

SUBMISSION ON THE PERSONAL PROPERTY SECURITIES BILL

Prepared by Women's Legal Service Victoria
on behalf of Women's Legal Services Australia

For the Senate Legal and Constitutional Affairs Committee

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Introduction

Women Legal Services Australia ('WLSA') is a national group of Community Legal Centres specialising in women's legal issues and a network of the National Association of Community Legal Centres. WLSA regularly provides advice, information, casework and legal education to women on family law and family violence matters. We have a particular interest in ensuring that women experiencing family violence are adequately protected in the family law process, and that disadvantaged women, such as those from culturally and linguistically diverse backgrounds, Indigenous women, women with disabilities and rural women are not further disadvantaged by the process.

WLSA wishes to acknowledge the work of Women's Legal Service Victoria (WLSV) in preparing this submission. WLSV has been providing free legal advice, information, representation and legal education to women in Victoria for over 25 years. WLSV specialise in issues arising from relationship breakdown and violence against women. Their principal areas of work are crimes compensation, family violence (principally intervention orders) and family law.

A significant proportion of WLSA's clients who have experienced family violence have had to relocate and hide from former partners or family members in a bid to protect themselves and their children from further abuse. The safety implications of the availability of personal information on a publicly accessible register can not be underestimated. WLSA does not seek to comment on the *Personal Property Securities Bill 2008* ('the Bill')¹ in its entirety, we do ask the Committee to consider how survivors of family violence and stalking may be affected by the Bill. In particular, should a Personal Property Securities Register ('the Register') be established, we urge that the primary legislation contain provisions that protect the personal information of those women who have greater than usual privacy needs due to their ongoing risk of family violence or stalking.

¹ Reference is made to the – the exposure Draft of the Personal Property Securities Bill 2008



The National Personal Property Securities Register

Family violence is characterised by one party attempting to control and exert power over the other party and stalking by one party attempting to have contact with the other party against their wishes. These former partners' attempts at controlling their partners do not necessarily end when women have sought police or court intervention. In fact, recent figures show that two out of every five women who get police and court protection experience further abuse from their previous partner after a restraining order has been taken out.² By monitoring the whereabouts and activities of a former partner, the violent partner seeks to retain control over their former partner and continue with their abuse.

Frequently after our clients have gone into hiding, their former partners will then go to great lengths to gather information, including accessing publicly available information to determine their whereabouts. Technological advances have enabled violent partners to continue to stalk and locate former partners.³

In one particular case, a woman who was represented by one of WLSA legal services had gone into hiding after she alleged to have been raped by a person with whom she was not in a relationship. During the seven years that she was in hiding, she was so fearful of being located by the alleged perpetrator that she had not placed her name on the electoral roll. After being in hiding for seven years the client decided it was safe to re-enroll to vote. She was then tracked down by the alleged perpetrator, who admitted in court that he would check the electoral role every month to see whether she reappeared on it. He appeared one day out of the blue at her parents' property.

WLSA is concerned that an accumulation of available information on the Register could allow former partners to locate women escaping from family violence and place the safety of these women at risk. It is a concern for WLSA that stalkers could also access the Register and locate women and children who are in hiding.

Information on the Register

The Bill outlines that details about a person on the Register are to be prescribed by the Regulations. It is submitted that the information to be included should be specified in the primary legislation and not only in the Regulations. Whilst regulation provides a degree of flexibility, this must be balanced with the potential impact it will have on women who are fearing for their own and their children's safety and well being. WLSA strongly insists that residential addresses of grantors⁴ should not be retained or displayed on the Register. Women survivors

² Data Analysis Australia, June 2008

http://www.tanyaplibersek.fahcsia.gov.au/internet/tanyaplibersek.nsf/content/nat_council_violence_05june08.htm

³ A trend that the Australasian Council of Women and Policing is investigating

<http://www.acwap.com.au/news.html>

⁴ Grantor means the individual who owns the property and a security is attached to it.

of family violence and stalking should be able to restrict their and their children's personal information so that it is not disclosed in searches.

The discussion paper on the Regulations to the Bill⁵ (the 'Draft Regulations') provides that individuals will be identified by name and date of birth. As suggested in the Office of the Privacy Commissioner's Submission to the Attorney General's Department in August 2008 ('the Privacy Commissioner Submission'), date of birth information together with other information can lead to forming profiles of individuals.⁶ This is a real concern for WLSA; as the majority if not all of violent partners would know the date of births of their former partners. They could quite easily enter such dates into the Register and obtain information about such women in hiding. The Privacy Commissioner's recommendations should be heeded and the date of births should not be used to search the Register nor be shown in the search results.

Further, as the Privacy Commissioner points out a starting point should be to consider what types of information would be necessary for the Register. It would seem that consumers looking to purchase an item of personal property and wishing to determine whether the item is encumbered, would not need information about the grantor rather information about any such security interest. It would be unnecessary to allow searches by grantors' names and dates of birth. This would facilitate 'fishing expeditions' and particularly for women and children fleeing from family violence, a way for their former partners to accumulate information to locate them.

Notification Prior to Registration

The Bill does not provide for a process whereby grantors are notified before a registration is listed or when changes are made to personal information. A grantor should receive notice that a listing or a change in information is to be placed on the Register before registration. As suggested in the Privacy Commissioner Submission, the notice should include the specific details of the information to be disclosed on the Register.⁷ This will allow women survivors of family violence to determine whether the information may put them in an unsafe situation and if so request that the Registrar prohibit registration on grounds that it would be inappropriate to register her information on a public register. This will enhance her protection and limit the chances of unauthorised searches.

⁵ Paragraph 27, Personal Property Securities Reform Discussion Paper, Regulations to be made under the Personal Property Security Act August 2008.

⁶ See page 11 Office of the Privacy Commissioner Submission on the Consultation on Personal Property Securities Bill and Commentary to the Attorney General's Department dated August 2008.

⁷ See page 7 Office of the Privacy Commissioner Submission on the Consultation on Personal Property Securities Bill and Commentary to the Attorney General's Department dated August 2008.

Prohibiting Searches of the Register

The Bill outlines a list of 'authorised' purposes for searching the Register. Access is denied where it is prohibited by the Regulations. The Draft Regulations to the Bill prescribe that applications can be made to have data withheld from a search result where there are court orders, or where the circumstances provide a sufficient basis on which to withhold a search result. There is no specific reference to applications made by women survivors of family violence, nor do the regulations set out how a Registrar is to respond to such an application. Such a response must be set out and it must be sensitive and responsive to women survivors of family violence. It is imperative that applications by survivors of family violence to have their information withheld, be responded to by the Registrar quickly and in a manner that minimises the stress on such women. The primary legislation should set out the rights and the process by which such women can have their information withheld.

The Registrar should also have the power to deny access to the Register from the outset. That is, the Registrar should be able to prevent an initial search, and not just deal with an unauthorised search after the fact. It is of no use to women survivors of family violence that access is denied after their violent partners have already obtained their personal information. It is simply too late. It is therefore important that women and children escaping from family violence be granted privacy protection from the outset. There should be legislative provisions that allow such women to restrict their personal information from all searches where they consider that the release of personal information would place their and their family's safety at risk.

Information on the Search Result

The Bill does not clarify what information will be displayed in the results of a search of the Register. Clause 226(2) outlines that the Registrar must ensure that the way in which the results of a search are worked out in response to an application for search is determined in accordance with any regulations made for the purposes of this section. The primary legislation must set out clearly what the search results will contain taking particular account of the potential risks to women and their family who have escaped from family violence and stalkers.

Further, the Bill provides that the written search result will show the registered description and any other data as determined by the Registrar. The draft Regulations propose that a free text field and attachments can also be recorded on the Register. WLSA is concerned that should such descriptions of the property be provided in a search result, it could provide additional information in tracking down women and children. For example, the colour or make of a motor vehicle, together with details of the credit provider may provide a former partner with enough information to track down women and children in hiding. There is also a risk that an attachment may inadvertently or advertently provide the location of the property or the address of the grantor. Again, this will provide or

lead to the whereabouts of women who have safety reasons for keeping these details private.

Amendments to the Register

The Bill outlines the procedures in amending the Register, which appear to be more favourable to the secured party than the grantor. The grantor can seek changes to the Register only for ending the registration and omitting the collateral, whereas the secured party is able to make amendments to the grantor's details, the property's description, and the end time for registration. Further, the grantor must ask the secured party to amend the Register; whereas the secured party can apply directly to the Registrar.

As outlined in the Privacy Commissioner's submission, this discrepancy is inconsistent with good privacy, in that, the ability to access and correct personal information is an important element to information privacy.⁸ This is especially so for women escaping from family violence. Women often have to leave their homes and personal belonging when escaping from violent partners. Such women usually do not have the money to purchase personal property outright, and frequently have to take out credit to purchase personal property in setting themselves up again. Under the Bill, such women will not receive notification before a listing has been placed on the Register. They will only receive notification upon registration, at which time they cannot ask the Registrar directly that the registration be amended so that their details and the description of the property be limited to ensure protection. Such women need this information to be withheld quickly and the Bill does not provide for that.

WLSA agrees with the Privacy Commissioner's Submission that grantors should be able to request amendments to their personal information directly from the Registrar instead of asking the secured party, and grantors have the power to amend a greater range of information including their details and the description of property.⁹ Women survivors of family violence should be able to have their information amended on grounds of family violence and stalking. Further, the primary legislative must provide for a quick, sensitive and appropriate response to applications made by women survivors of family violence and stalking to amend their information.

⁸ See page 9 Office of the Privacy Commissioner Submission on the Consultation on Personal Property Securities Bill and Commentary to the Attorney General's Department dated August 2008.

⁹ See page 9 Office of the Privacy Commissioner Submission on the Consultation on Personal Property Securities Bill and Commentary to the Attorney General's Department dated August 2008.

Conclusion

In summary, WLSA seeks to raise the issues and complexity of family violence to the Committee when considering the Bill. Should the Register be developed then, WLSA recommends that:

1. The primary legislation set out what details of the grantor are to be contained on the Register.
2. Residential addresses of grantors should not be retained, displayed (in any form even as an attachment), or be provided in a search result (written or as a screen result) by the Register.
3. Names or dates of birth should not be used to search the Register. Where possible serial numbers should be used to search the Register. The potential risk to women and children escaping from family violence and stalking outweighs any public interest that may be gained by allowing searches by names and dates of births.
4. Grantors be notified prior to a registration and a change in personal information. An opportunity must be then be provided to women survivors of family violence to request that the Registrar withhold their and their family's personal information.
5. The primary legislation provide specific procedures for survivors of family violence and stalking to apply to have their personal information withheld. Such procedures must be sensitive and responsive to such women. It is imperative that applications by survivors of family violence and stalking to have their information withheld, be responded to quickly and in a manner that minimises the stress on such women.
6. The Registrar has the power to deny access to the Register from the outset not just after an unauthorised search has occurred. The Registrar when considering whether to deny access must take into account whether a search would place women or a member of their family at risk.
7. The primary legislation set out exactly what information will be shown on the search result (written and electronic). The information provided in the result should be limited and should not contain the address or date of birth of the grantor. Free text and attachments should not inadvertently or advertently place women and children survivors of family violence at risk.
8. Grantors should be able to request amendments to their personal information directly from the Registrar instead of asking the secured party, including on grounds of safety in situations of stalking and family violence.
9. Grantors have the power to amend a greater range of information including their details and the description of property.

10. The primary legislation provide for a quick, sensitive and appropriate response to applications made by women survivors of family violence to amend their information.

Nationally, at least 40 per cent of all homicides involved intimate partners or ex-partners.¹⁰ It would be a great tragedy if legislation designed to protect consumers lead to women and children being tracked down and killed by her former partner or a stalker. In fact, the National Plan to Reduce Violence Against Women and Children currently in development is seeking to harmonise laws to better protect women and children. Accordingly, WLSA asks that in considering the Bill and legislating for a Personal Property Securities Register, the protection of women and children from family violence be taken into account.

Contact details

This submission was prepared by Eila Pourasgheri, Law Reform & Policy Lawyer, Women's Legal Services Victoria, on behalf of the Women's Legal Service Australia for consideration by the Senate Legal and Constitutional Affairs Committee.

If you would like to discuss any aspect of this submission, please contact

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¹⁰ Women were most likely to be killed by an intimate partner (48%) or a family member (23%); Homicide in Australia: 2005-06 National Homicide Monitoring Program Annual Report by Megan Davies and Jenny Mouzos.