



PPSA - Are you getting it right ?

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Agenda

1. Exporting to Australia - differences in the PPSA
2. New rules for identifying debtors on the New Zealand register
3. Common errors which may invalidate or limit your security
4. Assurance review - do we need it in NZ?



Australia - Let's make it hard

	New Zealand	Australia
The PPSA itself	112 Pages	372 Pages
The regulations	25 Pages	43 Pages
Total	137 Pages	415 Pages



Australia - Statutory review

1. Review of the Australian PPSA - 3 years after commencement of Act
2. Criticised the Act for its complexity
3. And then Made almost 400 recommendations
4. And warned against piecemeal change

So what did the Australian government do???????????



Major areas of contention

1. Transition rules and future supplies
2. Indefinite hires creating security interest from day one
3. Broad definition of motor vehicles



The real killer for trade credit suppliers

1. New Zealand - Unregistered securities unenforceable against third parties - but enforceable against the company.
2. Australia - Unregistered securities vest in the debtor company on insolvency.

Has real impact on commercial decision on who to register against.



Other major differences

1. Australia - much more litigious environment
2. Australia - incredibly complex rules to identify debtors
3. Australia - more widespread use of Australian Business Numbers (ABN)
4. Australia - more relaxed rules about signing of security agreements
5. Australia - 20 business day rule under the Corporations Act
6. Australia - different fees according to length of registration



Australia - summary

TAKE ADVICE!



New Zealand - identifying your debtor

- Long standing problem - identify partnerships and trusts
- PPSA Amendment - 2018
- Introduced NZBN as part of registration process
- Unfortunately - only applies to organisations
- Why?



Does a missing NZBN invalidate registration?

Possibly - but this seems harsh

- Commenced October 2018 with 2 month transition for existing registrations
- NZBN must be included if debtor is an organisation with NZBN and is not partnership or trust (mostly incorporated companies)
- But - search on company name and number will reveal registration so why needed?

CONSIDER

- Section 149 of PPSA - registration invalid only if it is seriously misleading



NZBN summary

- Current rules add little (if anything)
- When all businesses have NZBN - makes sense to make this mandatory for trusts and partnerships
- This would be big step forward
- Will not happen any time soon
- Meanwhile - add NZBN to existing registrations where required



Validity of financing statements

Section 149 - Only invalid if seriously misleading

Section 150 - Without limiting 149 - will be invalid if serious error in:

- Name of debtor, or
- Serial number of collateral

Compare to Australia



Limiting the effectiveness of registration

- Too narrow a collateral description
- Priority in proceeds (sections 46 and 47):
 - PMSI if continuously perfected
 - Temporary perfection - 10 working days
 - 2nd registration preferred



Assurance Review - is it needed in NZ?

Overview of the Australian position

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