



Intellectual Property and Personal Property Securities Reform

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Overview

- Current problems with PPS in Australia
- Functional approach to the PPS reform
- Implementation strategy
- Accommodating IP in PPS reform
- Conclusion



Overview

Securing IP

The New York Times disclosed on Tuesday that Leibovitz has borrowed about \$US15 million (\$23 million) from [Art Capital] in two tranches. Records show that she secured the loan partly against property she owns, but also by putting up as collateral the copyright, negatives and contract rights to every photograph she has ever taken or will take in future until the loans are paid off.

Source: Pilkington, E 2009. 'Leibovitz pawns life's work in a scramble for cash' *Sydney Morning Herald*, 26 February 2009

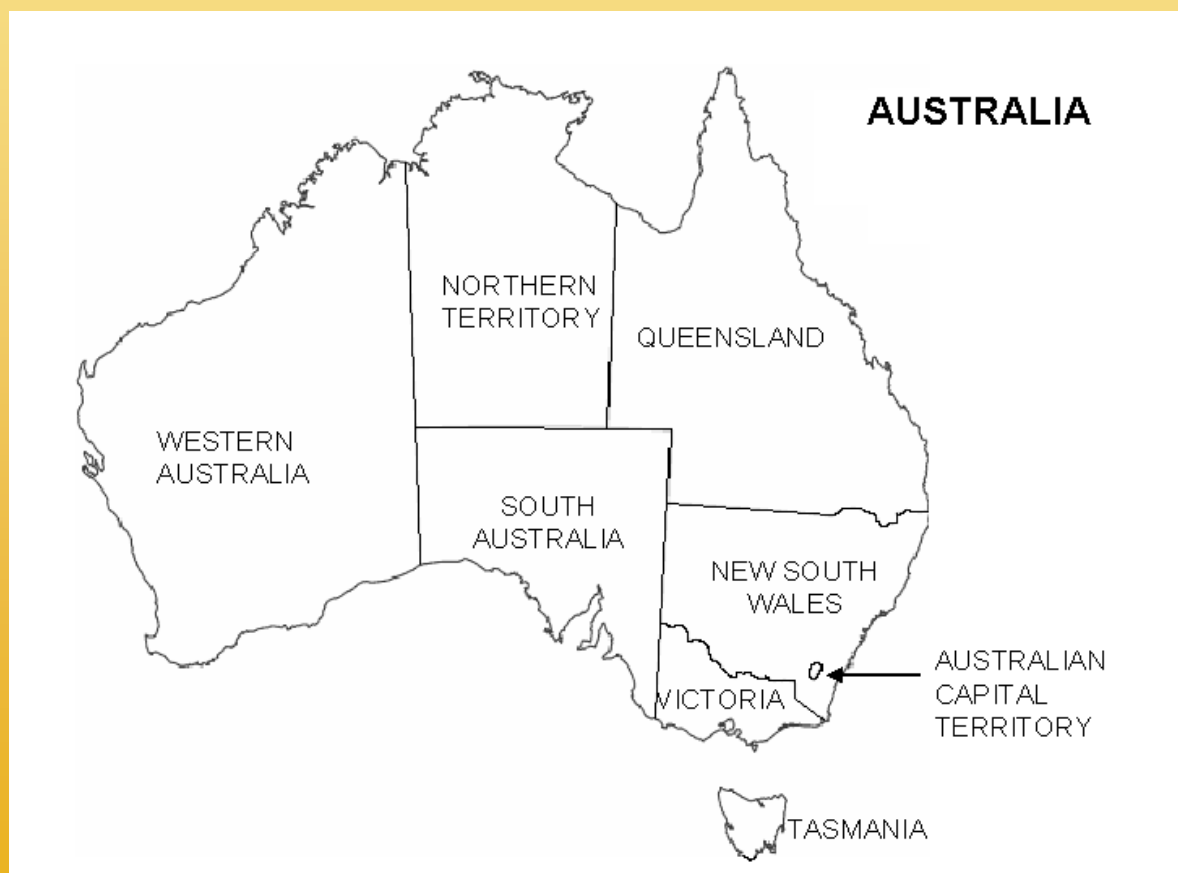


Current problems with PPS in Australia

- Certainty, consistency, complexity and cost
- Existing arrangements based on nature of collateral, transaction, debtor and location



Current problems with PPS in Australia





Current problems with PPS in Australia

- Certainty, consistency, complexity and cost
- Existing arrangements based on nature of collateral, transaction, debtor and collateral
- Multiple laws and legislation regulating PPS



Current problems with PPS in Australia

Building and Construction Industry Security of Payments Act 1999 (NSW)	Petroleum (Onshore) Act (NSW)	Motor Car Traders Act 1986 (VIC)
Tribunal Act 1998 (VIC)	Building and Construction Industry Security of Credit Act 1984 (VIC)	Partnership Act 1958 (VIC)
Warehousemen's Liens Act 1958 (VIC)	Sale Of Goods Act 1895 (SA)	Property Law Act 1958 (VIC)
Agricultural Chemicals Distribution Patents Act 1990 (Cth)	Second-Hand Dealers And Pawnbrokers Act 1996 (SA)	Road Safety Act 1986 (VIC)
Credit Act 1984 (NSW)	Co-operatives Act 1996 (VIC)	Sale of Goods (Vienna Convention) Act 1987 (VIC)
Consumer Credit (New South Wales) Act 1995 (NSW)	Fines Act 1996 (NSW)	Second-Hand Dealers And Pawnbrokers Act 1989 (VIC)
Duties Act 2000 (VIC)	Impounding Act 1993 (NSW)	Transport Act 1983 (VIC)
Fair Trading Act 1999(VIC)	Confiscation Act 1997 (VIC)	Trustee Act 1958 (VIC)
Fisheries Act 1995 (VIC)	Disposal of Uncollected Goods Act 1961 (VIC)	Designs Act 2003 (Cth)
Conversion of Securities Adjustment Act 1931(NSW)	Domestic (Feral and Nuisance) Animals Act 1994 (VIC)	Victorian Civil and Administrative (VIC) Control Act 1966 (Qld)
Conveyancing Act 1919 (NSW)	Co-operatives Act 1992 (NSW)	Bills Of Sale And Other Instruments Act 1955 (Qld)
Duties Act 1997 (NSW)	Co-Operative Housing and Starr-Bowkett Societies Act 1998 (NSW)	Legal Aid Commission Act 1979 (NSW)
Factors (Mercantile Agents) Act 1923 (NSW)	Forestry Rights Act 1996 (VIC)	Mining Act 1992 (NSW)
Partnership Act 1892 (NSW)	Legal Practitioners Act 1986 (SA)	Offshore Minerals Act 1999 (NSW)
Payments Act 2002 (VIC)	Finance Brokers Control Act 1975 (WA)	Warehousemans Liens Act 1935 (NSW)
Chattel Securities Act 1987 (VIC)	Fines, Penalties and Infringement Notices Partnership Act 1891(Tas)	Water Management Act 2000 (NSW)
Pawnbrokers And Second-Hand Dealers Act 1996 (NSW)	Penalty Units and Other Penalties Act 1987	Cooperatives Act 1997 (Qld)
		Credit (Rural Finance) Act 1996 (Qld)
		Pharmacy Practice Act 2006 (NSW)



Current problems with PPS in Australia

Liens On Crops Of Sugar Cane Act 1931 (Qld)	Natural Resources Management (Water Management and Other Matters) Amendment Act 2007 (SA)	Hire-Purchase Act 1959 (WA)
Major Sports Facilities Act 2001 (Qld)	Partnership Act 1891(SA)	Motor Vehicles Dealers Act 1973 (WA)
Circuit Layouts Act 1989 (Cth)	Second-Hand Vehicle Dealers Act 1995 (SA)	Partnership Act 1895 (WA)
Manufactured Homes (residential parks) Act 2003 (Qld)	South Australian Meat Corporation Act 1936 (SA)	Pawnbrokers And Second-Hand Dealers Act 1994 (WA)
Motor Vehicles and Boats Securities Act 1986	Stock Mortgages And Wool Liens Act 1924 (SA)	Property Law Act 1969 (WA)
Partnership Act 1891 (Qld)	Unclaimed Goods Act 1987 (SA)	Road Traffic Act 1974 (WA)
Police Powers and Responsibilities Act 2000 (Qld)	Plant Breeder's Rights Act 1994 (Cth)	Goods Act 1958 (VIC)
Property Agents And Motor Dealers Act 2000 (Qld)	Worker's Liens Act 1893 (SA)	Goods Securities Act 1986 (SA)
Property Law Act 1974 (Qld)	Commercial Arbitration Act 1984 (VIC)	Sale Of Goods Act 1895 (WA)
Sale Of Goods Act 1896 (Qld)	Consumer Credit (Victoria) Act 1995 – Consumer Credit Code (VIC)	Settlement Agents Act 1981 (WA)
Second-Hand Dealers And Pawnbrokers Act 2003 (Qld)	Warehouse Liens Act 1990 (SA)	Trustees Act 1962 (WA)
Storage Liens Act 1973 (Qld)	Bills Of Sale Act 1899 (WA)	Warehousemans Liens Act 1952 (WA)
Transport Operations (Road Use Management) Act 1995 (Qld)	Bulk Handling Act 1967 (WA)	Bills Of Sale Act 1900 (Tas)
Bills Of Sale Act 1886 (SA)	Consumer Affairs Act 1971 (WA)	Building Act 2000 (Tas)
Consumer Credit (South Australia) Act 1995(SA)	Consumer Credit (Western Australia) Act 1996	Consumer Credit (Tasmania) Act 1996
Co-operatives Act 1997 (SA)	Cooperative and Provident Societies Act 1903(WA)	Cooperatives Act 1999 (Tas)
Criminal Law (Clamping, Impounding and	Chattel Securities Act 1987 (WA)	Disposal of Uncollected Goods Act 1968
	Disposal of Uncollected Goods Act 1970 (WA)	Factors Act 1891(Tas)
		Homes Act 1935 (Tas)
		Motor Vehicle Securities Act 1984 (Tas)



Current problems with PPS in Australia

Sale Of Goods Act 1896 (Tas)
Second-Hand Dealers And Pawnbrokers Act
1994 (Tas)

Corporations Act 2001 (Cth)

Consumer Credit Act 1995 (ACT)
Cooperatives Act 2002 (ACT)
Credit Act 1985 (ACT)
Instruments Act 1933 (ACT)
Hemp Fibre Industry Facilitation Act 2004
(ACT)
Pawnbrokers Act 1902 (ACT)
Conversion Act 1921 (Cth)
Loans Securities Act 1919 (Cth)
Public Trustee Act 1985 (ACT)
Stock, Wool And Crop Mortgages Act 1930(Tas)
Tasmanian Development Act 1983 (Tas)
War Service Land Settlement Act 1950 (Tas)
Registration of Deeds Act 1957 (ACT)
Road Transport and Safety Management Act
1999 (ACT)
Sale Of Goods Act 1954 (ACT)
Sale of Motor Vehicles Act 1977 (ACT)

Instruments Act 1935 (NT)
Law of Property Act (NT)
Partnership Act (NT)
Public Trustee Act (NT)
Road Traffic Act (NT)
Uncollected Goods Act 2004 (NT)
Offshore Petroleum Act 2006 (Cth)
Shipping Registration Act 1981 (Cth)
Warehousemen's Liens Regulations 2007
Chattel Securities Regulations 1997
Copyrights Act 1968 (Cth)
Co-operatives Regulations 1997
Instruments (Fees) Regulations
Bills of Sale (Fees) Regulations 1995
Bills of Sale (Requirements as to Instruments)
Regulations 1995
Co-operatives Regulations 1997
Public Trustee Act 1941 (WA)
Rights in Water and Irrigation act 1914(WA)
Goods Securities Regulations 1997
Registration Of Interests In Motor Vehicles
And Other Goods Act 1983 (NT)
Sale Of Goods Act 1972 (NT)

Cooperatives Regulations 2003
Co-Operatives Regulations
Admiralty Act 1988 (Cth)
Trade Marks Act 1995 (Cth)
Air Navigation Act 1920 (Cth)
Air Services Act 1995 (Cth)
Australian Industry Development
Corporation Act 1970 (Cth)
Commonwealth Inscribed Stock Act 1911
(Cth)
Mercantile Law Act 1962 (ACT)
Partnership Act 1963 (ACT)
Corporations Act 2001 (Cth)
Fisheries Management Act 1991 (Cth)
Loans Securities Redemption and Offshore
Minerals Act 1994 (Cth)
Warehousemen's Liens Act (NT)
Motor Dealers Regulations
Taxation Administration Act 1953 (Cth)
Treasury Bills Act 1914 (Cth)
Wool International Act 1993 (Cth)
Traffic Act (NT)
Bills of Sale (Fees) Regulations 1983



Current problems with PPS in Australia

- Certainty, consistency, complexity and cost
- Existing arrangements based on nature of collateral, transaction, debtor and collateral
- Multiple laws and legislations regulating PPS
- Multiple registers



Current problems with PPS in Australia

Existing Registers

The Register (Chattel Securities Act 1987 (WA))

Register of Patents (Cth)

Register of Co-operative Charges (NSW)

Register of Encumbered Vehicles (REVS) (NSW)

State Offshore Mining Register (NSW)

Register of Designs (Cth)

The Register (Motor Vehicle Securities Act 1984 (Tas))

Register (Bills Of Sale Act 1886 (SA))

Register of Co-operative Charges (SA)

The Register (Goods Securities Act 1986 (SA))

The Register (Liens On Fruit Act 1923 (SA))

Registry Book (Bills Of Sale Act 1899 (WA))

Register of Cooperative Charges (Tas)

Register of Trade Marks (Cth)

Register of Co-operative Charges (Vic)

Register of Cooperative Charges (ACT)

The Register (Bills Of Sale Act 1900 (Tas))

Register of Co-operative Charges (NT)

Fisheries Act - Secretary to keep register (Vic)

Registrar-General to collate (Instruments Act 1933 (ACT))

Land Titles Registry and General Registration Office (NT)

Register of Charges for Co-operative housing bodies (NSW)

Register of Plant Breeder's Rights (Cth)

The Register (Stock, Wool And Crop Mortgages Act 1930 (Tas))

Register of legal and equitable interests in petroleum titles (NSW)

General Register of Deeds (Registration of Deeds Act 1957 (ACT))

Register under Registration of Interests in Goods Act 1986 (NSW)

Australian Register of Company Charges (Cth)

Register of Interests in Motor Vehicles and Other Goods (NT)

Register of Liens (Liens On Crops Of Sugar Cane Act 1931 (Qld))

Vehicle Securities Register (Chattel Securities Act 1987 (Vic))

Register of mortgages of mineral development licences (Vic)

Register of Security Interests (Bills Of Sale And Other Instruments Act 1955 (Qld))

Register of Liens on Crops, Register of Liens on Wool and Mortgages of Stock (Vic)

Register of legal and equitable interests in exploration licences, assessment leases and mining leases (NSW)

Register of Security Interests (Motor Vehicles and Boats Securities Act 1986 (Qld))

Register of authorisations (Fish Resources Management Act 1994 (WA))

General Register of Deeds (Security Interests in Goods Act 2005 (NSW))



Current problems with PPS in Australia

IP Legislation and Registers

<i>Patents Act 1990</i>	Register of Patents
<i>Trade Marks Act 1995</i>	Register of Trade Marks
<i>Designs Act 2003</i>	Register of Designs
<i>Copyright Act 1968</i>	None
<i>Circuit Layouts Act 1989</i>	None
<i>Plant Breeder's Rights Act 1994</i>	Register of Plant Breeder's Rights
<i>Corporations Act 2001</i>	Australian Register of Company Charges



Functional Approach

- Reform adopts a functional approach
 - Treat like transactions alike
 - IP rights as intangible property
 - One register: no specialist registers
 - Movement away from title based finance
 - Certainty, consistency, complexity and cost



Implementation strategy

- Existence, content, transfer and licencing of IP rights excluded



Implementation strategy

- A long time coming
 - History of PPS reform (1969 – present)
 - Australian government commitment to PPS reform



Implementation strategy

- Consultation (since January 2006)
 - PPS experts / IP experts / the curious
 - State and Territory Governments
 - 12+ public seminars
 - 4 Discussion papers
 - 2 Draft Bills
 - 1 Parliamentary Inquiry



Accommodating IP in PPS reform

- Licences not security interests
 - divergence from functional approach
 - cf lease over tangible property
- IP as inventory
 - 'account' to include IP royalties
 - facilitate securitisation



Accommodating IP in PPS reform

- Possession of IP rights
 - ‘perfection’ principally by registration
 - registration before attachment
 - ‘seizure’ by notice



Accommodating IP in PPS reform

- Transfer of higher tier interest
 - transfer binds successive transferees

- Collateral description
 - description includes IP where security interest has attached to IP



Accommodating IP in PPS reform

- Conflict of laws
 - apply law of jurisdiction governing IP right or licence



Conclusion

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Further information at www.ag.gov.au/pps

Email queries to pps@ag.gov.au



End