

Quote in reply: Banking and Finance Committee:21000334/11

4 August 2009

Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Department of The Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600



Dear Sir

PERSONAL PROPERTY SECURITIES BILL 2009

The Queensland Law Society (QLS) would like to thank you for the opportunity to comment on the Personal Property Securities Bill 2009. The QLS is the peak professional body for State's legal practitioners and we lead a profession of more than 7,500 members throughout Queensland. The QLS is a constituent body of the Law Council of Australia and is comprised of several specialist committees who provide policy advice to the QLS Council on areas of concern to the profession. This response has been compiled with the assistance of the Society's Banking and Finance Law Committee who have a keen awareness of the issues affecting this area of the law and welcomed the opportunity to provide comments to this Bill.

We take this opportunity to express our support for the Personal Property Securities Bill 2009 and the establishment of a national electronic personal property securities register. We note the Committee's endorsement of the 'functional approach' to the reform of personal property securities law in its March report on the exposure draft of the Personal Property Securities Bill 2008 and re-confirm our support for this approach.

The Bill is a significantly revised version of the exposure draft Bill that was the subject of your Committee's report in March 2009. In our view the re-arrangement of the chapters, parts and sections of the Bill and the simplification of the drafting of numerous provisions enhance the Bill's readability and utility.

Sub-clause 14(2)(c)

One concern with the Bill is the inclusion of new sub-clause 14(2)(c). The effect of this sub-clause is that it will not be possible to have a purchase money security interest (PMSI) in collateral that the grantor intends to use for personal, domestic or household purposes. This provision was not included in previous exposure drafts of the Bill and in our view it should be removed.

Consumer finance is based on taking security (or reserving title) in the financed goods and it is unusual to take security over other goods. Conversely, all-assets securities are commonly taken to secure commercial finance and in some circumstances this could include the personal assets of a sole trader, partners in a partnership or director guarantors. In the absence of sub-clause 14(2)(c) a consumer

financier would not need to be concerned about a prior registered non-PMSI security interest. If sub-clause 14(2)(c) remains in the Bill a consumer financier's only security is potentially at risk unless they undertake searches and obtain a release or subordination from the holder of the prior registered security interest if that interest could extend to the consumer goods being financed by the consumer financier.

While sub-section 14(2)(c) is unlikely to be a concern in the context of financing arrangements for serial numbered goods which the grantor intends to use for personal, domestic or household purposes (due to the operation of other provisions in the Bill), it could increase the cost of consumer finance for non-serial numbered goods.

One consistent approach to PMSIs for both commercial and consumer finance would make the legislation less complex.

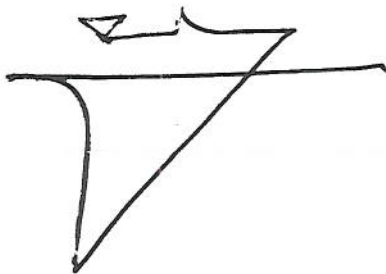
We submit sub-clause 14(2)(c) is unnecessary and should simply be removed from the Bill. No other consequential amendments would be required.

Clause 12(4) and the definition of 'account'

Clause 12(4) of the Bill is intended to apply to both ADI accounts and chattel paper. However the revised definition of 'account' in clause 10 specifically excludes both ADI accounts and chattel paper. This should be corrected.

If you have any queries or wish to discuss this submission further, please contact Ms Binny De Saram, Queensland Law Society Banking & Finance Law Committee on (07) 3842 5885 or at b.desaram@qls.com.au.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Ian Berry', written over a horizontal line.

Ian Berry
President