item financed. This does not happen at auction sales of livestock. This is no different than a person having say, a MYER card and buys items on a 30 day account, MYER do not register this on the PPSR.

**ALPA** members, along with their clients are confused as to the registering of these livestock on the PPS register? It is our belief that these livestock should not be on the PPS as the Terms & Conditions of sale cover the vendor regarding ownership.

**ALPA** requests that an urgent investigation be carried out on whether the PPS Act has intended this outcome for small business for the sale of livestock and the language of the PPS Act be simplified without compromising desirable policy objectives to clear up this matter of livestock auctions.

**(END)**

**Andy Madigan**



**Andy R Madigan** JP

Chief Executive Officer

Australian Livestock & Property Agents Association Ltd

Suite 3, Level 6, 2 Barrack Street, Sydney NSW 2000

[www.alpa.net.au](http://www.alpa.net.au)

t: 02 9262 6633 | f: 02 9262 6422 | m: 0412 075 853 | e: [andy@alpa.net.au](mailto:andy@alpa.net.au)

**ALPA membership is a signature of professionalism in the industry**