

Attorney-General's Response to Privacy Impact Assessment Report for the Personal Property Securities Register

Recommendation 1 – IIS recommends that the 3 year review of the PPS Act consider the impact of the operation of the PPSR on individual grantors' privacy, in particular in relation to the inclusion on the PPSR of name and DOB for grantors in relation to consumer securities and any impact arising if the definition of commercial property means that property which is used predominantly for personal, domestic or household purpose is nevertheless able to be categorised as commercial property.

Response – Accepted.

Recommendation 2 – IIS recommends that any proposals to include additional personal information in the PPSR beyond that permitted in the June 2009 PPSR Bill should be subject to a published PIA before a decision is made to amend the legislation.

Response – Accepted.

There are no current proposals to include additional personal information on the PPS Register.

Recommendation 3 – IIS recommends that secured parties proposing to register a security interest in consumer property where the registration will include an individual grantor's name and DOB be obliged to first advise the individuals concerned of the disclosure of personal information to the PPSR. To the extent that this obligation would not be satisfied by a secured party's existing obligation under the Privacy Act, IIS recommends that the PPS Bill should provide that failure to provide prior notice of a registration that relates to consumer property and would include name and DOB is an interference with privacy under the Privacy Act.

Response – Not accepted to the extent that it would impose additional obligations on small business.

This requirement would impose an unwelcome administrative burden on small businesses adapting to the new PPS regime. It would also impose different obligations on small businesses than the Privacy Act does in similar circumstances.

The Government will ask the PPS Registrar to produce guidance for small business on best privacy practice for secured parties, including advising individual grantors of security interests in consumer property of the disclosure of their personal information to the PPSR.

Recommendation 4 – IIS recommends that the 3 year review of the PPS Act assess whether any obligation on secured parties under the Privacy Act and the PPS Act to provide prior notice of disclosure of personal details to the PPSR is sufficient to ensure individuals are in a position to make informed choices about proceeding with a

credit application and whether these obligations are being fulfilled, or additional enforcement measures such as civil penalties, are needed to ensure that secured parties meet these obligations.

Response – Accepted.

Recommendation 5 – IIS notes that the AGD is now working on a records management framework as required by the *Archives Act 1983* for the PPSR and recommends that it include as a principle in the framework that personal information be held for the minimum time possible once a registration is no longer active.

Response – Accepted.

Recommendation 6 – IIS recommends that the Registrar should ensure that public information and education about the PPSR should include information about its availability for searches and that the Registrar should monitor the potential for the PPSR to be used as source of information in ID fraud or theft activities.

Response – Accepted.

In the lead up to the commencement of the new PPS scheme in May 2011, the Government will produce information and educational material designed for different user groups. This will include information regarding:

- *the type of personal information that might be held on the PPSR,*
- *searches that may be made by reference to an individual grantor's details, and that the use of data obtained by such a search is only authorised if undertaken for specific purpose, and*
- *the possible consequences of unauthorised searches including civil penalties, damages and investigation under the Privacy Act.*

Recommendation 7 – IIS recommends that the Registrar and the Office of the Privacy Commissioner monitor the nature of concerns about accuracy or correction matters in relation to the PPSR raised with them and that they meet periodically to consider if there is a need for additional information or other measures to ensure that individuals can most effectively pursue their concerns.

Response – Accepted.

The Government expects that the PPS Registrar will establish a number of stakeholder consultative forums, including one with the Office of the Privacy Commissioner.

Recommendation 8 – Recognising that it will not be possible for the Registrar to directly notify individuals whose details are migrated from existing registers to the PPSR about the operation of the register, IIS recommends that the Registrar include information in any publicity and education campaigns about the PPSR encouraging individuals to check the PPSR and to seek amendment if appropriate.

Response – Accepted.

The information and educational material referred to in the response to recommendation 6 will also include material inviting individuals to check the PPS Register to see if they are the subject of any migrated registrations and how to seek amendment where appropriate.

Recommendation 9 – IIS recommends the PPSR be designed so as to ensure that every person making a search of the register is asked to confirm that they are doing so for an authorised purpose and advising them of the consequences of making a false declaration about the nature of a proposed search.

Response – Accepted.

Recommendation 10 – IIS recommends that publicity about the PPSR should ensure that potential users are aware that searches of the PPSR in relation to consumer property, where the search criteria include individual’s name and DOB, may only be conducted for permitted purposes, and these purposes do not include any direct marketing purposes such as the use of information for pre-screening of direct marketing lists. IIS also recommends that the review of the PPS Act should investigate whether the provisions in the Act have been effective in ensuring that the grantor details included in relation to consumer property is only used for permitted purposes.

Response – Accepted.

The information and educational material referred to in the responses to recommendations 6 and 8 will also include material about authorised uses of the PPS Register.

Recommendation 11 – IIS recommends that the Registrar develop a policy, which is available publicly, which sets out the process by which an individual could seek to have their name and DOB that would otherwise appear on the PPSR suppressed and the circumstances or criteria that would apply.

Response – Accepted.

Recommendation 12 – IIS recommends that if the Government considers that the Registrar would not be in an ideal position to consider requests to remove details from the PPSR in “emergency” situations that it considers other options for this role, including seeking input from the Privacy Commissioner or the Ombudsman.

Response – Accepted.

The Government considers that the Registrar will be best placed to deal with requests to remove details from the PPS Register and notes the expected ongoing liaison between the Registrar and the Office of the Privacy Commissioner.

Recommendation 13 – IIS recommends that the 3 year review of the PPSR consider whether the enforcement framework is effective in protecting individual privacy or whether additional measures are needed.

Response – Accepted.

Recommendation 14 – IIS recommends that AGD should ensure that there is a person or body with responsibility for management and oversight of privacy of the PPSR that report to a senior manager and, when appointed, to the Registrar. Roles and responsibilities should include developing and delivering a clear policy approach for privacy for the PPSR including in relation to:

- Educational material about the PPS scheme and the operation of the PPSR;
- Handling requests to remove individual grantor details from the PPSR where there are serious privacy concerns;
- Data retention;
- An appropriate privacy policy including in relation to notification of data breaches; and
- Further PIAs at significant points for example where there is any proposal to change nature of security interests listed on the PPSR or to the nature of permitted searches.

The person or body should also be responsible for ensuring that the Registrar conducts regular privacy audits of the operation of the PPSR and that it responds to any audit findings in a timely way. Audits should preferably follow an annual cycle with reports available to the public.

Response – Accepted.