PPSA - farming, grazing and agribusiness

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Introduction

1 The *Personal Property Securities Act 2009* (Cth) (**PPSA**) and the regulations are intended to replace a wide range of existing Commonwealth, State and Territory laws and registers dealing with security interests. When considering the implications of the PPSA for agribusiness in particular, consideration will need to be given to a range of farming, grazing and agribusiness activities which will now fall within the security interest provisions of the PPSA and which have particular application and priority rules under the PPSA.

2 In addition there are a number of actions and activities which are now deemed under the PPSA to give rise to security interests which may not otherwise have been so regarded in the past. These will be important to agribusiness owners, farmers and contractors as well as finance institutions and other commercial counterparties where security interests are provided.

Typical agribusiness operations – case study

3 To assist in addressing these PPSA issues reference will be made, by way of example, to a typical mixed farming business and the interactions and transactions arising therein which may be impacted by the PPSA.

4 In this case study, FarmCo operates a cattle and sugar farming business in northern Queensland. Like many farming operations FarmCo relies on debt from a number of sources including:

(a) funds borrowed from BankCo for general farm purposes, day to day expenses, seasonal costs and overdraft facilities. These loans are currently secured by a registered fixed and floating charge granted by FarmCo to BankCo.

(b) funds borrowed from FinanceCo for livestock and crop financing. These are currently secured by crop liens and stock mortgages.

(c) equipment leasing facilities and other asset financing arrangements provided by LeaseCo, which are generally secured by fixed charges over the assets being financed; and

(d) plant loans from the sugar milling company to which FarmCo supplies sugar cane. These loans are generally unsecured but are the subject of a cane payment direction authorising the milling company to deduct certain amounts from FarmCo's cane pays at regular intervals to meet the outstanding debts.

These financing arrangements will be considered at each level of the farming operations in order to consider registration requirements and priority issues under the PPSA.

PPS register

5 A number of existing registers will be migrated to the Personal Property Securities Register (**PPSR**) at the *migration time* and before the *registration commencement time* including, in the context of agribusiness arrangements:

(a) the ASIC register of company charges;

(b) the co-operatives register of charges;

(c) bills of sale;

(d) motor vehicle securities;

(e) crop liens; and

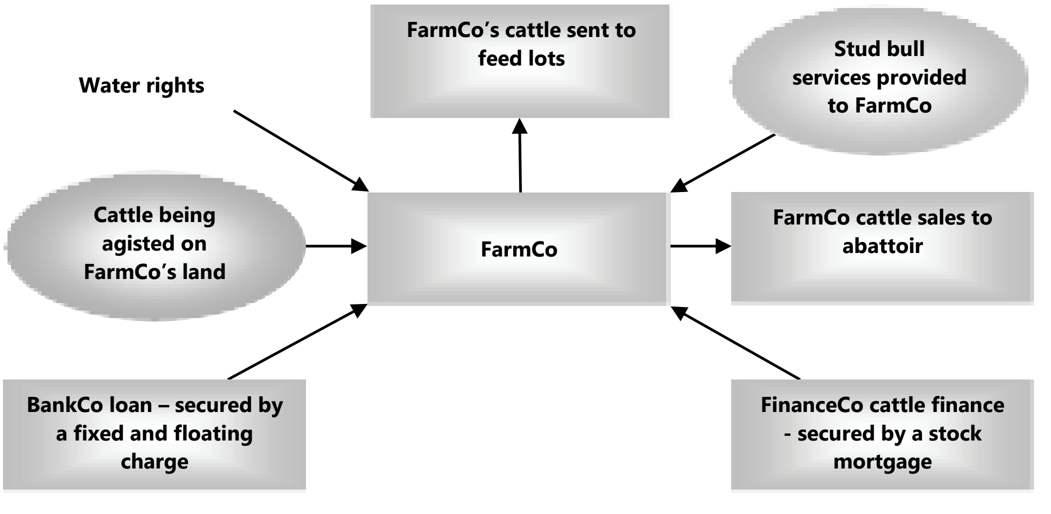
(f) stock mortgages.

6 Prior to the *registration commencement time* for the PPSA the existing registered securities will be migrated to the Personal Property Securities Register (**PPSR**)[1] and it will be the responsibility of the grantor and the grantee of the security interest to ensure that the securities have been migrated[2].

7 In FarmCo's case, it is expected that the security interests referred to in paragraphs 5(a), 5(b) and 5(c) will be migrated to the PPSR. The plant loan in paragraph 5(d) will currently not be registered as a security interest and will therefore not be subject to migration.

FarmCo's farming operations - cattle

8 Diagrammatically the various activities in FarmCo's cattle farming operations can be represented as follows:



9 FarmCo will have a number of interactions arising from its cattle farming operations:

(a) BankCo holds a registered fixed and floating charge over FarmCo's assets;

(b) cattle owned by other parties are agisted on FarmCo's land;

(c) FarmCo's cattle will be sent to feedlots operated by other parties;

(d) stud bull services will be provided to service FarmCo's herd on FarmCo's land;

(e) FarmCo will have cattle sold and being transported to the abattoir;

(f) FarmCo's cattle will be the subject of various financing and security arrangements with FinanceCo; and

(g) generally there will be land owned or leased by FarmCo from which the farming operations are conducted and FarmCo will have certain water rights.

FarmCo's farming operations – cane growing

10 In conducting its sugar cane farming activities there are two parts to FarmCo's operations:

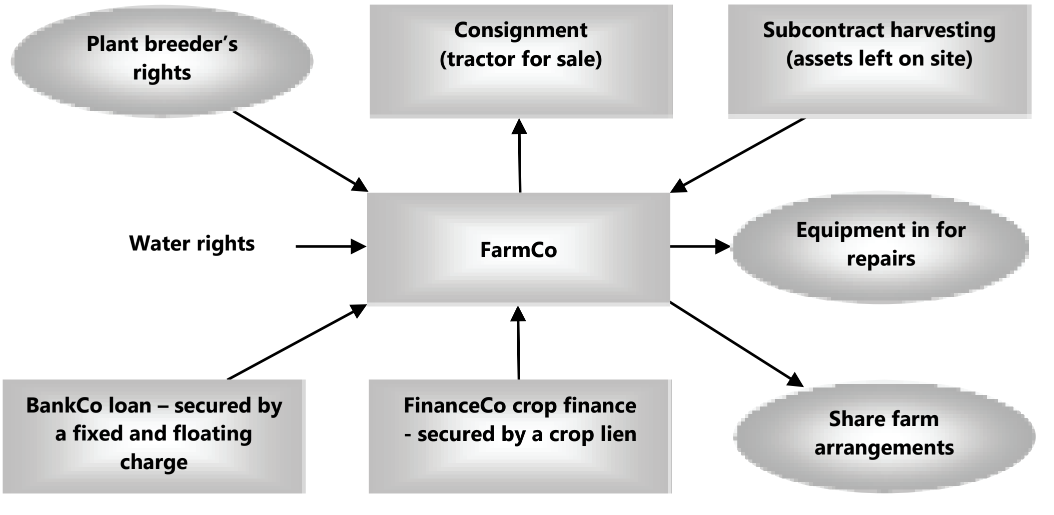
(a) sugar cane operations at farmer level which will involve the day to day farming operations and the growing and harvesting of the sugar cane crop; and

(b) sugar cane operations at the miller level which will address the arrangements between the sugar milling company and FarmCo for the sale and payment for sugar cane.

11 Each of these parts of the cane farming business has its own interactions and needs to be considered separately from a PPSA perspective.

Sugar cane operations – farmer level

12 These operations can be represented diagrammatically as follows:



13 At any time the following interactions may be in place:

(a) FarmCo will be operating the farm using funds provided by BankCo and the subject of a registered fixed and floating charge;

(b) contractors undertake planting, harvesting, cartage and/or other contract farming operations on FarmCo's farm using their own equipment or FarmCo's equipment;

(c) FarmCo may have share farm arrangements in place either for part of its farm or to allow it to farm other land;

(d) the varieties of cane grown by FarmCo may be subject to plant breeders rights held by other parties;

(e) equipment used by FarmCo has been delivered to the local mechanic's business and stored in the workshop awaiting repair;

(f) used farming equipment in excess of FarmCo's requirements is sent for sale by consignment and displayed at the local equipment dealer's premises;

(g) FarmCo has been provided with additional seasonal finance to allow it to undertake its cropping activities which is the subject of specific security interests granted to FinanceCo; and

(h) generally there will be land owned by, leased by or subject to share farm arrangements by or with FarmCo from which the farming operations are conducted and FarmCo will have certain water rights to facilitate the farming operations.

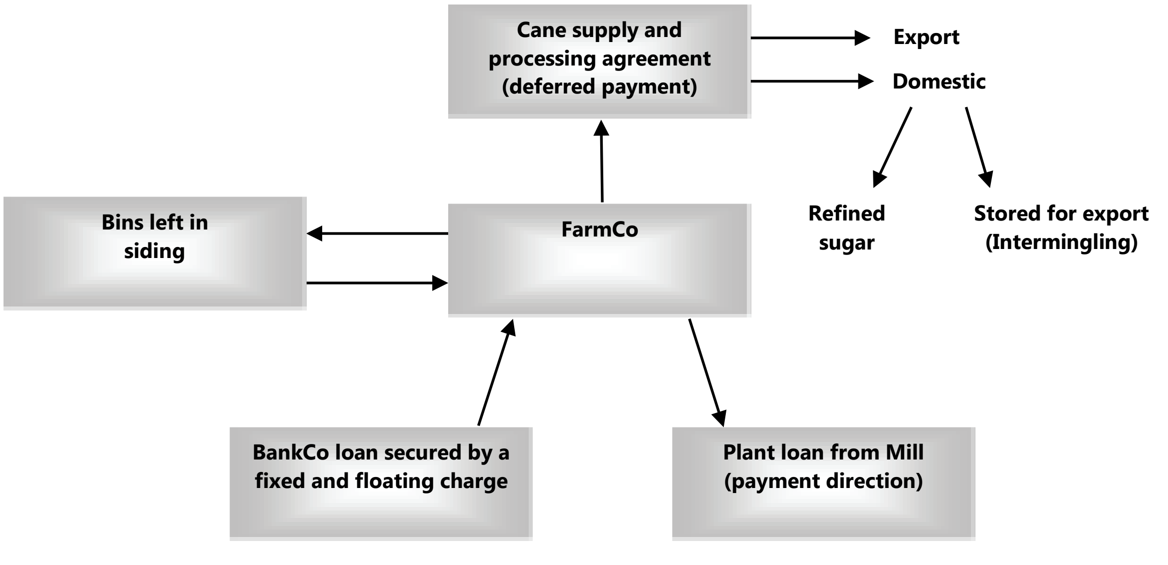
Sugar cane operations - mill level

14 Sugar cane grown by FarmCo is sold to the local milling company on the basis set out in the cane supply and processing agreement (**CSPA**). Each sugar cane grower is required to enter a CSPA to allow it to deliver cane and the CSPA sets out the arrangements in the milling district for the orderly harvesting and processing of the cane. The CSPA also addresses quality, transport, timing and payment arrangements. Given the seasonal nature of the sugar cane crop and the limited milling capacity, the sugar cane is sold by FarmCo to the milling company and FarmCo receives payments on a relative basis for the amount of sugar produced from the cane supplied by FarmCo, relative to the sugar produced from cane supplied by all other growers in the milling district.

15 The CSPA differs for each milling company but they tend to be fairly consistent in the amount paid for the cane. FarmCo and the other growers in the milling district can expect to receive approximately two-thirds of the proceeds received from the sale of the sugar produced from the sugar cane sold to the milling company and the milling company retains one-third of the sales proceeds. From these proceeds each of the growers and the milling company are responsible to meet their own costs.

16 The raw sugar produced from the sugar cane is generally sold to export however some raw sugar may be used in local refineries. Queensland Sugar Limited which generally acts on behalf of the milling companies in marketing the sugar provides an 'advance payment' system which pays the milling companies, who in turn pay the growers, during the season as the cane is provided even though the raw sugar may not have been sold or paid for at that time.

17 Diagrammatically the interactions can be represented as follows:



18 The following interactions take place between FarmCo and the milling company:

(a) FarmCo will be party to a CSPA entitling FarmCo to be paid for the cane sold to the milling company;

(b) the milling company may have advanced funds to FarmCo to assist in FarmCo's current year planting activities (separate from finance provided by FinanceCo);

(c) sugar will be sold and exported overseas before FarmCo has been paid;

(d) sugar will be stored in sugar storage facilities either for use domestically or awaiting export before FarmCo has been paid;

(e) FarmCo may have received advance payments for the cane from the milling company;

(f) from time to time there may be equipment owned by the milling company which is stored on FarmCo's land (for example, in cane railway sidings).

19 With this background consideration can be given to how the PPSA will apply to FarmCo and its farming activities.

What does the PPSA apply to?

20 *Personal property* is defined in section 10 and essentially covers property other than land, fixtures and certain rights and licences (for example water rights)[3]. In the agribusiness context it applies to:

(a) crops;

(b) livestock;

(c) agricultural equipment;

(d) plant breeder's rights; and

(e) share farm arrangements.

What is a security interest?

21 Central to the PPSA is the definition of *security interest*. For the PPSA to be relevant to a particular arrangement or transaction there must be a *security interest*. Under the PPSA, title to personal property subject to the PPSA regime is not governed by notions of legal title, but by which party's security interest has priority under the PPSA priority rules. This requires at least two competing security interests, or competition between a security interest and another type of interest provided for under the PPSA.

22 Under section 12, in order to determine if a security interest is created, any transaction (and the documents that record the transaction) will need to be analysed to determine whether or not the transaction *in substance, secures payment or performance of an obligation (without regard to the form of the transaction or the identity of the person who has title to the property)*.

23 Accordingly, to determine if there is a *security interest* it is necessary to focus on the substance rather than form of a document, which means that the concept of a security interest will be significantly wider than the mortgages, charges and other encumbrances parties have been used to.

24 Under section 12(2), a *security interest* includes an interest in relation to personal property provided for by any of the following transactions if the transaction, in substance, secures payment or performance of an obligation:

(a) a fixed charge;

(b) a floating charge;

(c) a chattel mortgage;

(d) a hire purchase agreement;

(e) a conditional sale agreement (including an agreement to sell subject to retention of title);

(f) a consignment (whether or not a commercial consignment); and

(g) a lease of goods, (whether or not a PPS Lease).

25 In section 12(3), a *security interest* also includes the following interests in relation to personal property, whether or not the transaction concerned, in substance, secures payment or performance of an obligation:

(a) the interest of a consignor who delivers goods to a consignee under a commercial consignment; and

(b) the interest of a lessor or bailor of goods under a PPS Lease.

26 It is clear from the definitions and the use of the expression *in substance*, that the PPSA includes a broad functional definition of security interest and there may be some argument that this could allow the PPSA to extend beyond security interests which are proprietary interests. However, based on the objectives of the PPSA, the better interpretation is that the security interest must involve the security party having a proprietary interest in the collateral which can be exercised against the grantor and also against third parties who have subsequent interests in the collateral[4].

27 *Grantor* includes:

(a) a person who has the interest in the personal property to which a security interest is attached (whether or not that person owes payment or performance of an obligation secured by the security interest);

(b) a person who receives goods under a commercial consignment; or

(c) a lessee under a PPS Lease.[5]

28 *Goods* means personal property that is tangible property, and includes:

(a) crops; and

(b) livestock.[6]

29 Personal property also includes *intellectual property* which in turn includes the right to do, or to licence another person to do, an act referred to in section 11 of the *Plant Breeder's Rights Act 1994* in relation to propagating material of a plant variety.[7]

Crops and livestock

30 *Proceeds* is defined in section 31.

(a) *Proceeds* of collateral to which a *security interest* is (or is to be) attached means identifiable or traceable personal property including personal property that is derived directly or indirectly from a dealing with the collateral (or proceeds of the collateral).

(b) *Proceeds* are traceable whether or not there is a fiduciary relationship between the person who has a *security interest* in the *proceeds*, as provided in section 32, and the person who has rights in or has dealt with the *proceeds*.

(c) However, *personal property* is *proceeds* only if:

(i) either:

(A) the *grantor* has an interest in the *proceeds*; or

(B) the *grantor* has the power to transfer rights in the *proceeds* to the secured party (or to a person nominated by the secured party); and

(ii) the interest in the *proceeds* does not arise because of the operation of paragraph 140(2)(f) of the PPSA.

31 In referring to *crops* and *livestock* the PPSA provides:

(a) The *proceeds* of collateral that is *crops* include the harvested produce of the crops, if the produce is identifiable or traceable[8].

(b) The *proceeds* of collateral that is *livestock* includes products of the livestock (for example, meat or wool), if the products are identifiable or traceable[9].

(c) However, *livestock* are not the *proceeds* of collateral merely because they are the unborn young, or the offspring, of livestock that are collateral[10].

32 Therefore, whilst a security interest in personal property will in some circumstances extend to the 'proceeds' of that personal property, the PPSA definition of livestock does not expressly include the offspring of the livestock under section 31(6). A security interest may be taken by a secured party in 'after-acquired property' and there is support for the proposition that offspring is after-acquired property. To ensure that the security interest appropriately secures the livestock and its unborn young and offspring the description of the security or collateral in the general security agreement (or such other agreement as records the security interest) should extend to including these words.

Comingling

33 Section 99 deals with processed or commingled goods and provides:

(a) a security interest in goods that subsequently become part of a product or mass continues in the product or mass if the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass.

(b) the identity of goods that are manufactured, processed, assembled or commingled is lost in a product or mass if it is not commercially practical to restore the goods to their original state.

34 Section 100 provides that for the purpose of section 55 (default priority rules), perfection of a security interest in goods that subsequently become part of a product or mass is to be treated as perfection of the security interest in the product or the mass.

35 Under section 101 any priority that a security interest continuing in the product or mass has over another security interest in the product or mass is limited to the value of the goods on the day in which they became part of the product or mass.

36 In addressing priorities section 102 provides:

(a) a perfected security interest continuing in a product or mass has priority over an unperfected security interest continuing in the same product or mass.

(b) if more than one perfected security interest continues in the same product or mass, each perfected security interest is entitled to share in the product or mass according to the ratio that the obligation secured by the perfected security interest bears to the sum of the obligations secured by all perfected security interests in the same product or mass;

(c) if more than one unperfected security interest continues in the same product or mass, each unperfected security interest is entitled to share in the product or mass according to the ratio that the obligation secured by the unperfected security interest bears to the sum of the obligations secured by all unperfected security interests in the same product or mass;

(d) For the purposes of section 102, the obligation secured by a security interest does not exceed the value of the goods on the day on which the goods became part of the product or mass.

Meaning of PPS Lease

37 Under section 13, a *PPS Lease* means a lease or bailment of goods:

(a) for a term of more than one year;

(b) for an indefinite term (even if the lease or bailment is determinable by any party within a year of entering into the lease or bailment);

(c) for a term of up to one year that is automatically renewable, or that is renewable at the option of one of the parties, for one or more terms if the total of all the terms might exceed one year;

(d) for a term of up to one year, in a case in which the lessee or bailee, with the consent of the lessor or bailor, retains uninterrupted (or substantially uninterrupted) possession of the leased or bailed property for a period of more than one year after the day the lessee or bailee first acquired possession of the property (but not until the lessee's or bailee's possession extends for more than one year); or

(e) for goods that may or must be described by serial number in accordance with the regulations, if the lease or bailment is:

(i) for a term of 90 days or more;

(ii) for a term of less than 90 days, but is automatically renewable, or is renewable at the option of one of the parties, for one or more terms if the total of all terms might be 90 days or more;

(iii) for a term of less than 90 days, in a case in which the lessee or bailee, with the consent of the lessor or bailor, retains uninterrupted (or substantially uninterrupted) possession of the leased or bailed property for a period of 90 days or more after the day the lessee or bailee first acquired possession of the property, (but not until the lessee's or bailee's possession extends for 90 days or more)[11].

(f) However a *PPS Lease* does not include:

(i) a lease by a lessor who is not regularly engaged in the business of leasing goods;

(ii) a bailment by a bailor who is not regularly engaged in the business of bailing goods;

(iii) a lease of consumer property as part of a lease of land where the use of the property is incidental to the use and enjoyment of the land; or

(iv) a lease or bailment of personal property prescribed by the regulations for the purposes of this definition, regardless of the length of term of the lease or bailment.[12]

38 Serial numbered items are defined to include aircraft, watercraft, motor vehicles and certain intangible property such as designs, patents, trademarks and plant breeder's rights. Motor vehicles are not limited to registered road vehicles.[13]

39 Generally under the PPSA there is no distinction between operating leases and finance leases as any lease can secure payment or performance of an obligation. However the better interpretation is that the PPSA is generally restricted to PPS Leases and finance leases, but not operating leases (or pure leases).

40 Not every lease is a PPS Lease under the PPSA so to extend the interpretation to cover all leases (both finance leases and operating leases) as well as PPS Leases would essentially make the PPS Lease provisions redundant. Subject to the substance of the particular transactions and the intention of the parties, outside of PPS Leases only finance leases should be regarded as creating security interests. Examples of such security interests would arise for example where the residual value under the lease is set at the commencement of the lease and does not import notions of 'fair market value' in determining the lease payout figure.

41 The PPS Lease provisions deem certain leases (including operating or pure leases) to be security interests and outside those provisions it should not be accepted that all leases will create security interests requiring registration. However, given the position is not clear, there may be a series of 'precautionary registrations' of operating leases until there is some judicial pronouncement on the issue.

Security Interest Exclusions

42 Subject to sections 73 and 74, the PPSA will not apply to a lien, charge or any other interest in personal property that is created, arises or is provided under a law of the Commonwealth, a State or Territory, unless the person who owns the property has agreed to the interest[14]. This would apply to things such as a mechanics lien or a solicitor's lien. However if the lien is the subject of an agreement between the parties, such as a security interest similar to a crop lien, it will be a security interest requiring registration.

43 Section 73(1) provides that an interest (the *priority interest*) in collateral has priority over a *security interest* in the collateral if:

(a) the priority interest arises (by being created, arising or being provided for):

(i) under a law of the Commonwealth, a State or a Territory, unless the person who owns the collateral in which the priority interest is granted agrees to the interest; or

(ii) by operation of the general law;

(b) the priority interest arises in relation to providing goods or services in the ordinary course of business;

(c) the person who holds the priority interest provided those goods or services;

(d) no law of the Commonwealth, a State or a Territory provides for the priority between the priority interest and the security interest; and

(e) the person who holds the priority interest acquired the interest without actual knowledge that the acquisition constitutes a breach of the security agreement that provides for the security interest.

44 Even though the priority interest may be an interest to which the PPSA does not otherwise apply (for registration and perfection purposes) nevertheless the PPSA addresses the priority issues between those interests.

45 The PPSA also does not apply to the transfer of present or future remuneration payable to any individual as an employee or a contractor.[15]

46 Under section 8(1)(f)(ii), the PPSA also excludes the creation of an interest in a right to payment or the creation or transfer of a right to payment, in connection with an interest in land, if the writing evidencing the creation or transfer specifically identifies the land.

47 The PPSA does not apply to a right, entitlement or authority, whether or not exclusive, that is granted by or under the general law or a law of the Commonwealth, a State or a Territory in relation to the control, use or flow of water.[16] The exclusion of water rights in section 8(1)(i) of the PPSA includes but is not limited to the right a person has against another person to receive or otherwise gain access to water[17].

48 To the extent that the security agreement deals with property to which the PPSA does not apply (for example: land, fixtures and water rights) then the Commonwealth, State or Territory laws will still need to be satisfied when dealing with security interest over those forms of property.

49 For attachment purposes, a grantor has rights in goods which are leased or bailed to the grantor under a PPS Lease, consigned to the grantor, or sold to the grantor under a conditional sale agreement (such as, for example, a retention of title agreement) when the grantor obtains possession of the goods.[18]

Who does the PPSA apply to?

50 The PPSA will apply to *security interests* granted by a *grantor*, and will apply to all types of legal entities including:

(a) individuals;

(b) companies:

(i) Australian; and

(ii) foreign, if the assets are located in Australia;

(c) partnerships; and

(d) other legal entities,

irrespective of whether those entities are registered or required to be registered in Australia.[19]

51 This definition will ensure the application of the PPSA to all forms of entities which operate farming businesses in Australia.

Documentation

52 In granting security interests there is no particular form of security documentation which must be used. Because the PPSA applies to a wide class of legal entities there is no need to have different forms of documentation for different types of grantors. Generally, security interests will be documented by way of a general security agreement or a specific security agreement.

53 Essentially the PPSA provides that one type of security agreement can be used for a range of different security interests - where previously there would be a separate document for each type of security for example company charges, chattel mortgages, crop liens and stock liens. Each security interest must be registered on the PPSR via a financing statement.[20]

54 The concept of a floating charge will disappear and a security interest will be equivalent to a fixed charge which may be granted over circulating assets. In that case the security agreement will govern the basis upon which the circulating assets may be dealt with.[21]

55 To ensure that a security interest exists, documents may include clauses which constitute security interests even though the security interest is not the primary purpose of the document. However the underlying principles still exist and the mere attempt to include particular clauses in a document does not of itself result in a security interest being created in all cases.

56 A review of section 12, extrinsic material relevant to the interpretation of the PPSA and the practice in other jurisdictions provides the following broad principles:

(a) interests in personal property which are *in personam* are unlikely to constitute security interests and will not be registrable under the PPSA;

(b) interests in personal property which are *in rem* are likely to constitute security interests and will be registrable under the PPSA; and

(c) an interest *in rem* will arise where a creditor has a right in respect of property which is enforceable against a third party.

57 Whilst careful consideration needs to be given to the specific terms of each transaction, the majority of contractual rights will be interests *in personam* rather than interests *in rem* and therefore will not constitute security interests within the meaning of the PPSA. For example, the mere fact that an agistment agreement may seek to impose some obligation to return the cattle at the end of the agreement does not of itself give rise to a security interest to secure the performance of that obligation which must be registered without a general security agreement also being entered.

58 To the extent that a party has priority it will usually have priority over the collateral and any proceeds. Priority will normally extend to any future advances under the existing security arrangements. For example, where there are further advances by a bank which holds a general security agreement priority will extend to those further advances.

Purchase money security interests (PMSI)

59 A PMSI is:

(a) a security interest taken in collateral, to the extent that is secures all or part of its purchase price;

(b) a security interest taken in collateral by a person who gives value for the purpose of enabling the grantor to acquire rights in the collateral to the extent the value is applied to acquire those rights;

(c) the interests of a lessor or bailor of goods under a PPS Lease; and

(d) the interests of a consignor who delivers goods to a consignee under a commercial consignment,[22]

but does not include sale and lease back arrangements[23].

60 PMSIs:

(a) give rise to super priority over other registered security interests (other than security interest perfected by control);[24]

(b) can be obtained by a secured party when they enable the grantor to acquire particular collateral;[25]

(c) must be registered within 15 days in order to retain priority;[26]

(d) are deemed to apply to a lessor's interest under a PPS Lease (other than a sale and lease back); and[27]

(e) include the interest of a consignor who delivers goods to a consignee under a commercial consignment agreement.[28]

Hierarchy of priorities

61 Division 6 of part 2.6 applies where it becomes necessary to establish priority of security interests between PPSA security interests and other types of liens. The provisions generally provide that a non-consensual lien arising by way of operation of law takes priority over a security interest under the PPSA. There are however some important limitations:

(a) the lien must arise from the supply of goods or services;

(b) the supply giving rise to the lien must take place in the ordinary course of the supplier's business;

(c) the holder of the benefit of the lien provides the goods or services giving rise to the lien;

(d) no other Commonwealth, State or Territory law applies to determine the priority as between the lien and security interest; and

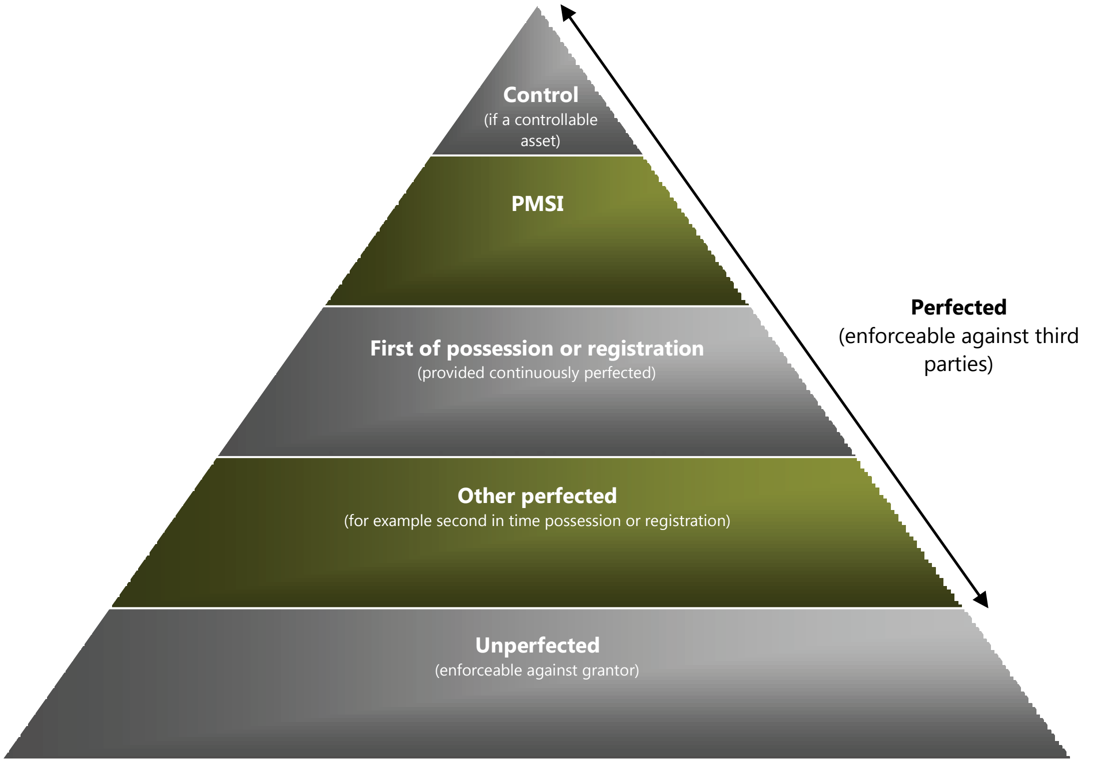
(e) the holder of the benefit of the lien must have acquired the interest without actual knowledge that the acquisition would breach a security agreement that provides for the earlier security interest.[29]

62 Under section 8(1) of the PPSA, the priority rules may still be relevant between a PPSA security interest and other consensual interests that are not security interests or are excluded from the application of the PPSA.

63 To the extent that a security agreement is to apply to security over both *personal property* and other property outside the PPSA the security agreement needs to be drafted in such a way that it is flexible enough to address both of those regimes.

64 Generally a buyer or lessee of personal property who takes the property in the ordinary course of the seller or lessor's business of dealing with property does so free of any security interest that is given by the seller or lessor provided that the buyer or lessee has no actual knowledge that the transaction breaches the existing agreement which created the security interest and does not have actual knowledge that the sale or lease breaches the security agreement.

65 Otherwise the priority of security interest under the PPSA can be generally reflected in the following diagram:



Farming activities – cattle - issues arising under the PPSA

66 With this background and general introduction to the concepts in the PPSA the issues which FarmCo will face under the new regime can be addressed.

BankCo holds a registered fixed and floating charge over FarmCo's assets

67 Prior to the *registration commencement time*, BankCo's fixed and floating charge will have been migrated to the PPSR and will have become a fixed charge over FarmCo's circulating and non-circulating assets. There is no need to vary the terms of the fixed and floating charge at the outset to meet the PPSA language as there are transitional provisions in the PPSA which allow for the existing security documents to continue and for the PPSA requirements to be deemed to apply.

68 BankCo will however need to confirm that its security has been migrated from ASIC to the PPSR to ensure its priority position is retained.

69 FarmCo will need to be aware of the terms of the facility or loan documents with BankCo and FinanceCo as they will likely have restrictions on granting security interests in future. These need to be carefully considered or they could result in breach of undertakings or covenants granted by FarmCo in the loan documents.

70 BankCo and FinanceCo will want to make sure FarmCo registers any security interest it holds to protect FarmCo's position and ultimately the financiers' position under their security in the event that they need to take action to enforce their security. Ultimately under the priority rules BankCo and FinanceCo can get no better claim to FarmCo's assets than FarmCo itself has if FarmCo has not properly registered its security interests.

71 The loan documents will likely have a further assurances clause requiring FarmCo to amend the finance and security documents to better protect the security interests to the extent required by the relevant financier.

Cattle owned by other parties are agisted on FarmCo's land

72 Any cattle agisted on FarmCo's property would generally be the subject of an agistment agreement. There are specific rules under the PPSA to address priority issues where cattle are the subject of agistment and feedlot arrangements.

73 Types of agistment arrangements include:

(a) what is essentially a licence arrangement, where the cattle owner has permission to graze the cattle on the licensor's land and to enter the land to care for them; and

(b) what is essentially a bailment arrangement, where the owner of the land upon which the cattle are agisted is responsible for their care.[30]

74 *Livestock* includes:

(a) while they are alive – alpacas, cattle, fish, goats, horses, llamas, ostriches, poultry, sheep, swine and other animals; and

(b) the unborn young of animals mentioned in paragraph (a); and

(c) the products of livestock before they become proceeds (for example, the wool on a sheep's back before the sheep is shorn).

75 Section 86 of the PPSA provides for a priority of livestock. A perfected security interest (the *priority interest*) that is granted by a grantor in livestock or the proceeds of livestock has priority over any other security interest (other than a PMSI) that is granted by the same grantor in the same livestock or proceeds if:

(a) the priority interest is granted for value;

(b) the priority interest is granted to enable the livestock to be fed or developed; and

(c) either:

(i) the livestock are held by the grantor at the time the security agreement providing for the priority interest is made; or

(ii) the livestock are acquired by the grantor during the period of six months after the date the security agreement providing for the priority interest is made.[31]

76 Section 138C allows for the security holder to take possession of the livestock or proceeds, slaughter the livestock wherever it is located or extract products from the livestock (for example shear sheep).

77 The secured party can then retain or dispose of livestock, or the proceeds of the livestock.[32]

78 To exercise these powers a secured party may enter the land on which the livestock or proceeds are located.[33]

79 Ultimately the extent of the security interest will depend on the form of the agreement between the farmer and the grantor.

80 In our example, Farmer A agists cattle on land owned by FarmCo, pursuant to the terms of an agistment agreement executed by the parties. Farmer A owns his cattle outright and they are not subject to any encumbrance granted to a financier. FarmCo has granted security over all of its personal property to BankCo. If FarmCo defaults on its loans to BankCo while in possession of

Farmer A's cattle under the agistment agreement, BankCo will seek to step in to enforce the security. Does BankCo have rights to seize and sell Farmer A's cattle?

81 It depends on the factual scenario. As between Farmer A and FarmCo there may or may not be competing security interests. The agistment agreement would usually provide that FarmCo has a contractual lien over the cattle of Farmer A to the extent that any agistment fees are unpaid to it by Farmer A. If that security interest is registered FarmCo will have a super priority under section 86 to recover the value of the feed consumed by Farmer A's cattle under the terms of the agistment agreement.

82 Farmer A, as owner of the agisted cattle, will not have a security interest attached to the cattle (arising out of his mere ownership of those cattle alone) and capable of registration over FarmCo (unless the agistment agreement specifically provides for one). The agistment agreement is unlikely to be a PPS Lease in the context of a pure agistment agreement, which is generally in the form of a licence.

83 An agistment agreement alone does not secure the actual payment or performance of the obligations owed to Farmer A under the agistment agreement (unless it contains charging clauses). If there was to be a security interest it would need to be documented under a general security agreement entered into pursuant to the agistment agreement.

84 If FarmCo becomes insolvent and BankCo enforces its security over FarmCo (while FarmCo is in possession of Farmer A's cattle under the agistment agreement), there is no security interest granted by FarmCo in favour of BankCo which attaches to Farmer A's cattle.

85 However FarmCo does have rights in Farmer A's cattle under section 86 to the extent that FarmCo has not been paid agistment fees by Farmer A. Therefore BankCo's security interest granted to it by FarmCo can only attach to Farmer A's cattle to the extent of any unpaid agistment fees.

86 As long as the security interest under section 86 was registered within the required time frame it will have priority over any claim by Farmer A to recover its cattle. However the balance of cattle proceeds must be returned to Farmer A as it will not be caught by BankCo's security.

FarmCo's cattle will be sent to feedlots operated by other parties

87 A similar analysis would need to be undertaken in addressing issues arising under any feedlot agreement entered by FarmCo with the feedlot operator.

88 FarmCo has sent its cattle to a feedlot operated by FeedCo pursuant to the terms of a feedlot agreement executed by the parties. FarmCo's cattle are subject to a registered general security interest held by BankCo and a registered specific security interest (PMSI) held by the FinanceCo being the cattle financier. FeedCo has granted a security interest over all of its assets to FeedBank.

89 If FarmCo defaults on its loans while the cattle are still in the feedlot and BankCo and FinanceCo step in to enforce the security, do BankCo and FinanceCo have the right to seize the cattle from the feedlot and sell FarmCo's cattle?

90 As between FeedCo, BankCo and FinanceCo there will be competing security interests. The feedlot agreement may provide that FeedCo has a contractual lien over the cattle of FarmCo to the extent that any feedlot charges are unpaid to FeedCo by FarmCo. FarmCo, as owner of the cattle, will not have a security interest attached to the cattle (arising out of its ownership of those cattle alone) and capable of registration over FeedCo, but having granted security over the cattle to both BankCo and FinanceCo they will have registered security interests.

91 Under section 86 as long as FeedCo has registered its security interest it will have priority for the value of the feed consumed by FarmCo's cattle and will defeat the prior registered security

interest of BankCo (which does not have a PMSI). However as FinanceCo has a PMSI, it appears that under section 86 the prior registered PMSI of FinanceCo will not be defeated by the agricultural PMSI (under section 86) held by FeedCo.

92 There is some inconsistency in the priority rules between the agricultural PMSIs and priority under sections 85 and 86 and the finance PMSIs for cattle and crops. Section 85 does not acknowledge the priority of a prior finance PMSI for crops whereas there is a specific acknowledgement in section 86 for a prior finance PMSI for cattle. On that basis FinanceCo would have a better claim than FeedCo to the cattle, but FeedCo would have a better claim than BankCo.

93 FeedCo must however register its security interest or it will lose its priority entitlement regardless of the operation of section 86 (which requires the security interest to be perfected).

Stud bull services will be provided to service FarmCo's herd on FarmCo's land

94 The outcome will largely depend on whether the provision of the bull's services:

(a) is a lease or a bailment and if so, the nature of the agreement; or

(b) is a PPS Lease;

95 In determining whether or not there is a security interest arising as a result of a transaction an analysis of the transaction and the documents will need to determine if the transaction in substance, secures payment or performance of an obligation. It is not always clear whether a transaction or a document recording a transaction will secure payment or performance of an obligation however it is quite probable that contractual rights (such as the lease or bailment of the bull), with nothing further, may not always secure the payment or performance of an obligation.

96 A different outcome will arise if the arrangements for the provision of the bull amounts to a PPS Lease. A transaction that may not otherwise provide for a security interest may do so if it is determined to be a PPS Lease. In particular, whether the term of the lease (or bailment, as a PPS Lease expressly includes certain classes of bailment) of goods is for a term of more than one year is one indicator that will point to the agreement being a PPS Lease. However that needs also to be considered against the carve outs which provide among other things that the lease by a lessor or a bailment by a bailor who is not regularly engaged in the business of respectively leasing goods or bailing goods will not be a PPS Lease.

97 For example in the case *Rabobank New Zealand Limited v Robert McAnulty & Ors*[34] the Court of Appeal of New Zealand found on appeal that an agreement for a retired race horse to stand at a stud farm did not give rise to a security interest. In that context it would appear that in general and unless otherwise provided for in the transaction document, what may be contemplated by the PPSA is that it is the general security agreement which will give rise to a security interest and not the document which imposes the obligations on the parties in the first instance. This is because although a primary agreement may impose the obligations, it does not necessarily 'secure' them.

98 On that basis if the provision of the bull does not satisfy the requirements of a PPS Lease it is unlikely to give rise to a security interest requiring registration under the PPSA.

FarmCo will have cattle sold and being transported to the abattoir

99 Under section 12(2), a *security interest* includes an interest in relation to personal property provided for by a conditional sale agreement (including an agreement to sell subject to retention of title) if the transaction, in substance, secures payment or performance of an obligation:

100 To the extent that there are retention of title provisions in the agreement, the sale of goods will be treated as the buyer granting a security interest in favour of the seller to secure the amounts owing under the agreement. The conditional sale of goods will be deemed to be a security interest regardless of the fact that the seller still owns the goods.[35]

101 In this case if the agreements whereby FarmCo sells the cattle to the abattoir contain the usual retention of title clauses then FarmCo will have a security interest which it will need to register.

102 If there are no retention of title provisions FarmCo will not have a security interest in the cattle.

103 In the event that the cattle have been processed, FarmCo's perfected security interest will be regarded as a security interest in the product against which it would be entitled to recover. If the product from the cattle cannot be specifically traced the comingling rules will also apply.[36]

FarmCo's cattle will be the subject of various security arrangements with FarmCo's financiers

104 On a similar basis to BankCo, the financiers who have taken security over FarmCo's cattle will also need to ensure that their security interests have been migrated to the PPSR to ensure their priority position is maintained.

105 However FinanceCo will have a PMSI in respect of cattle which it has financed and which will give it a priority over BankCo's general security agreement.

Generally there will be land owned or leased by FarmCo from which the farming operations are conducted and FarmCo will have certain water rights

106 The PPSA does not apply to a right, entitlement or authority, whether or not exclusive, that is granted by or under the general law or a law of the Commonwealth, a State or a Territory in relation to the control, use or flow of water.[37]

107 FarmCo's water rights are not personal property that falls under the PPSA, so FarmCo will not be able to take or provide security over those rights under the PPSA.

108 FarmCo will however be entitled to provide security under the other relevant Commonwealth, State or Territory laws dealing with the granting and registration of security interests over those forms of property. FarmCo and BankCo will need to address these rights separately as part of BankCo's security arrangements.

Farming activities – cane growing (farmer level) - issues arising under the PPSA

FarmCo will be planting and cultivating the sugar cane crops using funds provided by BankCo and the subject of a registered fixed and floating charge

109 BankCo's position is addressed in paragraphs 67 to 71 above.

Contractors undertake planting, harvesting, cartage and/or other contract farming operations on FarmCo's farm using their own equipment or FarmCo's equipment

110 Contractor X is a harvesting contractor who harvests sugar cane. He has contracted his services to FarmCo. Under the harvesting agreement, Contractor X will harvest the sugar cane grown by

FarmCo. BankCo has security over FarmCo's land and its assets to secure its loans. Contractor X has left his harvester on FarmCo's property during a short period of inclement weather, which stopped harvesting.

111 If FarmCo defaulted as against BankCo and BankCo enforces its security over FarmCo's assets can it seize Contractor X's harvester in the process. Can Contractor X obtain his harvester back or does BankCo have better rights to the harvester than Contractor X?

112 In this scenario it is arguable that there is no competing security interests to which the priority rules under the PPSA would apply. This is because the harvesting agreement between Contractor X and FarmCo did not in substance secure payment or performance of an obligation. In addition, the relationship between Contractor X and FarmCo was more akin to a contractual licence which allowed Contractor X to enter FarmCo's land and harvest the sugar cane grown on FarmCo's land. Therefore FarmCo had no *interest* in the personal property (the harvester) and therefore had no standing to grant a security interest in that personal property to BankCo. BankCo's security interest would not attach to Contractor X's harvester.

113 However, if the harvester was leased or dry hired by Contractor X to FarmCo and it was a PPS Lease the scenario would change. FarmCo would have an interest in the personal property and it would be captured by any 'after acquired property' clauses in the general security agreement. Therefore, unless Contractor X had his interest registered as a PPS Lease against FarmCo, it is likely that the harvester could be seized upon enforcement of the security interest granted by FarmCo to BankCo, should BankCo enforce the security against FarmCo. In the case of a lease or hire scenario, Contractor X should register his interest in the harvester or risk losing the asset.[38]

FarmCo may have share farm arrangements in place either for part of its farm or to allow it to farm other land

114 Share farm arrangements are usually established under two circumstances, depending on who retains possession of the land:

(a) FarmCo may lease part of its land to a Sharefarmer and Sharefarmer grows sugar cane on the land for the Sharefarmer's benefit. The Sharefarmer would then supply the cane to the milling company under a CSPA in the Sharefarmer's name. The lease documentation entered between FarmCo and the Sharefarmer will provide for FarmCo to be paid a 'rent' equal to a percentage of the proceeds from the cane grown on the land.

(b) FarmCo may retain the land in its own name and provide a licence for the Sharefarmer to come onto the land to grow the sugar cane. FarmCo would be the party to the CSPA and the sugar cane grown by the Sharefarmer will be supplied to the milling company on behalf of FarmCo. The licence arrangements would provide that the Sharefarmer would be paid a percentage of the proceeds from the sale of the cane in payment for its share farming activities.

115 In the example in paragraph 114(a) the Sharefarmer will have a lease of the land which can be registered over the land and which does not comprise personal property (land being specifically excluded under the definition in section 10). The lease will record the arrangements between the parties and there will be no additional security interest which will be registrable under the PPSA.

116 Under section 8(1)(f)(ii), the PPSA also excludes the creation of an interest in a right to payment or the creation or transfer of a right to payment, in connection with an interest in land, if the writing evidencing the creation or transfer specifically identifies the land.

117 If Sharefarmer sought funding for the growing of the crops on FarmCo's land then the crop financier will have a PMSI over the crops being grown by Sharefarmer. The PMSI can be recorded

on the PPSR even though the Sharefarmer's entitlements are recorded on the lease which is not on the PPSR.

118 Section 84 provides:

(a) a security interest in crops does not prejudicially affect the rights of a lessor or mortgagee of land on which the crops are growing if:

(i) those rights existed at the time the security interest was created; and

(ii) the lessor or the mortgagee has not consented in writing to the creation of the security interest.

(b) subject to paragraph (a), a perfected security interest in crops is not prejudicially affected by a subsequent sale, lease or mortgage of, or other encumbrance on, the land on which the crops are growing.

119 Crops means crops (whether matured or not and whether naturally grown or planted) that have not been harvested, including:

(a) the products of agriculture or aquaculture, if the products have not been harvested; and

(b) trees (but only if they are personal property), if the trees have not been harvested.[39]

120 Section 84A clarifies that a security interest may attach to crops while they are growing.[40]

■ Section 85 – priority of crops

121 A perfected security interest (the priority interest) that is granted by a grantor in crops or the proceeds of crops has priority over any other security interest that is granted by the same grantor in the same crops or proceeds if;

(a) the priority interest is granted for value; and

(b) the priority interest is granted to enable the crops to be produced; and

(c) either:

(i) the security agreement providing for the priority interest is made while the crops are growing; or

(ii) the crops are planted during the period of six months after the day the security agreement providing for the priority interest is made.

122 Subject to section 84, this will defeat the security interest of the owner or any financier and, unlike the livestock provisions, there is no PMSI exemption.

123 Section 138B allows for the security holder to take possession, cut, gather and harvest the crops or proceeds:

(a) it can then retain or dispose of the crops or the proceeds of the crops.[41]

(b) to exercise these powers the secured party may enter the land on which the crops are located.[42]

124 Even though the crop financier will have a PMSI and super priority under section 85, it will not defeat the interest of FarmCo as lessor of the land and BankCo as mortgagee unless they had consented to the creation of the PMSI. The crop financier should be aware of the security arrangements in place via a search of the land register and will need to consider its position before providing the finance to Sharefarmer in those circumstances. In that context, it is recommended that financiers of crops for share farm arrangements enter into a priority

agreement between any mortgagee of the land to ensure their priority over the interest in the crops is not lost.

125 In the example in paragraph 114(b)the Sharefarmer does not have an interest in land, but merely a licence to come onto the land and grow the sugar cane. In this case the Sharefarmer will be providing the plant cane and the inputs to grow the crops and would therefore have an interest in those crops. If the share farm agreement included security provisions, or a general security interest was also entered into, the Sharefarmer would have a security interest under section 85 and upon registration would provide a super priority.

126 Even though the Sharefarmer will have a super priority under section 85, it will not defeat the interest of BankCo as prior mortgagee (under section 84) unless BankCo had consented to the creation of the security interest in the crops. The Sharefarmer should be aware of the security arrangements in place via a search of the land register and will need to consider its position before agreeing to the share farm arrangements. If necessary, to protect its position, the Sharefarmer will need to enter a priority agreement with any mortgagee of the land to ensure its priority over the interest in the crops is not lost.

The varieties of cane grown by FarmCo may be subject to plant breeders rights held by other parties

127 Personal property also includes *intellectual property* which in turn includes the right to do, or to licence another person to do, an act referred to in section 11 of the *Plant Breeder's Rights Act 1994* in relation to propagating material of a plant variety.[43]

128 For example, the Bureau of Sugar Experiment Stations (**BSES**) as the developer of sugar cane plant varieties will have a security interest which it will need to register on the PPSR to protect it security position.

129 BSES will also need to develop processes to stop the 'flow' of these varieties through neighbour exchange of plant cane which bypasses their plant breeder's rights entitlements.

Equipment used by FarmCo has been delivered to the local mechanic's business and stored in the workshop awaiting repair

130 A lien, charge or any other interest in personal property that is created, arises or is provided under a law of the Commonwealth, a State or Territory, is not required to be registered under the PPSA unless the person who owns the property has agreed to the interest[44]. This would apply to things such as a mechanics lien or a solicitor's lien. However if the lien is the subject of an agreement between the parties, such as what would previously be documented as a crop lien, it will be a security interest requiring registration.

131 The mechanic is not required to register its lien under the PPSA. Similarly FarmCo does not have a security interest in its own property where it has merely delivered equipment to the mechanic's workshop for repair.

132 In the event that the mechanic defaults with its financiers, those financiers would not be able to retain FarmCo's equipment except to the extent of recovery of the goods and services provided under the mechanic's lien by its defaulting security provider.

Used farming equipment in excess of FarmCo's requirements is sent for sale by consignment and displayed at the local equipment dealer's premises

133 Section 12(2)(h) provides that a security interest includes a consignment (whether or not a *commercial consignment*) if the transaction in substance secures payment or performance of an

obligation. It will be necessary to examine the form of the consignment documents to determine whether the consignment secures payment or performance of an obligation. Where the consignment is a one-off and FarmCo does not regularly engage in these types of arrangements it is unlikely that the consignment agreement of itself will be sufficient to constitute a security interest. However in the event that FarmCo was concerned about loss of the equipment a separate general security agreement could be entered.

134 The PPSA addresses more specifically *commercial consignment* arrangements. Commercial consignments will be security interests under section 12(3)((b) whether or not the transaction concerned in substance secures the payment or performance of an obligation. A *commercial consignment* is defined in section 10 and means a consignment if:

(a) the consignor retains an interest in the goods that the consignor delivers to the consignee;

(b) the consignor delivers the goods to the consignee for the purpose of sale, lease or other disposal; and

(c) the consignee and the consignor both deal in goods of that kind in the ordinary course of business;

but does not include an agreement under which goods are delivered to:

(d) an auctioneer for the purpose of sale; or

(e) a consignee for sale, lease or other disposal if the consignee is generally known to the creditors of the consignee to be selling or leasing goods of others.

135 In this case FarmCo and the dealer do not **both** deal in goods of this kind in the ordinary course of business. The creditors of the consignee are also likely to be aware that the consignee is selling goods of others. On that basis the transaction is unlikely to give rise to a security interest as a commercial consignment.

136 If the consignment was a commercial consignment FarmCo would need to register the security interest or it could risk loss of the equipment if the dealer defaulted on its own loan arrangements and its bank sought to take possession of the equipment.

FarmCo has been provided with additional seasonal finance for its cropping activities which is the subject of specific security interests granted to FinanceCo

137 On a similar basis to BankCo, if FinanceCo has taken security over FarmCo's crops it will also need to ensure that its security interest has been migrated to the PPSR to ensure its priority position is maintained.

138 The security interest provided to FinanceCo will be a PMSI and provide a super priority under section 85. The security interest will need to be registered by FinanceCo to perfect its security interest. Once registered it will defeat the interest of the owner or any other financier and unlike the livestock provisions there is no exemption for other PMSIs.

Generally there will be land owned by, leased by or subject to share farm arrangements by or with FarmCo from which the farming operations are conducted and FarmCo will have certain water rights to facilitate the farming operations

139 Water rights are not covered by the PPSA. See paragraphs 106 to 108 above.

Farming activities – cane growing (mill level) - issues arising under the PPSA

FarmCo will be party to a CSPA entitling FarmCo to be paid for the cane sold to the miller

140 Generally the CSPA provides for the sale of the sugar cane to the milling company on the basis that there will be a deferred payment to the grower from the sale of the sugar produced from the sugar cane. This is generally an unsecured transaction.

141 In order to allow for the on sale of raw sugar by QSL there are no retention of title provision in the CSPA, with title to the sugar cane passing to the milling company upon the receipt at the point of delivery agreed between the grower and the milling company. As there is no retention of title arrangement and the transaction does not secure the payment or performance of an obligation FarmCo will not have a security interest under section 12(2).

142 Payments may be made under the QSL advance payment system referred to in paragraph 16.

FarmCo may have received advance payments for the cane from the milling company

143 The advance payments paid by milling companies to their growers are paid on account of the sugar cane supplied under the CSPA. To the extent that FarmCo receives advance payments they are paid for the supply of sugar cane. Generally no security interest will arise from these arrangements.

The milling company may have advanced funds to FarmCo to assist in FarmCo's current year planting activities

144 If the amounts are advanced under a loan document and secured by a general security agreement the milling company would have a PMSI which should be registered.

145 Usually however the plant loans are unsecured but the grower gives a payment deduction authority to deduct the outstanding amounts in regular intervals from the grower's cane pays. Depending on the form of the documentation the cane payment deduction authority would likely be treated as a set off arrangement entitling the milling company to set off amounts owed for the plant loan against the amounts the milling company owes to the grower for sugar cane under the CSPA.

146 Set offs of this nature are not a security interest for the purposes of the PPSA as they are specifically excluded under section 8(1)(d).

Sugar will be sold and exported overseas before FarmCo has been paid

147 Similar to the CSPA, the raw sugar sale agreement between QSL and the milling company also provides for the sale of the sugar cane to the milling company without any retention of title. Payment is by way of deferred payment and the advance system referred to in paragraph 16. In turn the advance payments are remitted in part by the milling company to FarmCo to meet the milling company's obligations under the CSPA.

148 In order to allow QSL to undertake the commercial marketing arrangements the raw sugar supply agreement provides that title to the raw sugar passes to QSL at the weighbridge at the bulk sugar terminal (where the sugar is generally comingled with sugar from other mills). As there are no

retention of title arrangement and the transaction does not secure the payment or performance of an obligation there is no security interest of the milling companies in the comingled sugar.

149 This will be the same position for FarmCo and each of the growers who supply sugar cane to the milling companies in this manner. However as there are no security interests registered against QSL, QSL is able to use the sugar stocks as security for its own finance arrangements which are used to fund the advance payments to the milling companies and in turn the growers.

150 In the event that these arrangements were to change and the milling companies supplied raw sugar under retention of title arrangements those security arrangements would trace through to the comingled sugar. QSL would then have difficulty arranging finance to fund the advance program as QSL's banks would need to weigh up the competing security interests held by each of the milling districts in assessing the security risk and the advance payment funding levels it was prepared to commit to.

Sugar will be stored in sugar storage facilities either for use domestically or waiting for export before FarmCo has been paid

151 As set out in paragraphs 144 to 147 the milling companies will not have any security interest in the sugar stockpile and would not be able to take action to recover against the comingled goods in the event that QSL defaulted on payment.

From time to time there may be equipment owned by the milling company which is stored on FarmCo's land (for example, in cane railway sidings)

152 The mere storage of the equipment in this manner does not put at risk the milling company's assets. There is no transaction between the milling company and FarmCo to secure an obligation and there is unlikely to be a PPS Lease. As such FarmCo and in turn its financiers should have no claim to the assets even if they are located on FarmCo's land or in an easement on the land.

Conclusion

153 The PPSA was introduced to simplify the current diverse range of registration systems covering different assets and different parties. In the long run these changes will provide additional certainty for the registration and administration of security interests. As with all new systems there will be some teething problems as people become familiar with the new legislation and terminology and the need to register security interests which will not have been regarded as security interests in the past. Parties need to focus on the issues that will affect their businesses and understand the concepts to ensure that they can adapt processes to ensure their assets are protected.

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End Notes

[1] s.333 PPSA.
[2] Part 9.4 PPSA.
[3] s.8(1)(i) PPSA.
[4] CJ Wappett, The Personal Property Securities Act: Securities law isn't what it used to be, September 2011.
[5] s.10 PPSA.
[6] s.10 PPSA.
[7] s.10 PPSA.
[8] s. 31(4) PPSA.
[9] s.31(5) PPSA.
[10] s.31(6) PPSA.
[11] s.13(1) PPSA.
[12] s.13(2) PPSA.
[13] s.10 PPSA and regulation 1.7 PPSA regulations.
[14] s.8(1)(b) and 8(2) PPSA.
[15] s.8(1)(f)(iv) PPSA.
[16] s. 8(1)(i) PPSA.
[17] s. 8(5) PPSA.
[18] s.19(5) PPSA.
[19] s.152 PPSA.
[20] Part 5.3 PPSA.
[21] s.339 PPSA.
[22] s.14(1) PPSA.
[23] s.14(2) PPSA.
[24] s.62 PPSA.
[25] s.14(1) PPSA.
[26] s.62(3)(b) PPSA.
[27] s.14(1) and (2)(a) PPSA.
[28] s.14(1) PPSA.
[29] s. 73 PPSA.
[30] *Big Top Hereford Pty Ltd v Gavin Thomas as Trustee of the Bankrupt Estate of Douglas Keith Tyler* [2006] NSWSC 1159.
[31] Section 86 PPSA.
[32] s.138C(2) PPSA.
[33] s.138C(3) PPSA.
[34] [2011] NZCA 212.
[35] s.12(1) PPSA.
[36] s.99 and 100 PPSA.
[37] s. 8(1)(i) PPSA.
[38] *Graham v Portacom New Zealand Limited* [2004] 2 NZLR 528; *Waller v New Zealand Bloodstock* [2206] 3 NZLR 629.
[39] s.10 PPSA.
[40] s.84A(1) PPSA.
[41] s.138B(2) PPSA.
[42] s.138B(3) PPSA.
[43] s.10 PPSA.
[44] s.8(1)(b) PPSA.