



**Australian Institute of
CREDIT MANAGEMENT**

Telephone: (02) 9906 4563
Facsimile: (02) 9906 5686
E-mail: aicm@aicm.com.au
Web: www.aicm.com.au
Level 3, 619 Pacific Highway,
St Leonards NSW 2065

ABN 79 008 455 758

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The Senate

Standing Committee on Legal and Constitutional Affairs

PO Box 6100

Parliament House

Canberra ACT 2600

Australian Institute of Credit Management Submission re

Inquiry into the Personal Property Securities Bill 2009

Introduction

This submission has been prepared by the Australian Institute of Credit Management (AICM) following consultation with members and the wider credit management industry.

AICM is the association for credit professionals in both commercial and consumer credit comprising both individual and corporate members from all industry sectors in Australia.

The value of the provision of credit to the Australian economy is significant. Whilst the Australian Bureau of Statistics (ABS) does not collect official figures for the value of commercial business to business credit, using the most recent ABS Input Output Tables¹ together with the annual AICM National Credit Industry Survey it is conservatively estimated that commercial credit is provided to an annual value of \$600 billion. This figure does not reflect consumer credit or loans to business. Thus it may be concluded that the relevance of the Personal Property Security law reforms is extraordinary.

¹ ABS Input Output Tables 2004-2005 Cat No 5209.055.001 www.abs.gov.au

AICM's Overall position

AICM's overall position in relation to the draft Personal Properties Securities Bill 2009 is one of strong support.

AICM believes that the introduction of the proposed legislation will enable creditors who generally come under the definition of unsecured creditors to become secured creditors with rights and entitlements previously not enjoyed.

Also, the introduction of this legislation will enable more effective and timely credit assessments of both new customers and existing customers. This should facilitate the provision of credit facilities, encouraging the development of business's growth and financial stability.

In addition the introduction of Personal Property Security law reforms will represent considerable compliance cost savings to business and the wider Australian economy.

AICM would seek that the Parliament deal with the Personal Property Securities Bill 2009 expeditiously. AICM is aware that the introduction of the proposed legislation is now scheduled for May 2011. An unfortunate outcome of this deferral of the implementation has been a perspective within some businesses that this vital reform is no longer a priority and preparatory work has consequently been delayed. This conclusion whilst understandable may work to the detriment of organisations and impact upon the successful take up of these excellent reforms.

It is AICM's view that once the Bill has been addressed by Parliament this attitude will change therefore it would seem essential for the Bill to become an Act as soon as the Parliamentary process permits so that the preparatory processes can commence from an informed perspective.

In addition, the proposed legislation will become a key component in the management of risk in relation to the provision of both commercial and consumer credit.

AICM would again note that the development of the Personal Properties Securities Bill 2009 has been an iterative process commencing in 2006 under the guidance of the then Attorney-General and progressed under the current Attorney-General through the Standing Committee of Attorneys-General. The recognition by both the current and previous government, of the commercial significance of this legislative reform is commended.

AICM looks forward to participating in the consultative development of the Regulations that will arise from this Bill once it becomes law and would urge that the issuing of draft regulations occur as soon as practical.

AICM is particularly mindful of the extensive legislative reform package currently before Parliament in addition to the PPS reforms. AICM believes that it is vital that there is consistency between these reforms in particular the National Consumer Credit Protection Bill 2009 and related bills.

Specific comments

Naming of the proposed legislation

Whilst AICM is disappointed to note that the naming of the Bill does not reflect the breadth of application it is pleasing to note that Section 3 of the Bill provides a concise summary of how the proposed legislation would apply including remedies. This Section goes some way towards facilitating a wider understanding of the broad ranging application of the proposed reforms.

Giving of Notice

AICM believes that the decision to remove the requirement for those parties that take a Purchase Money Security Interest (PMSI) to give notice is sound and will expedite the utility and take up of the PPS Register.

However AICM is concerned that the proposed provisions of Section 64 whereby a secured factoring arrangement would be given priority over a PMSI is unduly unfair to PMSI holders. This proposal in effect elevates the factor to the status of an

external controller. AICM would recommend that this provision be amended so that the first in time priority rule would apply. Alternatively if this proposal is unacceptable AICM would strongly recommend that the notice period be amended from five to ten business days. The need for PMSI holders to determine an appropriate course of action within five business days is an unnecessarily short timeframe. This position is supported by the value of commercial credit which as previously indicated is in the order of some \$600 billion per annum.

PPS Register

Whilst it is noted that the PPS Register will not be available for registrations prior to May 2011 it would be very helpful if detailed preliminary advice concerning how the PPS Register will operate would be most beneficial. This will address many preparatory issues which have been raised by prospective users of the PPS Register.

Clarification as to the procedure for registering and searching for information in relation to security interests registered in relation to a trust/trustee would be most helpful. There is an increasing use of trusts in business and the need to achieve perfection of a security interest against a trust is of considerable importance.

A critical facility which should be available through the PPS Register is the ability to give (when appropriate) notice electronically. Unless this facility is available there is a real danger that interested parties may not receive notice within the timeframes specified in the Bill.

Section 14(2)(c)

AICM notes the wording of this section and believes its inclusion will be of considerable benefit when a credit provider obtains a guarantee (for example a director's guarantee) as this will preclude the erosion of the value of the guarantee.

Registration of a security interest in fixtures and fittings

The reluctance of the State and Territory Governments to address the issue of the securitisation of fixtures and fittings is disappointing. The failure to include this

aspect of personal property will leave a key component of personal property outside the provisions of the proposed legislation. AICM would recommend that this issue be reconsidered once the PPS reforms are operational.

AICM's Consultative Process

Given the significance of the PPS reforms the AICM has conducted further consultation with the AICM membership and non members who work in the credit industry.

Seminars based on the 2008 Bill considered by the Senate Legal and Constitutional Affairs Committee in late 2008 and early 2009 were held as follows:

- Melbourne 12 May 2009
- Sydney 13 May 2009
- Adelaide 20 May 2009
- Brisbane 26 May 2009
- Perth 19 June 2009

These well attended seminars provided an excellent opportunity for effective consultation and consideration of the issues raised by proposed PPS law reforms. This consultative process has informed the development of this Submission.

Conclusion

AICM would reiterate its support to the PPS law reforms.

AICM and would express its appreciation to the staff in the PPS Branch of the Attorney General's Department for their informative assistance concerning this complex legislative reform.