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12 August 2009

Mr Peter Hallahan
Committee Secretary
Standing Committee on Legal & Constitutional Affairs
Department of The Senate
Parliament House
Canberra ACT 2600

Email: legcon.sen@aph.gov.au

Dear Mr Hallahan

Inquiry into Personal Property Securities Bill 2009

The Australian Finance Conference appreciates the opportunity to have appeared before the Committee on 6 August. During the hearing, we were asked to take several issues on notice and provide a response for the Committee's consideration. This letter provides those responses.

Section 14(2)(c) – exclusion of consumer transactions from PMSI concept

AFC's position remains unchanged and recommends removal of the exclusion. AFC has no additional examples of detriment to offer to that outlined during the hearing. Also, having reviewed the submission to the Committee by the Australian Institute for Credit Management on this provision, the AFC remains unconvinced of any benefit in retaining the exclusion.

Section 62(3)(b)(i) – PMSI registration within 10 days of grantor taking possession of goods

The Committee requested AFC provide a suggested redraft of section 62(3) for consideration. The redraft is set out below, essentially omitting paragraph (i), so that the requirement for obtaining PMSI priority is to register within 10 business days of attachment, i.e. when the financier (secured party) pays out the money and accordingly has knowledge the 10 day period has actually commenced. The redraft applies the same registration time requirement whether the property is goods or not.

Personal property other than inventory

(3) The purchase money security interest has priority if:

- (a) the interest is in personal property, or its proceeds, other than inventory; and
- (b) the purchase money security interest is perfected by registration before the end of 10 business days after the day the interest attaches to the property; and
- (c) the registration that perfects the purchase money security interest states, in accordance with item 7 of the table in section 153, that the interest is a purchase money security interest.

Section 267 – leases

The Committee sought AFC's view specifically on this aspect of the Clayton Utz submission.
The AFC agrees with that submission.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Steve Edwards', with a stylized, cursive script.

Steve Edwards

Legal & Market Consultant
to the Australian Finance Conference