

Show Me The Money: There's no prize for 2nd place

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Presenting Wednesdays with Redchip Webinar

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Zac's workload comprises a broad range of commercial, IP and property matters. In addition to being a lawyer, Zachary is also a registered trade mark attorney.

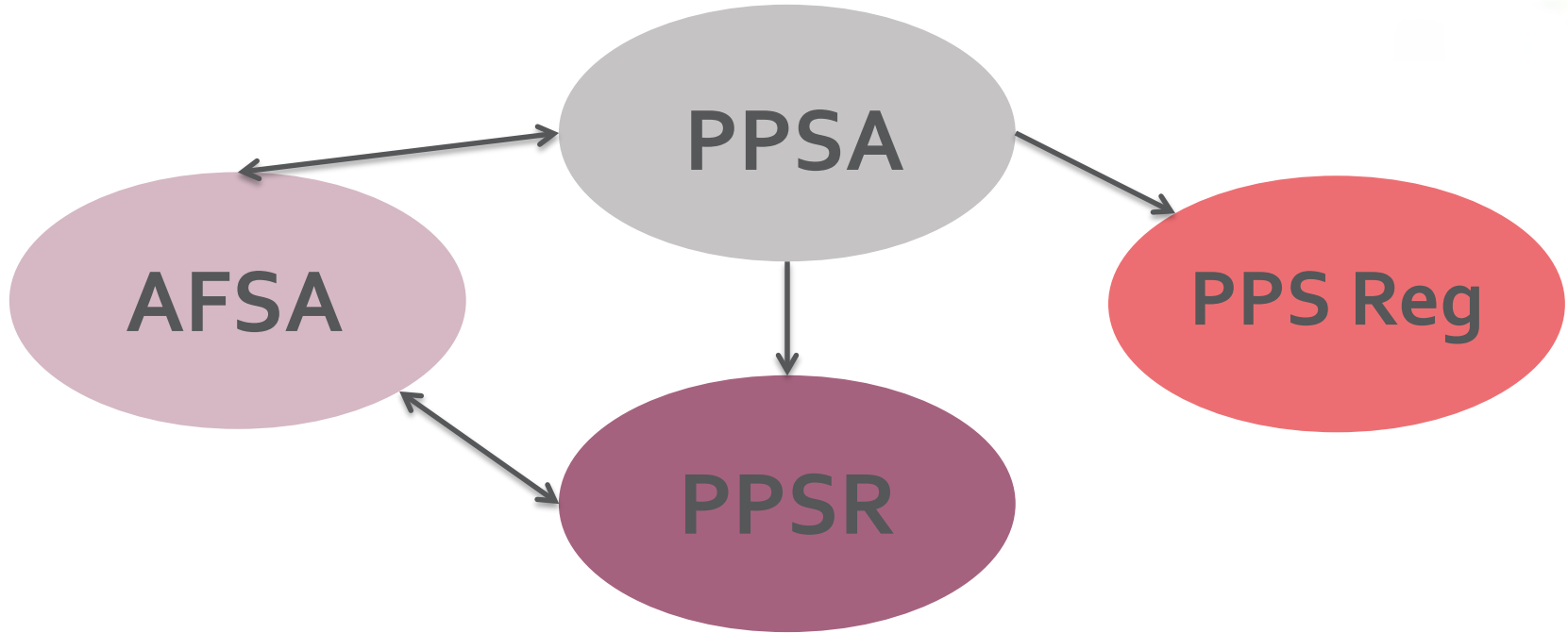
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Lauren spends her days supporting clients through their business and property transactions including sales, acquisitions and leasing.

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What is the current PPS System?



Tell me a little about yourself...

**Where did you come from,
and how did you get here?**

- PPSA system originated in the USA in 1950's
- Introduced to provinces in CAN in the 1970's
- NZ implemented system in 2002
- PPSA based on NZ, CAN and USA laws



What were things like before that fateful day?

(Monday 30 January 2012)

- Underlying legal concepts effectively the same (tracing back to old UK common law)
 - ROT, consignment, bailment, hire etc.
- No ability to register interests other than under Ch 2K Corps Act
- No requirement to register interests in personal property to have effective claim



A security interest under the PPS is?

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An **interest** in **personal property** provided for by a **transaction** that **secures payment** or **performance** of an obligation



First, you give me some collateral...

Collateral class	Personal property
Tangible property	Motor vehicles, watercraft, aircraft, agriculture or other goods (a catch all for all other types of tangible personal property)
General property	All property the grantor has an interest in at the time of registration and anything that they acquire in the future (a floating charge)
Intangible property	Personal property that is not any of the following: financial property, goods, intermediated security (i.e. intellectual property rights)
Financial property	Chattel paper, currency, a document of title, an investment instrument, a negotiable instrument

**Multiple security interests can exist in respect of the same transaction*

When is it most relevant?

Transaction	Specific considerations
Leasing Lending Hiring	Bailee does not provide value In the business of >2 year duration Pooling arrangements
Consignment	Consignor keeps an interest after delivery Goods delivered to consignee for disposal (i.e. sale / lease) Not auctioneer
Lending money	General and / or specific security for the repayment of money
Conditional sale	Possession passes before title

So, what **doesn't** the PPS cover?

Basically, things that **aren't** *personal property*.

But, what else?

A range of *excluded property*
(state by state)

Mostly government grants, think
along the lines of mining rights,
gaming licences and rights relating to
electricity generation/distribution



Attaining perfection

Relevant Transaction

- Security interest/s
- Collateral type
- PMSI
- Australian connection

Security Agreement

- Attachment
- Binding
- Possession/control
- Statutory amendments
- Requisite information obtained

Perfection

- Registration on PPSR
- Original collateral and proceeds

The early bird gets the worm...

- Priority given in order of registration
- Security interest must be perfected
- PPSR search is critical
- An exemption to the first in time, first in line rule is a PMSI



The early bird gets the worm...

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PMSI (a secret weapon giving you super priority)

Only available in **limited** (typically *commercial*) circumstances:

- Loan or credit to purchase specific personal property (non-commercial if asset is serial numbered)
- Personal property advanced with an outstanding debt
- PPS lease
- Commercial consignment

Strict registration **timing requirements** based on collateral type and whether collateral is inventory

The early bird gets the worm...

There are other ways to perfect beyond registration.

If you don't get the timing right, a security interest can be perfected by:

POSSESSION

More than just a contractual
right to possess

CONTROL

Only available for certain
types of property

You may think...

1. There is no huge benefit of registration
2. Registration is just to secure a right to be paid
3. There is no point in registration if the parties are related

But... there are a number of ways to use the PPSR to assist clients.....

Clawback of preferential payments

1. Preferential payments – what's the harm?
2. How can you avoid clawback?
3. Registration can protect your right to be paid above others



But... who wants a security interest over their head? NO ONE!

Registrations within a Corporate Group



1. Unintended consequences of asset protection and structuring a corporate group: **Creation of an entity in the business of leasing**
2. Usual rule of priority without registration may not apply to related parties
3. Registration can protect your assets and keep them where you want them!

Is it *really* worth the effort for related parties?



We are here to help you with.....

- Strategy and advice
- Documentation review and preparation
- Security interest searches
- Security interest registration
- Security interest management
- PPSR training
- Enforcement of rights (litigation team)

We're also friendly, so don't be shy!



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Questions?

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