



AUSTRALIAN BANKERS' ASSOCIATION INC.

David Bell
Chief Executive Officer

Level 3, 56 Pitt Street
Sydney NSW 2000
Telephone: (02) 8298 0401
Facsimile: (02) 8298 0447

9 November 2009

Mr Peter Hallahan
Committee Secretary
Senate Standing Committee on
Legal and Constitutional Affairs
Department of the Senate
Parliament House
CANBERRA ACT 2600

Email: legcon.sen@aph.gov.au

Dear Mr Hallahan,

**Inquiry into the Personal Property Securities (Consequential
Amendments) Bill 2009**

Thank you for your invitation for the Australian Bankers' Association (ABA) to make a submission to this inquiry. The ABA is pleased to accept the invitation.

The ABA appreciates the Committee's continuing interest in and scrutiny of the personal property securities legislative reform program. We trust that our further submission to this inquiry will be of assistance to the Committee's deliberations.

The Committee will appreciate that there has been limited time in which to provide a comprehensive submission, but we have endeavoured to identify some key changes proposed in the Consequential Amendments Bill upon which we request are taken into account. Overall, we consider the proposed amendments to be appropriate and not controversial from our members' point of view.

Schedule 2 – Intellectual Property Legislation

The proposed amendments to the Designs Act 2003, Trademarks Act 1995 and Patents Act 1990 appear designed to ensure that holders of security interests over owners' rights under those Acts register those security interests in the Personal Property Securities Register (PPSR).

The ABA supports the principle underlying these amendments, and understands that existing registered security interests under those Acts are intended to be appropriately identified for security holders to register their security interests on the personal property securities register (PPSR) prior to commencement or during the 24 month transitional period after commencement.

The amendments to the Plant Breeders Rights Act 1994 are supported by the ABA in drawing the attention of the reader of that Act to the overarching operation of the Personal Property Securities Act (PPSA).

Schedule 3 – Maritime Legislation

The ABA is very supportive of the amendments that will ensure that all future registration of security interests (mortgages) over ships after commencement of the PPSA will be registered on the PPSR instead of on the Australian Register of Ships.

This approach supports the principle that wherever possible there should be a single national register of security interests over personal property securities and which recognises the nature of the PPSR as a register of security interests as distinct from a title register for personal property.

The application of the amendments in Item 33 *et seq* are supported as they ensure retention of existing priorities between competing interests with respect to mortgages registered on the Australian Register of Ships prior to the commencement of the PPSA.

Schedule 4 – Personal Property Securities Act 2009

This schedule proposes a range of technical amendments to the PPS Bill. The ABA has identified the following amendments for comment:

Amendment to Section 8

The ABA supports this proposed amendment in the interests of certainty, as described in the Explanatory Memorandum.

Amendment to Section 10

The ABA understands the reason why a new definition of “ADI Account” may be necessary as described in the Explanatory Memorandum and supports the proposed amendment.

It is noted that the proposed amended definition of “ADI account” is substantially consistent with the drafting of section 5(4) of the Banking Act 1959 in describing the account as being “kept” by the account holder with the authorised deposit taking institution (ADI).

Amendment to Section 12

The ABA supports the insertion of a new section 12(4A) making it clear that an ADI may take a PPSA security interest in an ADI account kept by the account holder with the ADI.

Insertion of sub-section 14(2A)

In its submission dated 31 July 2009 to the Committee the ABA sought the removal of sub-section 14(2)(c). The proposed amendment for the addition of new sub-section 14(2)(2A) appears to strike an appropriate balance between a financier's ability to finance a consumer's acquisition of a serially numbered good, for example a motor vehicle, with priority as a purchase money security interest and a commercial financier that has taken a general security interest (PMSI) over an individual's present and future personal property. As described in the Explanatory Memorandum, the latter's security interest would not be subordinated to a later transaction by the person with another financier that, but for this amendment, would amount to a PMSI.

Amendment of Section 43

The ABA supports the amendment substituting "value" for the words "new value" in sub-section 43(1) for greater consistency with the New Zealand PPS regime.

Amendment of Section 61

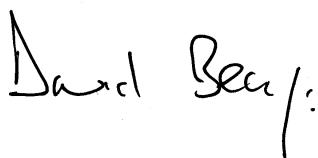
The ABA supports the extension of the means by which a subordination may be effectuated by including by a deed or other instrument in addition to a simple agreement.

Amendment of Section 239

The ABA supports the proposed amendment that would require the consent of the relevant ADI before the law of another jurisdiction would govern a PPSA interest in an ADI account.

The ABA looks forward to early completion of the legislative process to ensure the maximum time is available for banks and other financiers to move forward with their implementation arrangements with certainty about the legislation.

Yours sincerely



David Bell