

4 June 2010

Personal Property Securities Branch
Australian Attorney-General's Department
3-5 National Circuit
Barton ACT 2600

Australian Institute of Credit Management Submission re Personal Property Securities Regulations 2010 Exposure Draft and Commentary

The Australian Institute of Credit Management (AICM) welcomes the release of the latest draft of the Personal Property Securities Regulations April 2010 (PPS Regulations). It is AICM's conclusion that there is a pressing need for the PPS Regulations to be available well before the 'go live' launch of the PPS Register and the operation of the legislation. However in making this statement the AICM is mindful that the development of the PPS Register and the migration of existing Commonwealth, State and Territory registers is a complex task requiring careful management.

Overall the draft PPS Regulations appear to address many of the matters that should be included however there are a number of additional issues which should be addressed albeit via possibly a variety of communication channels.

AICM is aware that whilst the *Personal Property Securities Act 2009* (the Act) is the ultimate authority there are instances where some matters are more easily addressed and/or clarified via regulation and/or guidelines. It is AICM's preference that wherever possible those matters which need to be expanded upon or more readily dealt with by regulation should be placed in the regulations. Where there are matters that are unsuitable or inappropriate for inclusion in the regulations then they should be dealt with via Guidelines. In AICM's experience the reliance upon 'FAQs' and/or Information Sheets have a much lower level of utility as they are perceived as lacking sufficient status and authority.

AICM would recommend that the following matters should be addressed either by regulation or guidelines.

Registration of a security interest in a motor vehicle

Under the current state based registers relating to motor vehicles the VIN, engine number and vehicle registration details are recorded. AICM understands that when the state based registers are migrated there will be an attachment to the PPS Register which will contain information which will be deemed to be additional information such as the engine number and the vehicle registration details.

Going forward the PPS register will only contain the VIN and this will be the principal piece of information required to effect registration. AICM members working in the motor vehicle industry have expressed concerns that there will no longer be a facility to also include in the PPS registration the engine number and the vehicle registration details. Their concerns are based upon their experience when dealing with situations that relate to potentially fraudulent or criminal activities and there is a need to track the history of a vehicle. Without the additional information this process could potentially be impeded to the detriment of both suppliers and consumers.

Recommendation 1

Therefore AICM would recommend that the PPS Register maintain the current state based facility to record, in addition to the VIN, both the engine number and registration details.

Guidance as to the minimum information required when giving notice

Throughout the Act there are a number of circumstances which will require the giving of notice. Just a few examples of this requirement may be found in the following sections of the Act:

s 64, s 95, and Chapter 4

AICM is mindful of the wording of s 302 *Approved forms* however this provision would be more readily understood by way of indicative examples. Indeed such a facility is anticipated by the provision in s302 (3):

The Registrar may, by written instrument, approve a form for the purposes of paragraph (2)(a).

Recommendation 2

It is AICM's recommendation that providing advice as to the minimum information that should be set out in the different types of notices would be beneficial and would facilitate the take up of the benefits that will flow from a PPS Register which is a comprehensive reflection of perfected security interests.

The method of determining priority amongst competing registrations in the transitional period

Many AICM members are currently unsecured creditors and they welcome the opportunity to exercise their rights under the Act to become secured creditors. Primarily this will be achieved through the transition arrangements which will apply for two years from the 'go live' date of the PPS Register. However there has been considerable confusion as to how priority will be determined if during the transitional period all registrations of existing security interests are treated equally.

It is AICM's understanding that the Act provides for the security interests captured under the transitional arrangements to be accorded priority however the communication of such concepts has been less than effective.

Recommendation 3

AICM would recommend that an explanation, preferably by way of example, would alleviate this confusion and again encourage organisations to utilise the benefits of registration.

Set out below is a suggested model for such as example:

There are three suppliers of similar goods to XYZ Pty Ltd and each supplier registers their existing security interest during the transitional period. XYZ Pty Ltd becomes insolvent and the issue of priority must be determined. The priority ranking of the three suppliers will be ascertained by each supplier producing documentation which confirms the commencement of their security interest. Thus supplier A may have entered into a contract to supply goods dated 1 May 2008 whereas supplier B's contract to supply commenced on 2 June 2009 and supplier C's contract commenced on 3 August 2010. Thus priority ranking can be established.

The ability to register more than one security interest against a grantor

It would be beneficial if there was greater clarity regarding an entity's ability to register more than one security interest against a grantor. This is of particular importance to AICM members who currently often rely upon a retention of title provision together with a separate 'all monies clause' in their contract with a customer. In this circumstance the entity would be able determine if it should register a Purchase Money Security Interest (PMSI) in relation to specific goods supplied under the collateral class 'other goods', as well as a security interest against the collateral class 'all present and after acquired property'. Elaboration on this application of the provisions of the Act would reassure existing unsecured creditors that their interests will be maintained and supported under the new PPS regime.

Recommendation 4

AICM would recommend wider publicity of an entity's ability to register more than one security interest against a grantor.

Definition of inventory

The Act's Definitions as contained in s 10 *The Dictionary* are most helpful. However an issue that has arisen is that there is a degree of confusion as to the interpretation of the term 'inventory'. In common parlance the terms 'inventory' and 'stock' are used interchangeably, even though from an accounting and financial management perspective the items under consideration are in fact inventory. Whilst the definition of 'inventory' as set out below does address both concepts, for many people there is a level of uncertainty as to whether the term 'inventory' does in fact embrace stock.

***inventory** means personal property (whether goods or intangible property) that, in the course or furtherance, to any degree, of an enterprise to which an ABN has been allocated:*

(a) is held by the person for sale or lease, or has been leased by the person as lessor; or

(b) is held by the person to be provided under a contract for services, or has been so provided; or

(c) is held by the person as raw materials or as work in progress;

or

(d) is held, used or consumed by the person, as materials.

Recommendation 5

AICM would recommend the clarification of the definition of 'inventory' to include stock.

Conclusion

The comments set out in this submission reflect issues raised by AICM members and fellow credit professionals at an extensive seminar program organised across Australia by AICM in March, April and May 2010. The seminar program related to the PPS Act and other recent credit related legislative reforms of the Commonwealth Government.

AICM received assistance from the PPS Branch in the conduct of the seminars and have achieved in total participation by some 422 people.

AICM would like to express its sincere appreciation to the PPS Branch team for their ongoing support throughout the development of the PPS Act related legislative instruments.

Yours sincerely

A handwritten signature in black ink, appearing to read "Del Cseti". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ms Del Cseti
Manager External Affairs