



Our Ref: HM:LB 1287252
Direct Line: 9926 0202

10 December 2008

Committee Secretary
Senate Standing Committee
on Legal and Constitutional Affairs
Department of the Senate
PO BOX 6100
Parliament House
CANBERRA ACT 2600
Australia

Email: <https://senate.aph.gov.au/submissions>

Dear Sir,

Re: Inquiry into the *Personal Property Securities Bill 2008* – exposure draft

Thank you for the opportunity to comment on the Exposure Draft Personal Property Securities Bill 2008 (the Exposure Draft Bill).

The Law Society strongly supports reform in the area of personal property securities (PPS) and has been a stakeholder for many years in the reform process.

The Exposure Draft Bill and the Revised Commentary document (the Revised Commentary) have been considered by the members of the Law Society's Property Law Committee (the Committee). The members of the Committee are experienced senior practitioners, many of whom have extensive knowledge and experience in practice relating to PPS.

The Society made a submission on the Consultation Draft Personal Property Securities Bill 2008 released in May 2008 (the Consultation Draft). The Committee welcomes the changes incorporated into the Exposure Draft Bill as a result of the consultation process following the release of the Consultation Draft, particularly those noted in the Society's submission as mentioned below. References are generally to paragraphs in Appendix B of the Revised Commentary.



Comment on changes since the Consultation Draft:

Two major concerns identified in the Law Society's submission on the Consultation Draft related to the proposed treatment of government issued licences in general, and water licences in particular, and the provisions relating to fixtures. Following the inter-governmental agreement for referral of powers, both fixtures and water licences have been excluded from the Exposure Draft Bill, and the applicability of the Bill to government issued licences has been limited [paragraphs B4, B36]. These changes are welcomed.

Clause 6(1)(c) of the Exposure Draft Bill excludes from the operation of the Act "a lien, charge, or any other interest in personal property, that is created, arises or is provided for by operation of the general law". In the Consultation Draft, liens created at law were excluded, but equitable liens were not (clause 22(b)(ii)). This amendment appears to address, in part, concerns expressed by both Law Society and Law Council of Australia in submissions addressing the Consultation Draft that the solicitor's lien will be caught by the PPS regime. That change is also supported.

The Revised Commentary refers to new proposed sections 194A and 206A specifying that a person must not apply for registration or add property to an existing registration unless they reasonably believe that a security interest has or will be granted [paragraph B50]. Those clauses do not appear (under that numbering) in the Exposure Draft Bill. The Committee is concerned that those provisions may unreasonably expose a lodging party acting on instructions from, for example, a client, to liability.

Rural Issues Committee

The Exposure Draft Bill retains the provisions that crop security interests be limited to crops planted at the time of, or within six months after, the making of the security agreement [clause 130], and excluding progeny from livestock security interests [clause 42(3)]. The first of these provisions was raised in the Law Society's submission on the Consultation Draft. It was noted that the existing State legislation provides for crops mortgages for crops grown over a five year period (section 7 (5) *Security Interests in Goods Act 2005* (NSW)). The second issue is noted by the Society's Rural Issues Committee as a divergence from what has been standard practice to date.

Further consultation

If you wish to discuss the issues raised in this submission, please contact Liza Booth by telephone on 9926 0202 or by email to ljb@lawsocnsw.asn.au

Yours faithfully



Hugh Macken
President