

APPENDIX 3 Consolidated table of some of the suggestions made to the committee for amendments to the Personal Property Securities Bill 2008 [Exposure Draft]

Organisation	Section	Issue	Example	Recommendations
Queensland Law Society and Piper Alderman	Part 1.3, Divisions 4 & 5	There are two different concepts of 'control' used in the Bill		While having two different concepts seems to be causing some confusion, we believe 'control' is the appropriate term to be used in both contexts and suggest any confusion may be overcome by the inclusion of a note at the start of each Divisions 4 & 5 in Part 1.3 of the Bill highlighting that there are two different concepts and briefly stating the purpose of each of them
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	6	Application of Act to interests		The term 'interests' should be clarified as to whether or not it applies only to security interests or if it applies more broadly
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	6(1)(f)(vi)	Query why this provision only excludes assignments of accounts rather than assignments of chattel paper made to facilitate collection as well		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	6(1)(j)	Query whether this is intended to exclude "crops" as defined in section 26		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	6	Relationship with other laws – overriding provisions in the <i>Corporations Act</i> do not		Inconsistent State legislation should be repealed, if not, Commonwealth PPS Bill should cover the field.

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Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	26	completely match the relevant State laws. Definition of 'Account'		Should be limited to actual debt. This would prevent assignments of corporate bonds being registered twice.
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	26	Definition of ADI Account		Needs to be a concept of account with a bank or deposit taking entity which is not Australian
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	26	Definition of Bankruptcy and Insolvency		Would be preferable to not use the constitutional concept and needs more specific definitions referring to voluntary administration, liquidation and bankruptcy under the <i>Bankruptcy Act</i> .
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	26	Definition of Chattel Paper		Recommend this term be deleted as it will generate significant uncertainty and confusion
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	26	Definition of Clearing and Settlement Facility	This is made unnecessarily complex as it incorporates a Corporations Act definition which can only be understood by a very time consuming exercise. This is one example of difficulties that	

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Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	26	Definition of Consumer Property	arise when definitions are imported from other statutes	Query why it is not limited to property acquired for personal, domestic or household purposes and wonder whether this definition is necessary due to its minimal use in the legislation and over-broad definition.
Consumer Action Law Centre	26	Definition of Consumer Property		Should be amended to provide that it covers personal property held by an individual, other than personal property held <i>predominantly</i> in the course or furtherance of carrying on an enterprise
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	26	Definition of Controllable Property		Definition appears to be unduly restrictive and query why it does not also cover performance bonds and bank guarantees
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques		Definition of Control	Legislation difficult to follow because there are two different sets of definitions	Suggest that where additional concepts are necessary in the context of circulating assets, they are expressed in terms of restrictions, rather than control
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques		Definition of Future Advance		Given our view that section 60 would be better served saying that a security interest may secure any obligation, present or future, actual contingent, this current definition of 'future advance' unduly narrows what obligations can be secured
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques		Definition of Grantor	Definition is somewhat counter-intuitive in paragraphs (a) and (f) (and paragraph	

Organisation	Section	Issue	Example (e) to the extent it picks up those paragraphs)	Recommendations
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques		Definition of Investment Instrument		May be too limited. Should generally be extended to tradable investments and securities
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques		Definition of Licence		Would be better to have a separate provision to explicitly state that licences are property, and may be the subject of a security interest and dealt with by the secured party in accordance with the security interest unless otherwise provided by the Act creating the licence or regulations made under it. It is also not clear the why definition should be limited to licences that are transferable.
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques		Definition of Negotiable Instrument	Definition includes things that are not negotiable in the legal sense (paragraphs (d) and (e)). The intention behind section 41(2)(c) is unclear: does it include transfers of mortgages?	
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques		Definition of New Value		It is not clear why this definition should exclude value that is provided by way of reducing or discharging an existing debt or liability
Allens Arthur Robinson		Definition of Perfection	Differing uses of	This definition, when it relates to foreign

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Blake Dawson Freehills Mallesons Stephen Jaques			the word in sections 80 to 83 compared to section 64.	jurisdictions, should relate to the perfection of that security interest under that particular law
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques		Definition of Signed		There should be provision allowing other parties to rely on the assumptions in ss128 and 129 of the Corporations Act, and other rules as to ostensible authority
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	Section 19	Unclear wording		This section and Sub-division C should make it clear that no formality or requirements for granting security under any state law apply.
Australian Securitisation Forum	28	Transfer of assets under a trust-back or seller trust arrangement		The transfer of these accounts, where they will continue to be held on bare trust for the transferor, should not be deemed to be a security interest in accordance with section 28(3)(a) of the Act
Australian Securitisation Forum	28	Extinguishment of SPV's interest. The operation of the Act is not clear in these circumstances and raises a number of issues including enforceability issues		The extinguishment of a securitisation vehicle's interest in the securitised assets in favour of the seller should not be deemed a security interest for the purposes of the Act in accordance with section 28(3)(a) of the Act. In our view, in these circumstances the records retained by the seller and/or the securitisation vehicle should be the conclusive register of the beneficial owner of the relevant collateral
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	Section 28(1)	Meaning of "security interest"	The breadth of the definition undermines certainty for the PPS register and legislation in a number of ways.	Would be useful to clarify what is meant by "in substance" and exclude particular arrangements that might arguably be included in the definition, but (a) are not generally regarded as security interests, or (b) should not be included as security interests, for policy reasons.

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			<p>First, in reference to arrangements that "in substance" secure payment or performance of an obligation will generate uncertainty. Unless the PPS Bill provides greater clarity about how "substance" is to be assessed, the current definition of "security interest" is likely to unsettle negotiated allocations of contractual risk.</p> <p>Second, in view of the sanctions that apply if something is a security interest but is not registered, parties will be inclined to register everything they could remotely consider as a security interest</p>	
Allens Arthur Robinson	Section	Why an assignment which	Can give rise to	

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Blake Dawson Freehills Mallesons Stephen Jaques	28(3)(a)	is not a security interest be regarded as a security interest, particularly given the width of the definition of "account" and "chattel paper"	unforeseen consequences, in terms of unwritten and voluntary assignments, it will no longer be possible to have an unwritten assignment enforceable against third parties and may add to the complexity and cost of securitisation	
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	Section 28(3)(a)	Relationship with extinguishment provisions	Query why a different policy regime seems to apply with respects to accounts as extinguishment provisions are in many ways more favourable to the holders of security interests than the priority provisions	Suggest there should be a similar concept as provided in subsection (5) so that the secured party is taken to have "possession" of investment entitlements, investment instruments, and negotiable instruments that are evidenced by an electronic record if they are registered in the name of the secured party. At the moment that appears to have been left out of the definition of "control"
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	Section 28(3)(a)	Transfers and novations	We assume that a "transfer" does not include a simple declaration of trust.	Further clarification needed
Allens Arthur Robinson	Section	Absolute assignments and		If absolute assignments are retained as security

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Blake Dawson Freehills Mallesons Stephen Jaques	28(3)(a)	control		interests, we suggest that where a notice is given to the party that owes the account, and it is an absolute transfer, that is, of the type referred to in s12 of the <i>Conveyancing Act 1919</i> (NSW) and its equivalents, or its equitable analogue, then that should be regarded as "control" or "possession" for the purpose of the provisions of the legislation. In other words, no registration should be necessary
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	Section 28(3)(a)	Chattel Paper		Recommend that a legal assignment of an account of chattel paper (that is an absolute assignment where notice has been given to the account debtor) be excluded.
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	Section 28(3)(c)	Definition of "commercial consignment" will include arrangements which are not functionally security interests	While the example of the auctioneer has been correctly excluded, it leaves in arrangements such as artists leaving their paintings with a gallery for exhibition and sale.	
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	28(5)	This sub-section appears to be designed to overcome the risk that a person cannot take a valid security interest over the benefit of obligations that the person itself owes to the grantor		If the legislature is to take this step, it would be appropriate to extend it to apply to all obligations, rather than just obligations under an account
Allens Arthur Robinson Blake Dawson	Section 30(1)			Seems to serve no purpose. Should it be deleted?

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Freehills Mallesons Stephen Jaques				
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	Section 30(2)(a)	Meaning of the words "is an obligation for the term of the lease" is quite unclear		Further clarification needed
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	Section 30(9)(a)	In most lease transactions, the implicit interest rate will not be "specified"		Recommend that the discount be determined by the implicit yield in the lease, and that the section only rely on a specified interest rate where a rate is specified expressly for this purpose
Australian Securitisation Forum	32	Deferred Purchase Price Arrangements	The assets in connection with a securitisation transaction may sometimes be assigned to the securitisation vehicle on a deferred purchase price basis	security interests arising in connection with deferred purchase arrangements in relation to the transfer of receivables should be excluded from paragraph (a) of the definition of a purchase money security interest
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	Section 32(1)	Unclear what is meant by "the collateral" when more than one asset is bought under the one arrangement	Example: if one borrows \$100,000 to buy 10 cows at \$10,000 per cow, do the cows as a group constitute the collateral, or does each cow secure \$10,000	Further clarification needed
Allens Arthur Robinson Blake Dawson	Section 32(1)(b)	It is not uncommon in financing transactions for	Similarly, value could be paid to	It is important that this section be sufficiently flexible to accommodate all these types of arrangements

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Freehills Mallesons Stephen Jaques)	value to pass through the hands of a number of parties before it is ultimately applied to acquire an asset.	one party, in consideration for that party separately providing funding to the party that ultimately acquires the asset. It is also possible for the value to be provided in a structured financing after the asset has been acquired.	
Australian Finance Conference	32(2)	A sale and leaseback arrangement is excluded from being a PMSI		The AFC recommends a security taken by the financier will be a PMSI where the parties have agreed that, prior to the grantor acquiring personal property, the financier will 'reimburse' the grantor for the purchase price and take a security interest over the property. The AFC also recommends PMSI priority should apply if the secured party registers on the PPSR within a specified period after it advances the finance
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	Section 32(4)	This section may cause confusion	Does it mean that the same security interest has to secure the refinancing or consolidation, even if the secured parties can be	Would be easier if the definition "purchase money obligation" was broader

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Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	Section 32(5)	It is not clear how a refinancing would fit into the definition of "purchase money obligation"	In a refinancing, money is provided to repay money which was used to enable the grantor to acquire its interest. The value given by the refinancing lender does not assist the grantor acquire collateral, it has already acquired the collateral	
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	Section 34(1)	Meaning of <i>Accession</i>		This should be expressed as the separate identity of the other tangible property being lost. The identity of the improved property will continue
Australian Securitisation Forum	36	One of the primary concerns with the current treatment of chattel paper in the Bill is that if chattel paper is in a physical paper form, a person with a security interest having possession of that paper will have priority under the default priority rules over a person that has a registered security interest but does		Only chattel paper evidenced electronically should fall within the ambit of the regime. If the definition is to be limited to chattel paper evidenced electronically consideration will be required as to how a determination is made that the chattel paper is evidenced electronically

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<p>Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques</p>	<p>Section 36</p>	<p>not have possession of the paper The meaning of Chattel Paper is not familiar in Australian law and will cause confusion.</p>	<p>We understand that the concept of chattel paper was originally developed in the US to facilitate floor plan financing and instalment financing. It was then extended to lease financing. By comparison, under the current law in Australia, if a financier takes collateral over assets and receivables it does so without "chattel paper". Under current Australian law, there is not the existing legal basis for the operation of chattel paper. The Bill does not seem to change that, so that the concept will not be able to</p>	

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Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	Section 42(1)	The reference to a "dealing" is perhaps over-broad	be used in practice. Does not specify if it includes granting a new security interest, or letting the property for hire	Needs further clarification
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	Section 42(2)	Unclear what this section is designed to achieve	If it was possible to have a security interest over non-transferable property, then why should it not be possible to obtain a security interest over proceeds (e.g. compensation for termination of a licence)?	
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	Section 43(5)	Meaning of <i>Possession</i>	We presume that possession has been used because special priority is given to acquirers of chattel paper who take possession of it under section 118. It may also be helpful to set out when non-electronic chattel	Bill should make it clear whether it is possible to possess such chattel paper and, if so, which copy the acquirer must take possession of to perfect its security interest

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Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	Section 47	Drafting of this section is somewhat unclear	paper is possessed. Chattel paper may be executed in counterparts. Not sure why the definition of "controllable property" only includes a "letter of credit" and does not extend to similar contingent instruments, such as bank guarantees or performance bonds	
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	48	There should be a provision similar to section 45(4) covering the position where someone on the secured party's behalf is registered as owner of the investment entitlement.	Does not seem to be any provision covering the position where the secured party is actually registered as owner of the investment entitlement	That, we suggest, should be regarded as possession
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	49	Unclear how this section deals with a negotiable instrument that is itself an instrument and is not evidenced by a certificate, for instance, a promissory note, letter of credit or a bill	As negotiable instruments are defined by reference to an instrument, in what circumstances would it be	

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Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	51(1)(a)	of exchange	represented by a certificate that is not the instrument itself? Current protection of the holder of a floating charge against execution creditors and also against the Australian Tax Office and similar provisions, should continue.	We suggest that control would be sufficient, but also there should be a new test as to dealing with the asset being restricted. This would more accurately reflect current law.
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	51(2)	Under current law, an absolute assignment of accounts could not be a floating charge, and thus would not be available for preferential creditors	If there is an absolute assignment, there is no requirement for the proceeds to be paid into a proceeds account. It should be sufficient if the register indicates that it is an absolute assignment	The same principle should also apply to a transfer to chattel paper (if that concept is retained)
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	51(2)(b)	Definition of "control"		Only applies to a band of assets, and not all possible current assets. This points to the need for a wider definition of restricting dealing. There is, it appears, no definition of control for currency, or a negotiable instrument that is evidenced by a certificate (or is an instrument)

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Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	52	Wording in the Annexure	Tests should not be "controlled" which is already used in a different context in relation to what is or is not controlled in the context of "controllable property"	It should be whether dealing with the asset is restricted, with the requirement (as per recent English cases) that proceeds be paid into an account in which there are some restrictions.
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	52(1)	Control of a non-ADI Account that is the proceeds of inventory		The same principles should apply to an account with an offshore bank as apply to an ADI account. Equally in subsection (2), the money should be able to be paid into an account with a non-ADI offshore which is under control. This is not uncommon in foreign currency transactions
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	52(2)(b)	The reference to a person's "usual practice" is unduly restrictive		It may be clearer if the section were expressed the other way around: namely, that the secured party had control unless it is shown that the grantor's usual practice, with the express or implicit consent of the secured party, is to pay the proceeds elsewhere
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	53(2)	Control of inventory	The current relevant test as to whether or not there is a floating charge or a fixed charge over what otherwise might be stock-in-trade, is whether there is a restriction on dealing.	This section should be deleted, there should be no separate test in respect of inventory

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Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	59	Question the purpose of Section 59	This section merely states that the agreement may provide for the security interest in after-acquired property – it does not deal in any way with the consequence of the agreement having done so	
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	60	There is no need to clarify that secure interests can secure any liability, as that is the current position		This section could more easily do its job and preserve the existing position by simply stating that a security interest may secure any obligation of any type, whether or not existing or contemplated at the time the security interest is created.
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	61	When a security interest attaches to a personal property		Would be better for the section to say that security interest attaches to the grantor's interest or right in the property. Alternatively it should include a separate subsection that the security interest extends no further than the interest of the grantor in the personal property
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	61(1)	Change of text		Would be clearer if "both of the following have been satisfied" was inserted after "when" in the introduction
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	63(3)(a)	Problem with the requirement of writing		Question whether or not this should be required

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Queensland Law Society and Piper Alderman	63(3)(b)(iii)			The current wording of sub-section 63(3)(b)(iii) could be more clearly expressed to achieve this outcome including by removing the double negative in parenthesis
Allens Arthur Robison Blake Dawson Freehills Mallesons Stephen Jaques	63(5)	This would mean the effectiveness of a security agreement and a security interest depends on the intention of the grantor, which can change without the knowledge of the secured party		Further clarification is needed otherwise the result will be that there will be defensive registrations and secured parties who do not take this precaution will inadvertently lose out when the grantor does change the use. It would give grantors an easy avoidance measure.
Allens Arthur Robison Blake Dawson Freehills Mallesons Stephen Jaques	64(3)(b)	Unduly restrictive requirement for particularised description	As drafted, the requirement for particular types of description is a significant restriction on the ability of parties, currently enjoyed, to have security over what they like	Would be helpful if the Bill or regulations contained examples of the sort of description that would satisfy the Bill's requirements (both in relation to the requirements of this section and the requirements of the register) otherwise courts may interpret this strictly, particularly if they believe that the purpose of registration is to give notice of the particular property which should be apparent from the face of the register
Allens Arthur Robison Blake Dawson Freehills Mallesons Stephen Jaques	64	How a security interest is <i>perfected</i> – as stated earlier, security interest becoming effective under foreign law (including where they do not have a notion of perfection)		Simply extending the definition of "perfection" to cover perfection overseas will not be sufficient. It may be an artificial concept under many foreign laws and it may not be easy to establish an analogue to the Australian concept of perfection
Allens Arthur Robison	67(1)	It is not clear whether the	If a company has	

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Blake Dawson Freehills Mallesons Stephen Jaques		concept of "after-acquired property" encompasses only things that are the property of the grantor at general law, or whether it is intended to capture property that is taken to be "collateral" under any other security interest granted by the grantor	given a charge over its present and after-acquired property, and that acquires possession of an asset by way of finance lease, does the charge attach to the grantor's leasehold interest in the asset, or does it attach to the asset itself?	
Consumer Action Law Centre	67(2)			Should provide that a security interest cannot attach to after-acquired property of a kind prescribed by the regulations or covered by section 67(3)
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	67(3)	See no reason to include this provision		If it is going to be included, it should turn on whether the security interest is regulated by the UCCC or its Commonwealth replacement, rather than the type of goods the security interest relates to
Consumer Action Law Centre	67(4)			This section should be deleted from the Bill
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	68(4)	We have the greatest difficulty with the policy behind this subclause. IT appears that there are many circumstances in which an asset can be sold subject to a security interest, without the secured party being able to prevent it. This seems to		Sub-sections (4) and (5) have been introduced to since the first consultation draft but they do not address this issue. If it is retained, this sub-section should only apply where the proceeds have arisen because the grantor has transferred the collateral and no longer has an interest in it.

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Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	69(3)(b)	be the policy of section 124. This seems to be particularly unfair on the secured party that it effectively limits the recourse to the asset over which it was counting on security		Would be helpful to clarify the situation where a security interest perfected under a foreign law gives rise to proceeds in Australia (e.g. when a chattel or an intangible owned by a grantor located outside Australia is sold and the proceeds paid into an ADI Account)
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	70(2),(3)	The reference to 5 business days is too short, particularly as the secured party needs to react to an event of which it may know nothing		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	75	Do not see why a secured party should lose its security interest in collateral simply because the bailee issues a document of title, an event over which the secured party has no control		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	75(1)(c)	In any event, the reference to 5 business days is too short		

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Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	76	This section seems to apply also so as to remove perfection altogether even though security interest is perfected both by control and registration		If so, it should only apply if the security interest is not registered
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	77	Same comment as earlier, 5 business days is too short		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	78	Unclear why this applies equally to the grantor to whom possession is returned, and to the transferee of chattel paper who is a new party		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	78(3)			In our view, the security interest should also be perfected by control
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	79	We are puzzled by the operation of this section.	How would it work where the assignment of the account (or chattel paper) was absolute, that is it did not secure any obligation. What would the deemed security interest in the returned	This should be left as a matter of contract for the two parties. Once again the reference to 5 business days is too short.

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			<p>collateral secure? How would the transferee of the account learn of the return of the collateral, in order to be able to perfect it within the 5 business day period referred to? It is unclear why the person who receives a transfer of the debt arising on the sale should automatically receive a security interest over the goods</p>	
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	79(4)	Why is temporary perfection required if the transferee's security interest is already perfected by possession or registration?		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	81			This should have an exception for such items as aircraft and ships only temporarily brought into Australia
Allens Arthur Robinson Blake Dawson Freehills	83			This needs to provide rules for the location of investment entitlements. Sub-section (3) needs to deal with the portion where the issuer is an individual

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Mallesons Stephen Jaques				who moves, or has locations in several states. Either a more complex provision is called for or it should be left to general law
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	84	In our view, the Division should not apply when the grantor has nothing left to sell: that is, where the "security interest" is an absolute transfer. Also, it is unclear how the Division is intended to apply in the case of interests acquired for value other than by way of purchase (e.g. a declaration of trust given for value)	Under current law, leasing property other than real property does not give the lessee any interest in the property within the ordinary meaning of that term: a "lease" of personal property is just bailment	
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	85(1)(b))	Don't understand the reason behind deleting that the purchaser would take subject to the unperfected security interest if it knew that the transfer breached a security agreement from the consultation draft		This provision at least should continue. It may be preferable to provide that this rule applies where the transferee has no knowledge of the security interest rather than knowledge of a breach of the security agreement creating the security interest
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	86(1)(a)			This provision should only apply where property must be described by serial number
Allens Arthur Robinson Blake Dawson Freehills	86(1)(b))	As currently drafted, this provision significantly detracts from the worth of		This provision should not apply when the transferee had actual knowledge of the transferor, and a search against the transferor would have revealed, for

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Mallesons Stephen Jaques Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	86(1)(e)	having an all-assets security See no policy reason in the context of this rule for effectively enabling parties to assume that a known security interest did not prohibit a transfer of the property		instance, that there was a charge over all its assets. Would be preferable to vary this to "The transferee has no knowledge of the security interest".
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	87(c)	This section could have very wide-reaching effects: case law traditionally interprets "ordinary course of business" very widely in this context, far wider than in the ordinary course of trading		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	88(1)(c)	It is unclear whether the threshold is an amount per item, or the amount for an aggregate sale. It is also unclear how this provision would apply if the market value is greater than \$5000, but the transferee (reasonably) believes that the market value is less than \$5000		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	88(1)(f)			May also be appropriate to limit the definition of "knowledge" that applies to this clause

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Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	90(b)	This provision is unsatisfactory as currently drafted.	Schemes of arrangement are the currently favoured method for company takeovers. Similar things can happen with units in trusts and options	It is extremely important to retain this ability.
Queensland Law Society and Piper Alderman	90(c)	The words "unless the transferee's interest is a security interest" at the beginning of sub-section 90(c) are unnecessary as the Division of which section 90 forms a part does not apply if the transferee's interest is itself a security interest (see section 84(1))		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	92(2)			We support the inclusion of this section in addition to section 81, although it may be possible to combine the two provisions into one.
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	92(1)(h), (2)(g)			May also be appropriate to limit the definition of "knowledge" that applies to this clause.
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	95	In this and other sections referring to security interests to which the Act does not "operate" it is not clear what is referred to		"Does not operate" should be replaced with "does not apply" – the language of Section 6

Organisation	Section	Issue	Example	Recommendations
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	98(2)	Appears to be unduly wide	Appears to subrogate the secured party to the rights of predecessors in title which relate to the property irrespective of what type of rights they are, and against whom the rights may be exercised	This should be limited to the rights as against the transferee or the rights arising out of the particular transfer
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	100(3)	We do not understand the policy requirement that would allow someone to disregard a pre-existing security interest, particularly one perfected by registration. Also, why do secured interests perfected by control have priority over secured interests perfected by possession?	It would significantly erode the flexibility and value of all assets security, if the security holder had to go to the trouble of obtaining control over every controllable asset in order to avoid losing priority, even to parties who took with notice.	
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	100(4)	Again, if the subsequent security interest holder has notice of the first, it should not get priority		
Allens Arthur Robinson	100(6)			If a secured party has a security interest by control,

Organisation	Section	Issue	Example	Recommendations
Blake Dawson Freehills Mallesons Stephen Jaques				but subsequently takes one instead by registration and gives up control or loses control, but at no stage is unperfected, the priority time should perhaps be the date on which it was first perfected by control. However, the register should reflect the earlier priority date
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	100(8)		Priority could be established by the time of attachment, followed by the time of execution of the security agreement as a tie-breaker	Would be helpful to expand or clarify the priority rules that apply in this case, or else state that the general law applies. Tie-breakers would be needed under these rules where there were two security agreements each granting security over an asset which is acquired later. Both would attach when the asset was acquired
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	101	This section does not resolve circular priority positions as there is nothing to say which is the <i>first security interest</i>	That is, where A has priority over B which has priority over C which has priority over A	
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	101(1)(a)	How can a security interest have priority over a security interest which does not exist? How do you select what sort of security interest the putative non-existent security interest would be		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	103	It seems that this section could be deleted without any damage. The heading of the section is misleading,		Should not have the effect of privileging security interests which are covered by the Act over those which are excluded under section 6.

Organisation	Section	Issue	Example	Recommendations
Australian Finance Conference	105	as the question of whether the Act applies to some security interests is not necessarily answered on constitutional grounds (see section 6) The Bill permits secured parties to subordinate priorities		The AFC recommends that the Bill's regulations include the power to prescribe a form of subordination agreement.
Allens Arthur Robison Blake Dawson Freehills Mallesons Stephen Jaques	109(1)(c)	The notice requirements would seem to be quite onerous for someone who has a retention of title arrangement in relation to a trading relationship.		If notice remains a requirement, then it should be effective in relation to those secured parties who receive it, whether or not other secured parties receive it. In other words, the holder of the purchase money security interests would rank ahead of those who receive the notice
Allens Arthur Robison Blake Dawson Freehills Mallesons Stephen Jaques	109(3)(b)(ii)	If the description in the notice cannot be general, this could be very time-consuming on behalf of holders of purchase money security interests, particularly suppliers of goods under ROT terms		It should be possible to give a generic description
Allens Arthur Robison Blake Dawson Freehills Mallesons Stephen Jaques	111(3)	This section seems objectionable to us at least to the extent that it applies to assignments are in substance security interests, and we note that it is not found in the NZ legislation. We do not think that this	It is unclear what, if any, steps the holder of the purchase money security interest could take to protect its position once it receives a	In general terms, if absolute assignments are defined as security interests, then assignments of receivables should be dealt with in the same way as other extinguishment provisions even though they are defined as security interests, and the approach should be consistent

Organisation	Section	Issue	Example	Recommendations
Australian Securitisation Forum	111(4)	<p>We repeat our earlier submission that it is critical from a securitisation perspective that notices to be given under section 111(4) are sufficiently flexible so that the holder of a priority interest would not have to notify a holder of a PMSI each time additional collateral in the same category was acquired for new value</p>	<p>provision should give the holder of a security interest priority over an earlier interest of which the holder was aware at the time it took the security interest.</p> <p>notice. It is also unclear why a purchase money security interest in an asset should lose priority over the proceeds of the asset in this way.</p>	<p>There are a number of options for addressing concerns, including adoption of the New Zealand allowance of 15 days from the grantor acquiring possession. The AFC recommends, taking into account the range of reasons identified to justify a different time limit, that registration before the end of 5 business days after settlement (i.e. when the security interest attaches by value being given by the secured party) should establish the PMSI priority</p> <p>Nevertheless, 5 business days still seems a little short</p>
Australian Finance Conference	112	<p>Inadequacy of 5 business day registration time limit for priority</p>		
Allens Arthur Robinson	112(1)	<p>We understand the logic of</p>		

Organisation	Section	Issue	Example	Recommendations
Blake Dawson Freehills Mallesons Stephen Jaques		having a short period because the secured party is aware of the grantor acquiring the possession, and should be prepared for it.		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	Division 4	The rules generally provide for temporary perfection of the transferor-granted interest for 24 months, but it is unclear why this time period was chosen. It seems too long a period to protect third parties and not long enough to protect defrauded financiers.	Why temporarily perfect the transferor-granted interest as against purchasers for 24 months but as against secured parties for only 5 days after knowledge is acquired? Why elevate the commercial interests of financiers over those of other commercial parties? Why provide for temporary perfection, but then make it depend on the very uncertain test contained in clause 70?	We see no reason for a different rule (namely, 5 business days after knowledge is acquired) where another security interest is granted. By including this rule, the Bill therefore favours subsequent secured parties over other parties who may be prejudiced by the continuing security interest, but we see no policy justification for the difference in treatment.
Allens Arthur Robinson	114(2)	This provision sits strangely		The holder of the transferee's security interest should

Organisation	Section	Issue	Example	Recommendations
Blake Dawson Freehills Mallesons Stephen Jaques		with the fact that if the first and second security interest had both been granted by the one party, and the first security interest was not registered according to the serial number, but the second was, the first would still take priority. It seems an odd result if it should be different simply because the grantors are different.		not get priority where it had actual knowledge that the acquisition constituted a breach of the transferor's security interest.
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	116	It is unclear why this section applies only to certain types of payment		This should not expressly prejudice the operation of insolvency legislation (relating to preferences etc.) The provision is generally too wide – it enables creditors who are vaguely aware of security agreements, or that a company might be in trouble, to pursue payment, knowing that if they receive payment, it will be free of security interests. There should be some concept here of payments in good faith in the ordinary course of business. It may also be appropriate to limit the definition of "knowledge" that applies to this clause
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	117	There is no need for any attempt at restatement or modification of these principles in the context of the PPS Bill.	Provisions like the <i>Bills o Exchange</i> Act and the law merchant as to negotiability are clearly understood, and well settled. There is no need to	This is extremely important for the operation of the money-market which relies on bills of exchange, and on much of the banking system which relies on cheque clearance. Simply making this Act subject to the Bills of Exchange Act under section 18 would probably not achieve this aim.

Organisation	Section	Issue	Example	Recommendations
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	117(b)(i))	This section makes a new qualification on negotiability and the ability of a party to acquire good title, which significantly erodes the concept of negotiability. Under the current law, only actual knowledge (not constructive knowledge) of defects will undermine negotiability	depart from them and there is certainly no reason for weakening concepts of negotiability	It may be better that this section simply state that a party who acquires a negotiable instrument (defined to include only instruments that are truly negotiable at law) acquires it free of a security interest if, under the <i>Bills of Exchange Act</i> or other relevant law, the holder takes free of all interests.
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	118			Given our views on the utility of the concept of chattel paper, we think it would be preferable to treat these priority issues (if they are retained at all) in the same way as accounts
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	118 (2)(b)	The purpose of this provision is unclear		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	120	It is unclear whether this section is meant to be exclusive. It is also unclear how this section sits with section 103	If it is, it seems implicitly to give an extraordinary privilege to holders of security interests	

Organisation	Section	Issue	Example	Recommendations
Allens Arthur Robison Blake Dawson Freehills Mallesons Stephen Jaques	120(1)	It is unclear how this fits in with the extinguishment provisions	over holders of other interests in property. Particular difficulties arise when the grantor of the security interest, has higher rights to the asset, than the party whose action created the priority interest That is, it seems to be an extinguishment provision all of its own, at least one in which the new interest (which could be ownership) takes priority over the security interest	
Allens Arthur Robison Blake Dawson Freehills Mallesons Stephen Jaques	120(4)	By expressly referring to section 6(f)(ii) this means that section 120 would be interpreted so as to give priority over security interests which are covered by the Act over any other security interest of the type referred to in section 6.		

Organisation	Section	Issue	Example	Recommendations
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	121	<p>This is unfair. See our comments on section 102 above</p> <p>Currently, an execution creditor has priority over an uncrystallised floating charge, but automatic crystallisation can trump them. This section would effectively replicate the position of an automatic crystallisation clause.</p>		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	121	<p>There does not seem to be any clarification of the position of holders of security interests in circulating assets as against the Australian Taxation Office in relation to accounts and notices (e.g. under section 218 of the <i>Income Tax Assessment Act 1936</i>)</p>		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	122(1)	<p>Usually an ADI could simply rely on a combination of accounts or set-off, which is not a security interest, but there is already a security interest over the account which has been perfected, it is unclear</p>		

Organisation	Section	Issue	Example	Recommendations
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	123(1)	<p>why it should gain priority</p> <p>See our comments on section 79. The questions addressed by this section would not arise if the question as to what happened in relation to returned goods where a party has an assignment of the account arising from those goods is left to the parties</p>		
Australian Securitisation Forum	124	Transfer of grantor's rights in collateral		Rather than permitting assignability, this section should provide that a contractual prohibition on assignment is effective to preserve the general law position
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	124(1)	Do not understand the need for this section. Also unclear in relation to collateral/property that courts have regularly said is unassignable e.g. insurance contracts and contracts of employment or assignment to a party incorporated in another jurisdiction, which may or may not result in Australian law ceasing to apply to that security interest	Seems to give a wide-spread licence to parties to ignore contractual prohibitions on transfer of personal property	
Allens Arthur Robinson	125	We see no reason why a		This provision need not be included to achieve the

Organisation	Section	Issue	Example	Recommendations
Blake Dawson Freehills Mallesons Stephen Jaques		law designed to reform the law of security interests should so substantially change the position of parties to transactions that are not in the nature of security		policy of the bill, and should not be adopted without very comprehensive review
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	125(1)	The interaction between sections 125(1)(a) and (b) needs to be clarified.	Paragraph (a) contains no temporal restriction in relation to when the defence will have accrued or arisen. On that basis either paragraph (b) is redundant or paragraph (a) needs to be read down.	
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	125(1)(a)	The language has now been modified and since the first consultation draft to resemble more closely the current law. We still query the need for it		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	125(3)	This sub-section will have a significant effect in such things as project finance where the nature of the thing being assigned is important, and in	It introduces considerable uncertainty, and the use of terms such as "commercially reasonably" and	This is an unnecessary departure from current principles: it should be left to the parties to decide

Organisation	Section	Issue	Example	Recommendations
Australian Securitisation Forum	125(3),(4) & (6)	<p>securitisation where set-off against the securitised debts is a major issue.</p> <p>Rights on transfer of account or chattel paper</p>	<p>"material adverse effect" are fertile ground for litigation</p> <p>Use of terms such as "commercially reasonably" and "material adverse effect" are open to broad interpretation by the transferor and may not provide sufficient comfort to rating agencies and investors</p>	<p>These sub-sections should be removed</p>
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	125(5)	This causes particular difficulty in circumstances of project finance and also in many other areas.	If a party has taken assignment of a debt, or a contract, why is it that the assignor can still change it?	It should not be up to the courts to determine whether or not modification is "commercially reasonable" or has a "material adverse effect". They may be matters on which the parties have their own views. It would be on that basis that they may have entered into the transaction
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	125(7)	The transferor should simply be able to make an irrevocable direction to the account debtor to make payments to the transferee, as is currently the position. This seems to add significant difficulties and uncertainties in an area	Under paragraph (b), it appears that the direction would not work if the transferee fails to provide proof on the 6 th Business Day.	

Organisation	Section	Issue	Example	Recommendations
Australian Securitisation Forum	125(7)	where currently there are none. Also, we are not sure why the transferee needs to provide proof when the direction would have come from the transferor It is not evident why this section should be limited to intangible property or chattel paper		Proof of sale should not be required under section 125(7)(b). Proof of sale should also not be required as the risk of an assignee wrongfully asserting a right to a debt against a debtor is slim
Queensland Law Society and Piper Alderman	125(7)	The first line "if collateral that is intangible property or chattel paper is transferred..." in our view the reference to 'intangible property' should be a reference to 'accounts'. Section 125(7) deals with accounts and chattel paper not intangible property		In our view the reference to 'intangible property' should be a reference to 'accounts'
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	125(8)	We do not understand why this clause is necessary, and why it cannot be left to the general law	Why can't the account debtor ignore any irrevocable direction from the transferor which is not in the form of the Notice? Why is it that the transferee has only five business days to	It simply may not be possible in the five business days. If it eventually provides proof after a longer period then it should be effective from time of proof

Organisation	Section	Issue	Example provide proof?	Recommendations
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	126(1)	Further difficulties arise for borrowers who want to restrict the ability of banks to assign their rights in respect of loans made by the borrowers, say, to hedge or vulture funds		The provision, if it is retained, should also permit an account debtor to obtain injunctive relief to prevent a transferor from proceeding with a prohibited transfer. Also if adopted, the provision should not prevent the grant of an injunction to prevent an assignment, or the rights to terminate the contract
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	126(2)	This is unnecessary, even if sub-section (1) is accepted.	The account debtor should have an action against the transferee for inducing a breach of contract, if the transferee took with knowledge of the breach	
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	127(1)	This provision is unnecessary, as it would be a rare security agreement that would be binding on a licensor in those circumstances.	It is hard to imagine how a holder of an intellectual property, who gives a licence to use the intellectual property to a party who then gives a security interest, is bound by the security interest	
Allens Arthur Robinson Blake Dawson Freehills	129(1)	This section seems to leave a few gaps. It does not deal with a sale or "other	It does not seem to cover a position where a security	If the land is sold before the security interest of the crops is perfected, by a mortgagee who is not subject to the security interest in crops, then the sale should

Organisation	Section	Issue	Example	Recommendations
Mallesons Stephen Jaques		encumbrance on" the land given before perfection of the security interest in the crops. It does not seem to deal with security interest in crops being granted after the creation of some other form of interest in the land other than a lease or mortgage	interest in crops is granted, but a lease or mortgage of the land is granted after the grant of the security interest in crops, but before the perfection of the security interest in crops	not be subject to the security interest in crops
Law Society of New South Wales	130	The provisions that crop security interests be limited to crops planted at the time of, or within six months after, the making of the security agreement and excluding progeny from livestock security interests [clause 42(3)]		It is noted that the existing State legislation provides for crops mortgages for crops grown over a five year period (section 7(5) <i>Security Interests in Goods Act</i> 2005 (NSW)).
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	130			Recommend that this section be expanded to explain what the priority position is as between two competing security interests that both arise under the clause. Would also be helpful to expand on the meaning of "to enable the grantor to produce the crops" in section 130(b) Same comments as for section 130
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	131			
Allens Arthur Robinson Blake Dawson	133	The boundary between accessions and		

Organisation	Section	Issue	Example	Recommendations
Freehills Mallesons Stephen Jaques		commingling are unclear. But are defined by reference to identity being lost		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	134	This seems to apply whether or not the security interest in the accession has been perfected. This seems contrary to the principles in the remainder or the legislation		If there is a security interest over the improved property, then it would seem to follow that the rights of the owner of the accession, such as they are, have priority over a holder of the security interest in the improved property, but not over the improved land itself
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	135(c)	The policy rationale behind the requirement that the security interest have been perfected immediately after the person acquired the security interest, and have been continuously perfected ever since, is not clear.		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	135(e)	This seems to be contrary to the policy of the priority provisions in section 100, in giving protection to an unperfected security interest over a perfected security interest when the perfected security interest takes with knowledge of the breach of the unperfected security interest		
Allens Arthur Robinson Blake Dawson	136(c)	If the security interest is not even attached to the		

Organisation	Section	Issue	Example	Recommendations
Freehills Mallesons Stephen Jaques		accession, why is this section necessary at all? How could a security interest attach to an accession, after its identity had been lost?		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	139(1)			It would be appropriate for this section to also confirm that the security agreement will also be taken to have satisfied section 67(3)(ii)
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	140	We question whether this is the correct approach, particularly in relation to a mass of fungibles		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	140(b)	There seems to be a drafting issue in Section 140(b) – it refers to the tangible property continuing in the product. We query whether the limit on the value of the continuing security should be referable to the value of the original property relative to the value of the whole product (or the original value of its constituent components) rather than its original value		
Allens Arthur Robinson Blake Dawson Freehills	142(2)	The use of the word "equally" in line 3 appears to be at odds with the "pro-		We recommend it be deleted

Organisation	Section	Issue	Example	Recommendations
Mallesons Stephen Jaques		rata" mechanism in section 143		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	Clause 143	Value of obligations if insufficient proceeds		If the property is fungible and becomes part of an undifferentiated mass, then the secured parties should be entitled to a proportionate part of the whole, or the proceeds of the whole
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	Clause 143			Presumably also section 143 should only apply when the security interests are held by different parties
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	144	We query how this section can operate if, by definition, the separate identity of the accession will have been lost		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	145			There should be some general notice provision like s170 of the <i>Conveyancing Act 1919 (NSW)</i> to allow deemed service by leaving notices at an address etc. This should apply to all notices required under the Act
Australian Securitisation Forum	149(1)(a)	Request clarification that securitisation transactions where accounts or chattel paper are transferred or assigned to an SPV not in connection with the securing of a payment or performance of an obligation (but rather a true sale of the accounts or chattel paper) are not covered by this Chapter		This should be the case even where the transferee may have indemnity rights or other rights against the transferor in connection with the transfer of the accounts or chattel paper

Organisation	Section	Issue	Example	Recommendations
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques Consumer Action Law Centre	149(4) 149(4)			We suggest that the regulation of consumer items should be left to the Uniform Consumer Credit Code or its Commonwealth successors Should also exclude sections 164 and 180(2) from application to collateral that is used by a grantor predominantly for personal, domestic or household purposes
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	150	By listing just three parties, this section begs the question as to what happens to the rights between other parties		It may be better if this section were drafted to make it clear that except where it expressly provides to the contrary, the Part does not derogate from any right that any person may have against another in respect of the security agreement or the collateral, including the parties to the security agreement
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	154			We do not think that the provision should exclude consumer transactions, consumers are sufficiently protected elsewhere. However, to the extent the Bill does deal differently with consumer transactions, this should be by reference to whether the security interest is regulated by the UCCC rather than by reference to the nature of the goods to which the security interests relates
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	154	If the definition of "grantor" is left wide, it may be difficult, if not impossible, to "contract out" as it would require the secured party to contract with everybody with an interest in the collateral		
Allens Arthur Robinson	154(1)			This should refer to goods to be used predominantly

Organisation	Section	Issue	Example	Recommendations
Blake Dawson Freehills Mallesons Stephen Jaques				for personal, domestic or household purposes <i>at the time they were initially acquired</i> . Otherwise there will be significant uncertainties on enforcement. Also, a secured party should be able to rely on the certificate as to the use of the collateral, similar to section 11 of the UCCC. Clauses 172(2) and 177 should be added to the list
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	154(2)	This appears to take away from the ability to contract out of giving notice because the parties cannot contract out of obligations in relation to person who are not parties to the security agreement	This would remove much of the benefit of being able to contract out, and would impose duties and restrictions in relation to the enforcement of security interests that are not found in the current law. In relation to 154(2) sub-section (5) is not adequate to deal with the issue	
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	155			Would be better for the PPS Bill to recognise the possibility that receivers can be appointed by anyone over property anywhere and, if it is necessary to derogate from this in some cases, by regulation or otherwise to provide for it
Australian Finance Conference	155	The Bill's enforcement provisions do not apply to the personal property that is		Recommends that the enforcement of a fixed charge or goods mortgage given by a company over specific tangible property be dealt with in accordance with

Organisation	Section	Issue	Example	Recommendations
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	156	being dealt with by a controller within the meaning of Part 5.2 of the Corporations Act This provision could cause significant complexity		Chapter 4 (Enforcement of Security Interests) of the Bill, rather than the controller provisions of the Corporations Act If the ability to choose between enforcement regimes is retained, it should not be subject to a requirement that the choice be "reasonable": it would be highly undesirable to suggest that it is "unreasonable" for a secured party to choose the enforcement regime that is most advantageous to it
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	157	It is unclear how this section would operate. We do not understand why there is a need for the elaborate provisions giving all parties a notice that the mortgagee intends to enforce the securities as if it were land		If the secured party is proceeding as if the property is land, the notice requirements should not differ from those applicable to security interests over land.
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	159(3)	This can put the account debtor under a difficult position, if it is unsure as to the efficacy of the security, or the validity of the notice. The timing is also interesting		This entire section 159 seems over-prescriptive. A better provision would be simply one that was general, and said that the secured party can exercise any of the rights of the grantor in relation to the collateral
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	159(4)	Further, this seems to be inconsistent with sub-section 5		
Allens Arthur Robinson	160(5)	The reference to 5 business		

Organisation	Section	Issue	Example	Recommendations
Blake Dawson Freehills Mallesons Stephen Jaques		days is too short		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	161	This section seems to give the secured party the right to seize collateral, even though another party may have a higher right. This raises the overall question as to whether the "collateral" is the asset, or the right of the grantor to that asset. We note that there is an apparent gap relating to the seizure of shares and any other property excluded from the definition of intangible property		This section should make provision for deemed "seizure" of other intangible assets like accounts. Seizure should be deemed to have occurred if notice has already been given to the account debtor, so that the secured party is in control in the wider sense
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	161	We do not understand the policy behind sub-section (3). If a secured party now has possession and control of an asset, so that all the world knows that it has possession and control, why shouldn't it be taken to have perfected its security interest?		Sub-section (2) should be a general provision and not limited to Chapter 4
Allens Arthur Robinson Blake Dawson	162	It is unclear what happens if the secured party has		

Organisation	Section	Issue	Example	Recommendations
Freehills Mallesons Stephen Jaques		possession or control sufficient to be able to sell, but because of the nature of the asset the possession or control does not constitute perfection, but is perfected by other means		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	162(2)	It is unclear what happens if notice cannot be given because the grantor cannot be found. It is also not clear what the notice needs to state		The process should only be initiated if the notice states (for example) that the secured party is to be taken to have seized the collateral
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	163(1)	The conceptual model behind much of the drafting seems to be that there is one asset subject to the security interest which should be sold as soon as possible. Reality is often very different		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	163(3)	This gives a new field of uncertainty. It is a higher duty of care than the normal "good faith"	Currently, secured parties are allowed to have regard to their own interests. Requiring them to have regard to the interests of a large number of other parties is a significant change,	

Organisation	Section	Issue	Example	Recommendations
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	163(3)(a)	We don't see why an express permission for delay is required	may be onerous and will certainly be a fertile field for litigation	The default position should be the current one, namely that the secured party can sell the property at what it thinks is the appropriate moment, subject to its duties.
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	164	In our view, the "necessarily incidental" test is a harsh one, particularly by comparison with other tests which relate to reasonableness		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	165	The reference to 5 business days is too short.		Section 156(1) would not allow the secured parties to enter into an agreement of this type. The "contracting out" list in section 154(1) should be extended to include this section as well. We query whether this should require notice in all circumstances. The provision for seizure by higher ranking parties should not be limited to security interests
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	165(4)	This seems to be drafted so as to always require a longer period than 5 business days	If the collateral is immediately deliverable, and the higher ranking secured party is entitled to it, then it should be immediately delivered. There is no reason why a	

Organisation	Section	Issue	Example	Recommendations
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	165(5)	This provision significantly tilts the balance in favour of lower ranking secured parties	lower ranking secured party should have any longer grace period in delivering possession than the grantor	A higher priority party should not be obliged to pay costs incurred by a lower ranking party: such a rule seems to give a blank cheque to a lower ranking party. The normal rules should apply, namely that a lower ranking security holder should take its chances.
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	165(7)	This timing limit seems unduly restrictive, given that the higher priority party needs to receive and check through invoices. The provision also gives undue leverage to lower ranking parties to put commercial pressure on higher ranking parties who may want to have a work-out or leave a business running in the interests of overall recoveries		The current law position should be preserved, which is that a holder of a security interest only has to compensate grantors of security interests and lower ranking owners of security interests if it breaches its duties as mortgagee
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	166	As mentioned above in relation to section 161, this seems to suggest that a secured party may sell collateral, even though it		Seizure should not be necessary for the secured party to sell collateral

Organisation	Section	Issue	Example	Recommendations
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	166(2)	only has limited rights to that collateral We do not see why section 166(2)(b) should not apply to some forms of properties for personal, domestic or household purposes, subject to the UCCC		Would be better for the Bill to provide that a secured party may lease the relevant collateral subject to the terms of the security agreement (rather than permit the parties to agree that the secured parties may lease the collateral)
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	166(3)	We wonder why this section is necessary: surely all enforcements of security agreements must be in accordance with the security agreement?		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	166(6)	This seems to be inconsistent with section 124(1)		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	166(7)	We don't understand the note at the bottom of this sub-section		We do not read section 68 and subclauses 42(2) and (3) to have that effect. If they do, they should be changed
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	167(3)(b)	This considerably extends the number of people who can bring a claim. We wonder why the debtor is referred to in the section as the debtor has no interest in the collateral		We think that there should be some limit, otherwise this legislation seems to give a possibility of a great deal of tactical or nuisances litigation.
Allens Arthur Robinson Blake Dawson	170(1),(2)	This may be burdensome if the sale is being conducted		

Organisation	Section	Issue	Example	Recommendations
Freehills Mallesons Stephen Jaques		in many lots over a period of time		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	170(3)	This could be burdensome, particularly estimating receipts under a lease		It would be much better simply to give an account after a period which deals with all receipts over that period, rather than an item by item description
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	170(5) &(6)	This effectively requires the secured party to prepare accounts of a business that is taking over a business. Companies are only required to produce accounts annually, and have a significantly longer period than 1 month in which to produce them		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	171(1)(a)	Given the width of the definition of "grantor", this would give the secured party the right to dispose of the asset free of interests which are superior to that of the secured party		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	171(1)(c)			This should relate to all lower ranking interests, not just security interests
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	172(2)	It is unclear why this provision is necessary. This seems to be generally incompatible with the	Parties who are lower down the priority chain can always force a sale	

Organisation	Section	Issue	Example	Recommendations
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	174	normal provision that a security holder can choose its moment to exercise its power of sale, and also hold onto property in order to extract value from it. It is unclear why this provision is necessary, given that there is the remedy of foreclosure, and also that a secured party has an ability to buy the assets under section 167	by paying out the higher ranking security interest	If the enforcement provisions are excluded for deemed security interests, like commercial consignments and leases, then it would be appropriate for there to be no discharge of the secured obligation. They should be able to exercise their current rights, that is, to keep the property, and to sue for the amount recoverable (albeit, mitigated by their retention of the assets)
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	175			This provision should be more clearly limited to notices where the secured party proposes to acquire the property itself
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	176	This section may not be particularly helpful: if there is a dispute of this kind, it is likely to end up in court		
Australian Securitisation Forum	177(2)(b)	We acknowledge the changes made to this section in response to submissions. Is the new reference to “future advances” in section 177(2)(b) duplicative of the remaining words in that paragraph?		Parties should be able to contract out of this section under section 154. Section 177(2)(c) should contemplate secured creditors ranking pari passu with the enforcing secured creditor

Organisation	Section	Issue	Example	Recommendations
Allens Arthur Robison Blake Dawson Freehills Mallesons Stephen Jaques	Clause 181	This is a significant and unnecessary departure from existing rights, which should not be retained in the Bill.		This is a concept which should be left to credit regulation, if it appears at all. If the grantor has waived its right under this provision, then this should also apply to everyone else
Allens Arthur Robison Blake Dawson Freehills Mallesons Stephen Jaques	Clause 186(4)	If the Registrar refuses access of suspends the register, the Bill does not offer any guidance about what effect would be had on priorities etc.	This concern applies particularly in relation to temporary perfection	
Allens Arthur Robison Blake Dawson Freehills Mallesons Stephen Jaques	187(c)	What other interests (other than security interests) are contemplated here?		
Australian Finance Conference	189(1)	The Bill refers to the registration of collateral. AFC has a concern that this expression is not consistent with the expectations of secured parties and with the core rationale for the Bill.		Recommend that the Bill should refer to registration of a security interest, not registration of collateral.
Allens Arthur Robison Blake Dawson Freehills Mallesons Stephen Jaques	189(2)(c)(ii)	If the Registrar is satisfied that the application is made in contravention of section 190, what redress does the security party have?		
Allens Arthur Robison Blake Dawson Freehills Mallesons Stephen Jaques	190(1)	This is in fact an onerous requirement and will put secured parties into a difficult bind given the		From discussions on the previous exposure draft we think the concern this is trying to address is unscrupulous financiers running out and taking out "pre-emptive" registrations in order to gain a priority

Organisation	Section	Issue	Example	Recommendations
Australian Finance Conference	191	uncertainty of the "in substance" approach		position – this can be addressed by a requirement that the person believe on reasonable grounds that they will obtain the interest for which they are applying for registration – it shouldn't matter whether or not it's a security interest. Alternatively the requirement should be that they believe on reasonable grounds that they will have an interest in the property and that they believe that interest might be regarded as a security interest
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	191 – Item 1 – the secured party	details of subordination may be recorded or changed on the PPSR, but this is not mandatory Often, security is held by a trustee for a shifting band of secured parties		The AFC recommends that the Bill's regulations include the power to prescribe a form of subordination agreement. The requirement should be satisfied simply by mentioning the name of the trustee
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	191 – Item 2 – the grantor	It is unclear how much detail will be required, especially if the secured party does not have all the detail to hand		This seems to put a lot of information onto the register which could slow down the registration of security interests. A solution may be to limit it to the actual party that grants the security interest
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	191 – Item 4 – the collateral and proceeds	It is unclear how an "all assets" charge would fit with this requirement. We also query why the registration must relate to a single class of assets.		It would also help if the permitted descriptions are as broad as possible

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Allens Arthur Robison Blake Dawson Freehills Mallesons Stephen Jaques	191 – Item 6 – the end time for registrat ion	It is unclear how the Bill proposes to deal with the transfer of accounts in batches, for instance in a securitisation Seven years may be an appropriate time for cars or household goods but it may be inappropriately short for many other types of property owned by individuals		As noted previously, it would be better to refer to security interests regulated by the UCCC rather than security interests over particular types of property
Consumer Action Law Centre	191 – Item 6			Should prescribe a default registration period of five years for consumer property or property described by serial number
Allens Arthur Robison Blake Dawson Freehills Mallesons Stephen Jaques	191 – Item 7 – subordi nation	We do not see the need for the registration to describe subordination arrangements		
Allens Arthur Robison Blake Dawson Freehills Mallesons Stephen Jaques	191 – Item 9 – any matter prescrib ed			There should be provision for insertion of information about restrictions of dealings with the asset, or the granting of further security interests
Consumer Action Law Centre	194			Should not apply to property to be used predominantly for personal, domestic or household purposes
Intellectual Property Committee of the	194	Provides that personal property may be registered		

Organisation	Section	Issue	Example	Recommendations
Business Law Section of the Law Council of Australia		as collateral either before or after a security agreement is made. This provision confers a right on any lender at any time to register a security interest over any personal property of any person without the knowledge, consent or approval of that person		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	196(1)(c)	This unacceptably puts parties at risk of mistakes or failures by the Registrar or the Registry that cause the description to be unavailable		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	198(2)	It is unclear whether this means that, for example, a registration is ineffective if the secured party fails to disclose all parties interested in the collateral (and therefore currently defined as "grantors") even if it did not know about them		There should be some saving in relation to misleading entries honestly made by the secured party, otherwise there is a very heavy onus on the secured party and a significant risk of misstatement and loss of the security
Intellectual Property Committee of the Business Law Section of the Law Council of Australia	198(2)	Provides that defects in the description of collateral will not operate to render a security interest ineffective before the earliest of several	The effect of this is that the collateral may be described in a seriously misleading manner	

Organisation	Section	Issue	Example	Recommendations
Australian Securitisation Forum	199	<p>stated periods</p> <p>reference to “grantor’s details” in section 199(b) be clarified so that a trustee as grantor is required to state the trust in respect of which it is the grantor. This will facilitate pin-pointing a particular trust debtor where the debtor acts as trustee for numerous trusts</p>	and yet the security interest will still be effective. This seems to defeat the point of registration	
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	199(a)	It is not clear what property is contemplated to be covered by the regulations as to be covered by serial numbers. This could have serious effects in relation to “all assets” charges		
Australian Finance Conference	200	Imposes requirements on a secured party if details on which a registration is based, change		Recommend that, unless a secured party becomes actually aware that registered details have changed, there should be no obligation to change details from those already registered
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	200(2)	The reference to 5 business days is too short		

Organisation	Section	Issue	Example	Recommendations
Australian Finance Conference	200(2)	The reference to 5 business days is too short		Recommend 10 business days is a more realistic and reasonable time for change or response
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	203(1)	The same comment applies here as section 189(2) That is, there may be some doubt as to whether an interest of right its security interest		In that case, the party should be entitled to make any defensive registration, and require the Registrar to enter it into the Register
Consumer Action Law Centre	206(2)			Should be amended to require a secured party to apply for an amendment of a registration to omit collateral or to end its effective registration 'as soon as reasonably practicable' after the unperfection time occurs, and no longer than before the end of five business days after the day the unperfection time occurs
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	207	There seems to be no equivalent requirement here for the party seeking the amendment to have a belief on reasonable grounds		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	208(1)(c)	It is not clear to us why a security trust instrument should be excluded		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	209(5)	Five business days is far too short a period for a large financial institution to respond to the demand, to find the appropriate materials in its files and to compose a response		

Organisation	Section	Issue	Example	Recommendations
Australian Finance Conference	209(5)	The reference to 5 business days is too short		Recommend 10 business days is a more realistic and reasonable time for change or response
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	210	This seems to be extraordinarily biased against the secured party		
Australian Finance Conference	210(4)	The reference to 5 business days is too short		Recommend 10 business days is a more realistic and reasonable time for change or response
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	223(3)	This seems to require that every time a secured party registers a security interest it needs to give notice to the grantors and others, adding to the paperwork		
Consumer Action Law Centre	223(5)			Should be amended to require a statement holder to ensure that the notice is given to each interested person as soon as reasonably practicable after the time of the verifiable event, and no longer than before the end of 14 days after the time of the verifiable event
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	224			If the register is electronic and can be checked electronically by the secured party, the Registrar should not need to add to its costs by giving the secured party a copy of the new registration or amendment initiated by that secured party
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	227 Item 7			This should extend to parties who propose to deal with a person, who are to take an exposure to risk on that person, but not "provide credit" to it
Allens Arthur Robinson Blake Dawson Freehills	227 Item 14			This should extend to administrators appointed under different laws outside Australia, that are analogous to receivers, administrators, liquidators etc.

Organisation	Section	Issue	Example	Recommendations
Mallesons Stephen Jaques Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	233	The invalidity of the security in liquidation and voluntary administration is a heavy sanction and we are concerned that the current drafting will create unnecessary difficulties		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	233(1)	The sudden death cut-off date is too draconian		It would be better to have the relevant provision providing that the security interest is void as against the relevant insolvency official, rather than vest in the official. An administration is often a temporary appointment. If the administrator is removed, then it still should be possible for the secured creditor to retain its rights. Under this arrangement, it would lose them irrevocably. The court should have the discretion to allow perfection after commencement of the winding up etc, as the court currently does in relation to charges
Australian Securitisation Forum	233(3)(a)			chattel paper should also be included in section 233(3)(a) as there is no reason to distinguish between a transfer of an account that does not secure payment or performance of an obligation from a transfer of chattel paper in the same circumstances
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	233(4)	We find this section very difficult to follow		
Allens Arthur Robinson Blake Dawson Freehills	234	We think this section is too narrow in scope. Any person who has their rights		The only qualification on that should be that where the right confiscated secures another obligation it should not entitle them to additional compensation

Organisation	Section	Issue	Example	Recommendations
Mallesons Stephen Jaques		vested in the grantor should be entitled to compensation		over and above the other obligation
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	235	This additional duty is unnecessary and may be counterproductive		If such a section must remain, it should simply include an obligation to act in good faith
Queensland Law Society and Piper Alderman	235	We believe existing statutory provisions and equitable principles provide adequate protection against improper business practices and it is not necessary or desirable to enact additional and differently worded safeguards		
Australian Finance Conference	235 & 236	These provisions are not justified and bring uncertainty to an Act trying to do the opposite. The meaning, scope and application of duty are unclear.		Recommend the omissions of these two sections
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	236	This section is objectionable. It appears to extend the field of parties entitled to damages to those currently owed no duty of care		
Allens Arthur Robinson Blake Dawson Freehills	237	Most legislation providing for registers in relation to land give rights to statutory		

Organisation	Section	Issue	Example	Recommendations
Mallesons Stephen Jaques		compensation for misstatements in the register, rather than trying to absolve the Registrar from responsibility. The absence of such a statutory compensation scheme, coupled with the immunity from suit, is an unnecessarily retrograde step.		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	241	This seems onerous, particularly the requirement to itemise property when the security may just cover all assets, or a class of assets. The holder of the security interest has no such information.		The provision could be made of little effect if, as we presume would be the case, all parties make an agreement as provided in subsection (6)
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	273	What is the rationale for including presumptions about transactions between related entities? The commentary states that the presumptions “are derived from current state legislation”. Which legislation?		As stated above, “value” should not be a requirement for an effective security interest. It does not seem appropriate to require a criminal standard of proof (“beyond reasonable doubt”) to rebut the presumptions in this clause
Allens Arthur Robinson Blake Dawson Freehills	281			Where parties have agreed between themselves a division between a fixed and floating charge over assets, that should continue so that an asset which is

Organisation	Section	Issue	Example	Recommendations
Mallesons Stephen Jaques				<p>subject to a floating charge under an existing fixed and floating charge (that is entered into before the relevant time) should be regarded as circulating assets and fixed charge assets as non-circulating assets</p> <p>The legislation should preserve the existing position in relation to the ATO and execution creditors, that is, that the automatic crystallisation is effective</p> <p>The words "in respect of particular personal property" should be removed</p>
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	282	<p>This section only provides that an existing interest is enforceable "in respect of particular personal property" if it would have been "so" enforceable before the commencement time. The "so seems to suggest that it must have been enforceable in respect of that particular personal property This seems to leave unprotected existing security interests to the extent they cover assets acquired after the time.</p>		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	284	<p>This provision applies the priority rule in section 120 of the PPS bill to interests arising under legislation or a rule of law or equity after the "registration commencement time".</p>		

Organisation	Section	Issue	Example	Recommendations
		<p>What happens to such interests arising before that time?</p> <p>Will the states and territories enact similar legislation which includes a comparable provision for interests arising under states and territories acts and instruments made under them?</p>		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	287	<p>Should the reference to “another security interest” in the second line be to “another transitional security interests”? The priority rules in clause 292 apply to priority disputes between transitional security interests</p>		
Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques	294	<p>The priority between competing security interests will depend on such things as whether the security interests are legal or equitable. It is unclear as to whether this distinction is maintained.</p>		<p>If all new security interests under the bill are to be regarded as legal security interests and deprive existing equitable security interests of priority then query the constitutional effect</p>
Allens Arthur Robinson Blake Dawson Freehills	294(1)(b)			<p>The specific provisions of the Bill that apply should be stated, ie. parts 2.4 and 3.1 of the Bill</p>

Organisation	Section	Issue	Example	Recommendations
<p>Mallesons Stephen Jaques Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques</p>	<p>301(b)</p>	<p>There does not appear to be any obligation on the states to give data in a transitional register to the Registrar.</p>		<p>As noted above, an obligation should be imposed on the states to give data in a transitional register to the Registrar in this bill or if there are constitutional limitations in corresponding legislation enacted by the States and Territories</p>
<p>Allens Arthur Robinson Blake Dawson Freehills Mallesons Stephen Jaques</p>	<p>302(2)</p>	<p>What happens if the migrated information is migrated incorrectly and parties suffer loss as a result of the incorrect migration? There appears to be no compensation if the Registrar makes a mistake. We know this is consistent with the bill which absolves a Registrar from the responsibility for misstatements in the PPS register. See our comments on section 237.</p>		