PERSONAL PROPERTY SECURITIES ACT 2009 (CTH) REVIEW SUBMISSION
JUNE 2014
ABOUT THE CIVIL CONTRACTORS FEDERATION

The Civil Contractors Federation (CCF) is the peak industry body representing Australia’s civil construction industry. It has branches in all states and territories and around 2000 contractor and associate members nationally.

CCF members are responsible for the construction and maintenance of Australia’s infrastructure, including roads, bridges, pipelines, drainage, ports and utilities. Its members also play a vital role in the residential and commercial building construction industry by providing earthmoving and land development services including the provision of power, water, communications and gas.

CCF is an organisation registered under the Fair Work (Registered Organisations) Act 2009. It is governed by a National Board comprised of member-elected representatives from each state and territory.

A commitment to furthering its members’ interests and helping them manage their businesses more effectively is at the core of CCF’s operations. To that end, it offers effective business tools and management systems, as well as practical advice in areas such as taxation, industrial relations, workplace health and safety, human resources and environmental compliance.

CCF’s mission is to be the voice of the industry and to provide a high level of benefit to its members. In particular, CCF is focused on ensuring the industry:

- **is professionally represented** - by representing and advocating for the views of the industry to all levels of government in a timely and effective manner.
- **is informed** - by delivering to members, effective and timely information about key issues.
- **has access to tools and resources that help businesses succeed** - by identifying, developing and delivering tools and resources that assist members in their day-to-day operations.
- **has access to high quality training** - by delivering best practice, training by the industry, for the industry.
- **has access to opportunities to network, learn and celebrate their achievements** - by delivering a range of events designed to provide members with opportunities to build relationships, be informed and have access to people of influence.
- **has access to supporting partners that extend the benefits of membership** - by developing networks and relationships with organisations that can provide additional services to members beyond those provided directly by CCF; delivering real cost savings to members.
SUMMARY

The Personal Property Securities Act 2009 (Cth) has had a great deal of impact on CCF members. In order to provide our response, we developed a survey which reflected the review’s terms of reference for completion by our members nationally. Of those who responded, 66.7 per cent had more than 20 employees and 33.3 per cent had less than 20 employees. It should be noted however, that our members are largely small to medium sized enterprises and the responses should be viewed as such.

Generally, this submission provides the opinion of CCF and its members and is not intended to be an exhaustive research paper. CCF also acknowledges the limitations placed on organisations to provide in depth feedback when consultations are subject to short timeframes.
CIVIL CONTRACTORS FEDERATION RESPONSES TO THE TERMS OF REFERENCE

A. THE EFFECTS OF THE REFORMS INTRODUCED BY THE PPS ACT ON:
   I) AUSTRALIAN BUSINESSES, PARTICULARLY SMALL BUSINESS
   II) AUSTRALIAN CONSUMERS
   III) THE MARKET FOR BUSINESS FINANCE IN AUSTRALIA, AND
   IV) THE MARKET FOR CONSUMER FINANCE IN AUSTRALIA

The following response provides information about how the PPS Act has impacted CCF members, and therefore is in direct reference to A. I).

The responses collected largely noted that the PPS Act has increased administration and costs. Based on their replies, costs may be viewed in several ways: the cost of registering the property; the cost of additional administration (staff time and other sunk costs); training costs; and the costs of legal advice or other consultants. CCF would also assert that there are likely to be costs in addition to those listed.

It has been suggested by our members that the PPS Act is simply more red tape and does not effectively achieve the intent due to the complexity of the Act and related processes, and the limited understanding within industry of the requirements.

B. THE LEVEL OF AWARENESS AND UNDERSTANDING OF THE PPS ACT AT ALL LEVELS OF BUSINESS, PARTICULARLY SMALL BUSINESS

Figure 1 represents the level of understanding respondents to our PPS Act survey have. In general, based on Figure 1, CCF would assert that our members’ knowledge is not to the level that is required to effectively and efficiently register interest in property. Therefore, many may be at risk of losing property which will likely lead to hardship; and for small business, this impact may be significant.

Many CCF Branches have undertaken substantial education programs with members on the PPS Act and Register in order to assist them in understanding the requirements. However, the survey undertaken clearly demonstrates the Act to be far too complex for members.

FIGURE 1: THE LEVEL OF UNDERSTANDING AMONG CCF MEMBERS OF THE PPS ACT
C. THE INCIDENCE AND, WHERE APPLICABLE, CAUSES OF NON-COMPLIANCE WITH THE REQUIREMENTS OF THE PPS ACT PARTICULARLY AMONG SMALL BUSINESSES

Figure 2 illustrates the incidence of CCF members losing property due to non-compliance with the requirements of the PPS Act. While only a very small percentage have experienced the loss of property, it should be noted that 87.5 per cent either don’t register their property or have not experienced a company becoming insolvent, and therefore their registrations or lack thereof have never been tested. To that end, CCF does not believe the data we have on hand provides a clear picture of the real situation. We are however concerned by the 45.8 per cent of respondents that noted they do not register their property, due to the potential risk on their business. This clearly reflects there is a low level of knowledge among our members and it could be argued that this could reflect small to medium sized enterprises as a whole.

Essentially, CCF would argue that non-compliance is heavily tied to knowledge or lack of as well as a level of apathy since it is simply viewed as more red tape.

![Figure 2: Incidence of CCF Members Losing Property]

One of CCF’s biggest concerns is that it is possible for a party to register an interest in property when it is clearly the property of another party and is determinable through registration and the like. There have been instances of members who have lost property due to such circumstances and this causes a high level of anxiety with the process. In particular, the process to have an interest removed is very resource intensive.

For example there have been instances of finance companies registering an interest over property that had already been paid for in full. Upon request from the contractor to have the interest removed by the registering company the contractor may have subsequently had to action any of the following processes:

- contact the PPS Register via the helpline
- apply to the PPS Register in writing to have the interest removed resulting in additional administration
- engagement of legal advice resulting in additional cost.

D. OPPORTUNITIES FOR MINIMISING REGULATORY AND ADMINISTRATIVE BURDENS, INCLUDING COSTS, ON BUSINESSES, PARTICULARLY SMALL BUSINESS, AND CONSUMERS

Of the CCF members who responded to our survey, a range of suggestions for improvement were provided. It should be noted that the vast majority of respondents expressed a desire for the PPS Act to be abolished in its entirety, however CCF notes there may still be a requirement for a process that allows companies and individuals to register their interest in property. To that end, CCF is of the belief that our members’ responses are due to the poor operation, cost and complexity associated with the PPS Act.
The following suggestions for improvement have been made:
- registrations should only be allowed once the owner has provided written consent.
- the PPS Register should be free.
- the Act should only apply to financiers.
- better assistance should be provided for using the PPS Register. Members have commented that they are advised by the helpline to contact a lawyer. It is suggested that the Department are experts and should be able to provide assistance on the process.
- if a party registering an interest makes a mistake, they should be able to correct it themselves or have it corrected within 24 hours.
- make the entire system simpler or easier to understand and administer.
- free training on the PPS Register and Act.
- the use of plain English rather than legal jargon.

In relation to the deadlines for registering an interest, as illustrated in Figure 3, the vast majority of members do not know whether the timeframes are reasonable. CCF notes that since so many respondents noted they don’t know if the timeframes are reasonable it likely means that they are not well enough informed.

**FIGURE 3: TIMEFRAMES FOR REGISTERING AN INTEREST**

**E. OPPORTUNITIES FOR FURTHER EFFICIENCIES IN THE PPS ACT REGIME INCLUDING (BUT NOT LIMITED TO) SIMPLIFICATION OF THE PERSONAL PROPERTY SECURITIES REGISTER AND ITS USE**

Due to the similarities between D. and E. CCF has included a number of suggestions in D. for consideration under this topic. Further suggestions for improvement include:
- registration of property once and no need to state where that property is
- make stock easier to register.

It was reiterated by members that the PPS Register should be free and written in plain English.
F. THE SCOPE AND DEFINITIONS OF PERSONAL PROPERTY COVERED BY THE PPS ACT

CCF members are divided on this issue. 70.8 per cent of respondents said the definition and scope were not appropriate. This is because they believed the PPS Act: is not clear enough and is too hard to interpret; or it should only apply to tangible property; or all assets should be included under the PPS Act; or the PPS Act covers too many things and shouldn’t. Those who responded yes noted that the definition and scope are adequate.

G. THE DESIRABILITY OF SPECIFYING THRESHOLDS FOR THE OPERATION OF THE PPS ACT REGIME IN RESPECT OF PARTICULAR TYPES OF PERSONAL PROPERTY

CCF members are divided on this issue. In general they responded that registration should be required for property in excess of approximately $5000, although it was also suggested that the threshold should be over $100,000.
H. THE INTERACTION OF THE PPS ACT WITH OTHER LEGISLATION INCLUDING THE CORPORATIONS ACT 2001

In general, CCF members noted that the PPS Act is a minefield and is difficult to understand so they are unsure of how it specifically interacts with other Acts.

I. ANY OTHER RELEVANT MATTERS.

Many CCF members engage law firms or similar to manage registering their property. This is of concern as it adds to business cost and reduces overall productivity.

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