

2002

Final Report - Workshop on Personal Property Security Law Reform

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Final Report - Workshop on Personal Property Security Law Reform

Abstract

[extract] Although reform of personal property security law has been long neglected, it is too important to be ignored any longer. A clear consensus has emerged that the reforms incorporated in the draft PPSA Bill would do much to attain the desirable objectives within secured financing in Australia of a cheaper, faster, simpler, easier, and safer scheme of personal property security law on a national uniform basis of best practice. The reforms will also confirm Australia's position in the global financial network through a regime that is compatible with our trading and financing partners.

Keywords

Final Report, Workshop on Personal Property Security Law Reform, Bond University, April 25 -27, 2002, Personal Property Security Act, PPSA

Final Report

Workshop on Personal Property Security Law Reform

Bond University 25 – 27 April 2002

Workshop on Personal Property Security Law Reform

I - Chairman's Introduction

Work on the reform of the law relating to personal property security law reform has been under way in Australia for more than 40 years. Although it has progressed sporadically, it has had a constant objective. That objective has been to streamline the multiple and complex system of State and federal laws and procedures, based on statute and case law, in order to develop an efficient and modern regime to reduce the uncertainty and cost of financing transactions against personal property. The category of property described as "personal" has increased in size and value over that time, and it now plays a much greater role in security for business finance. Advances in technology have made the task of developing an appropriate infrastructure more effective and straightforward. Changes in taxation laws have meant that there is less emphasis on the production and registration of documents for revenue purposes. Our economy has become more dependent on credit for growth at all levels.

Australia is not in a unique position. In the last half of the twentieth century, and especially in its last decade, reform of this part of the law has increased in speed and has converged in substance and in process. The first part of this movement towards reform was in the United States with the creation of the Uniform Commercial Code (UCC), replacing the nineteenth century common law structure that Australia still has. The American Law Institute has just completed the task of revision of Article 9 of the UCC. The strategy of Art. 9 of the UCC in respect of personal property security law was to concentrate on the substance of a transaction rather than its form – a return to the ancient methods of Equity – and to treat all security transactions over personal property in the same way. The UCC also introduced a system of notice filing

for publicity rather than registration of documents. The time of filing governs all questions of priority, and determines when the transaction is effective.

The central concept of a “security interest” was adopted by the Provinces of Canada, with some local variations. It is now the law in New Zealand since 1 May 2002. England is working on a draft that will deal with reform in two stages: first, by way of regulation for corporate borrowers; and secondly by statute for all lenders and borrowers. The English provisions are also based on the same model as the Australian draft Bill – an amalgam of Canada and New Zealand. The European Union and the United Nations Commission on International Trade Law (UNCITRAL) are working respectively on a Directive and a Model Law on Security Interests in Personal Property. Laws in relation to specific items of property and specific transactions, such as financial leasing and factoring, have been produced internationally within the last decade.

Personal property security law reform has become a globalised activity, and compatibility of regimes is a primary goal.

The most recent developments in Canada in Saskatchewan and in British Columbia, as well as the New Zealand legislation, are the models on which an Australian draft Bill for a Personal Property Security Act (PPSA) has been developed. The draft PPSA Bill is the result of several years of work of a Committee of the Banking and Financial Services Law Association of Australia and New Zealand (BFSLA) and of the Financial Services Committee of the Business Law Section of the Law Council of Australia (FSC/BLS). The draft Bill was the subject of extensive comment from a resource group of members of those Associations, and was also workshopped at the Annual Conference of the BFSLA. The objective of the draft Bill is to improve the capital value of personal property as collateral for business finance and, in particular, to enhance the value of such assets as accounts receivable and other intangibles. Despite the fact that the draft Bill is based on overseas models and is compatible with international best practice, the language and the concepts are Australian in character, and reflect Australian experience.

The impetus that produced the draft PPSA Bill came from a Workshop held at Bond University in 1995 to consider a Consultation paper then recently produced by the Commonwealth Attorney-General's Department. There had been a Report from the Australian Law Reform Commission in 1992, but there had been little support for its proposals from affected interests including consumers, business borrowers, and the finance industry. The Bond Workshop established a consensus among affected interests that there was a need for the reform process to continue, and broad agreement on the way ahead.

Since 1995, there has been an additional factor in Australia that has had to be taken into account. Australia is the only federation to tackle the issues of personal property security reform on a uniform national basis. The High Court of Australia in a series of decisions has reshaped the architecture of uniform national law in areas of shared legislative powers between the Commonwealth and the States and Territories. The method of implementation proposed has become as important as the content of the law proposed.

The Bond Workshop 2002

The next stage in this saga of reform will be the presentation of the draft PPSA Bill as a proposal to the Standing Committee of Attorneys-General (SCAG). As part of this process, it was decided to hold another Workshop at Bond University from 25 - 27 April 2002. The Workshop was sponsored by the Banking and Financial Services Law Association of Australia and New Zealand, the Australian Finance Conference, the Australian Equipment Lessors' Association, Institute for Factors and Discounters of Australia and New Zealand, Baycorp Advantage Ltd, and by the Bond Law School. It had the support of the Australian Bankers' Association and the Australian Law Reform Commission.

The Objects of the Workshop were:

- ◆ to demonstrate the degree of support from affected interests for the Australian draft Bill;
- ◆ to consider an appropriate constitutional framework for its implementation as a uniform law;

- ◆ to develop an appropriate national filing infrastructure; and
- ◆ to assess the extent to which the draft Bill realised its objectives.

This Report is a report of those proceedings. The Proceedings of the Workshop, including all the Papers presented and the Final Report, will be published in due course as a special issue of the *Bond Law Review*.

II – List of Participants in the Workshop

Professor David Allan - Chair, Personal Property Security Law Reform Committee

Craig Wappett – Partner, Mallesons Stephen Jaques, Deputy Chair, Personal Property Security Law Reform Committee - Presenter

Ian Gilbert – Executive Officer, Australian Bankers’ Association – Presenter

Professor Ralph Simmonds, Chair W.A. Law Reform Commission

Steve Edwards – Consultant, Australian Finance Conference and Principal, SME Associates. - Presenter

Professor Elizabeth Lanyon – Monash University – Presenter

Professor Paul von Nessen – Monash University - Presenter

Dennis Rose QC – Consultant Blake Dawson Waldron (formerly Chief General Counsel, Attorney-General’s Department (Cth) - Presenter

Professor Gerard Carney – Bond University, Commentator

Professor John Farrar – Bond University, Presenter

Patrick Quirk– Bond University, General Rapporteur

Nicole Martin - General Rapporteur

John Swinson – Partner, Mallesons Stephen Jaques, Commentator

Marion Hetherington – solicitor, Commentator

Laurie Mayne – Partner Russell McVeagh (NZ) and Member New Zealand Law Society PPSA Committee

Professor Anne Finlay – Commissioner, Australian Law Reform Commission

Jennifer Lang - Attorney-General’s Department (Qld) representing the Standing Committee of Attorneys-General (SCAG) Legal Officers

Andrew Henderson - Attorney-General’s Department (Cth)

Peter Hennessy – New South Wales Law Reform Commission

Paul Bini - Attorney-General’s Department – Victoria, and member of MINCO

Cheryl Blair – Product Manager Corporate Services, Baycorp Advantage Ltd.

Professor Duncan Bentley – Dean, Bond Law School
Professor Mary Hiscock – Workshop Planning Group
Letizia Raschella - Workshop Planning Group
Damien Millen – Workshop Planning Group
Jane Hobler – Executive Secretary to Planning Committee

III - Perspectives of those affected by the proposed legislation

The following positions reflect those presented at the Workshop by the interested parties: the Banks, the Financial Services Providers, Consumers (including small business), Corporate Borrowers, and Practitioners. Their individual presentations are published in full in the Bond Law Review as part of the Proceedings.

The Banks' Perspective

Any successful major reform of personal property security law in Australia requires acceptance by all the banks. Such a consensus has not yet been clearly demonstrated by all banks, but they have all made an unequivocal commitment to involvement in this reform process. This involvement is a major change in attitude in the banking industry. Those banks associated with the Australian Finance Conference have welcomed the development. But some banks within the grouping of the Australian Banking Association are still uncertain as to the relative cost and benefits of the proposed reform. Many of their fears and uncertainties may not be well-founded. And, given the predominance of Australian interests in New Zealand banking and financial services, the lessons gained there will be of considerable significance.

Continuing dialogue is called for. Some of the factors affecting the attitude of the banks might well include:

- ◆ Reform fatigue because of a continuing process of review and major regulatory and other changes in financial services regulation;
- ◆ A concern about increased levels of competition after introduction of PPS reform giving the possibility of increased disintermediation;
- ◆ A fear that their security position might be weakened;
- ◆ A level of comfort with the current system;
- ◆ A concern that possible changes by Parliament to any proposed bill may adversely affect their interests;
- ◆ A lack of Australian-based evidence to support alleged economic and efficiency advantages of the new PPSA;

- ◆ A need to monitor the wholesale New Zealand changes introduced in 2002 to ascertain if a new scheme is workable. Post 2002 Trans-Tasman financing relationships will be of particular relevance to any consideration of the draft PPSA Bill.

Financial Services Industry Perspective

Legislation, processes, and regulatory authorities vary depending on the nature of the product requiring registration as a security interest. The draft PPSA represents 'global best practice' and, as such is strongly supported by financial services providers. The size of this market in Australia is approximately \$42 billion.

The most pressing problems for financial services' providers under the present law are:

(1) Issues affecting registration:

- ◆ There is no single information database collating information between the states;
- ◆ There is an increasing need for registration in more than one register;
- ◆ Industry is faced with additional training requirements and complex operational procedures;
- ◆ There are gaps in coverage.

(2) Access to information on REVS/VSR:

Currently there are six territorial based registers in Australia for registration of vehicles – ACT and NT outsource this service to NSW. Most are linked on a real-time basis with the exception of WA, which updates daily, and Tasmania, which is not linked at all.

- ◆ Any general enquiry requires actual contact with WA and Tasmania to confirm the accuracy of information;
- ◆ There is no complete coverage of assets – mobile mining equipment is not included and only certain jurisdictions extend coverage to boats;
- ◆ The scope of information is limited to information on the asset itself, and does not extend to information about relevant parties.

(3) Market response

The industry has found ways of dealing with most deficiencies in order to get on with its business. The advent of information brokers such as Baycorp Advantage Ltd, and amendments to the Queensland *Bills of Sale and Other*

Instruments Act 1955, evidence the market's dissatisfaction with current procedures. But industry's solution does not remedy the disparate, inefficient procedures and processes so as to make a 'workable' system. Nor does it reduce its cost.

The industry view is that most, if not all, these problems would be resolved by the introduction of the draft PPSA Bill and a national electronic filing system.

The Consumers' Perspective

Reform of personal property security law in Australia is of acute interest to consumers and their representatives. Matters sought in any reform by consumers, including small business include:

- ◆ A desire to achieve uniformity in an area that is presently complex and disordered;
- ◆ Enhancing consumer rights in various ways, for example, by easy access to registers;
- ◆ A possibility to expand the range of assets over which financial institutions take security leading to lower rates of interest. For example, assignment of receivables and book debts by way of security would be made easier.

All of these would be attained under the draft Bill.

Further concerns include:

- ◆ There must be a program for education of consumers about their rights and the new procedures to be adopted;
- ◆ A judgment must be made on whether the filing system is acceptable given the national privacy laws and increasing security concerns that have come to the fore in the past 5 years;
- ◆ How far would, as at present, costs of reform of the system be passed on to consumers (transition costs / infrastructure costs (eg new registry) / 'ceding priority costs')?

These are matters that must be considered in a political context in implementing the reforms.

Experience of recent reforms implementing the national Consumer Credit Code, as well as pending reforms to introduce electronic transactions in such areas as property conveyancing, make the system of notice filing more

acceptable and accessible. This is yet another example of development in a digital economy that works cheaply and effectively.

The Corporate Borrower

Chapter 2K of the Corporations Act 2001 (Cth) provides for registration of charges for corporate borrowers. There are several deficiencies associated with the current law and procedures under it:

- ◆ Not all forms of securities are covered.

The Act excludes:

- ◆ intangibles other than book debts; and
- ◆ transfers in the ordinary course of business.

Furthermore

- ◆ Consequences of failure to comply with time limits are only as against a liquidator or administrator;
- ◆ Execution creditors are not protected if there is non-registration of charges;
- ◆ The scheme permits the realisation of an unregistered charge before winding up;
- ◆ The effect of crystallisation of a floating charge is not dealt with;
- ◆ Priority between registrable and non-registrable interests is not conclusive;
- ◆ The scheme is imprecise in its treatment of clauses which restrict further borrowing clauses; and
- ◆ There is no certainty as to the effect of the doctrine of constructive notice on non-registrable charges.

The Effect of the draft Bill

It is argued there are significant advantages for corporate borrowers under the draft PPSA Bill, particularly with respect to the way assets are covered.

- ◆ The draft PPSA Bill provides easier access to capital - the corporate borrower has more flexibility in converting funds;
- ◆ There is a reduced risk to lenders by providing 'safe' securities where priorities are certain; a consequence of this is a lower rate of return sought by the lender and a reduced need for cross securities;
- ◆ The bill covers every transaction that in substance creates a security interest;

- ◆ Technology and start-up operations are able to realise the value of intangible property.

In particular, the draft Bill addresses the following major issues:

(1) Circulating capital

The most significant change for corporate borrowers is the alteration of the scheme for providing security over the circulating capital of the corporation. On this point particularly it is possible to be guided by the Canadian and New Zealand experiences. Some short term confusion may result from the concurrent and continued use of the terms 'floating charge' and 'crystallisation', concepts not included in their existing form in the PPSA. Adjustments need to be made, but the shift to an American style 'floating lien' will not result in an immediate destruction of Australian commercial practice; Canadian and New Zealand corporate borrowers still retain control of their circulating capital.

(2) International system

The draft PPSA Bill is modelled on international best practice, but it is Australian in its language and in the way that it relates to financing practice. The advantage of the international model is that Australia can take advantage of the experience and the debate in New Zealand, Canada, and the United States; these countries have all worked through, and implemented, new secured transactions legislation. Furthermore, the draft Bill will achieve compatibility in financial transactions with other countries, and overcome the present difficulties in trans-Tasman financing.

(3) Increased certainty

To achieve increased efficiencies and lower transaction costs, there must be greater levels of certainty; the New Zealand and Canadian models provide good examples of the successful development and implementation of this change process.

(4) Priorities

Second priority creditors will not be able to protect their security from the effect of further advances by the primary secured creditor as a security interest for further advances may attach and be perfected at the time of the original transaction. The draft PPSA Bill provides “cross-over securities” to deal with this.

(5) Freedom of contract

Freedom of contract should not be constrained; this is preserved by the PPSA. The express or implied approval of the financier will be necessary for the debtor to deal with collateral.

The draft PPSA Bill – the cost benefit debate

Will the additional costs of these undoubted benefits be passed on to a corporate borrower? Where much of a credit provider’s costs are borne by the credit recipient, it is in both the borrower and lender’s interest to reduce the transactional costs of borrowing through the implementation of a system that is cheaper, faster, easier, simpler, and safer.

The capital cost involved in setting up this system may be offset to some extent by revenue generating opportunities capitalising on this infrastructure. Also, lower costs of registration act as an incentive to increase the number of registered securities. New Zealand anticipates registrations to increase ten times from May 2002, primarily as a result of lower costs. (Currently NZ\$5; expected to reduce further to NZ\$2-3; Australia approximately A\$110)

It is acknowledged that although the new environment brings new challenges and issues, these would proceed on the basis of increased commercial certainty. Less uncertainty results in lower transaction costs. Corporate borrowers will welcome change if it increases efficiency and lowers costs.

The Practitioners' Perspective

Practitioners will be extensively affected by PPS reform. The proposed PPSA will apply to all securities, regardless of form or who the security provider may be. This, it is argued, will result in:

- ◆ Cost savings and efficiency gains from rationalisation of security documentation;
- ◆ A one page financing statement, which can be lodged electronically. There is no need to lodge multiple copies of cumbersome security documents;
- ◆ A document that can be filed before the security interest arises - thus saving time and risk of another competing registration being made between settlement and registration ('perfection before attachment');
- ◆ A clear priority system;
- ◆ A resolution of present ambiguities, for example those surrounding security interests over a deposit, or those involving title retention clauses or purchase money security interests;
- ◆ Less work for lawyers in preparing the required documentation and advising on a complicated system.

IV – Chairman's Summary of Perspectives

- ◆ As to stakeholder support, for the first time in thirty years, the banking industry is unequivocally committed to participation in a reform process of the law on this subject. Some banks have some concerns, but these will be formulated more precisely within the industry so that further dialogue can then ensue.
- ◆ Strong endorsement was given on behalf of non-bank financial services providers.
- ◆ Support was also expressed on behalf of consumers, small business borrowers, the corporate sector, and practitioners working in this area.
- ◆ The contrast between the complexity of model transactions under the present regime and the improvements post-PPSA is a graphic illustration of the many benefits of change for all concerned.
- ◆ The existence of the PPSA does not remove options to continue using current financing transactions and practices under existing laws. These will co-exist with the simplified procedures of the proposed PPSA and will be supplanted as experience shows the new scheme is simpler and more effective. There is no need for wholesale introduction of new documentation as there has been with some recent reforms.
- ◆ No dissent from the draft Bill proposals was expressed, and there is a clear consensus that the present system of personal property security can not continue indefinitely.

V – Constitutional Issues Affecting Implementation

This section deals with the legal options available to implement PPS reform. Final choices about reform will depend on the range of political options open in the light of the legal options.

Commonwealth power to enact the draft PPSA Bill will fall short without a reference from the States under the Constitution. It is not possible to achieve the reform without Commonwealth, as well as state legislation, given the importance of corporations and of intellectual property in the scheme.

Major Constitutional issues for resolution:

- ◆ How to deal with the nature and scope of an amending power in any reference under section 51 (xxxvii);
- ◆ Resolving enforcement, jurisdiction, and related cross-vesting issues (including the avoidance of forum shopping);
- ◆ The relationship of the draft PPSA Bill to other Commonwealth legislation (e.g. *Patents Act 1990* (Cth))

Three major legal options were proposed:

Option (1): A single Commonwealth Act

Such an Act would apply –

- ◆ in each State - under section 51 (xxxvii) of the Constitution; and
- ◆ in each Territory – under section 122 of the Constitution.

Option (2): The simplest form of cooperative scheme

Under this scheme, if any Commonwealth legislation applied in the States it would be limited to provisions for the establishment and operation of the registry ('registry provisions').

Apart from registry provisions, the scheme would comprise:

- ◆ in each State – only State legislation; and
- ◆ in each Territory – Commonwealth or Territory legislation.

Option (3): A more elaborate form of cooperative scheme

Under such a scheme, if any Commonwealth legislation applied in the States it would include not only registry provisions if the registry was established by the Commonwealth, but also the remaining provisions of the securities law to the extent that they could be enacted by the Commonwealth under at least some of its legislative powers, such as its financial corporations and banking powers, and also over intellectual property..

Apart from registry provisions, the scheme would comprise –

- ◆ in each State – a combination of Commonwealth and State legislation; and
- ◆ in each Territory - Commonwealth or Territory legislation.

A further Option emerged in the discussions.

Option (4): A combination of Options (1) and (3).

One of the concerns of States and consumers with the suggested options arises from the constitutional limitations on the exercise of Commonwealth judicial power. States have developed a range of consumer tribunals for low cost and informal access in credit and security transactions. This issue is discussed in detail in the presented papers. A number of viable options exist to resolve this issue, particularly the further development of the Magistrates jurisdiction of the Federal Court, but these need to be explored.

Intellectual Property Issues currently regulated by Commonwealth laws

The Commonwealth must be involved in the implementation of any Option. Commonwealth, and not State, law provides the statutory basis of intellectual property rights in Australia. These include patents, registered designs, copyrights, and registered trademarks. This list is not exhaustive, and is constantly expanding into new areas, for example, domain names in e-commerce.

The Defects in the Present Regime

In Australia, charges over intellectual property rights are regulated by the *Corporations Act 2001* (Cth) and other competing Federal statutes. Often

statutory procedures are not followed, and valuable assets are left unprotected and at risk. This, it is argued, is as a result of:

- ◆ Numerous legislative schemes with disparate registration requirements. Generally these are not inconsistent, but they affect priority disputes. For example, the *Patent Act 1990 (Cth)* and *Trade Marks Act 1995 (Cth)* override the *Corporations Act* in relation to priority determinations.
- ◆ A lack of knowledge by lenders of current laws relating to security interests in intellectual property.
- ◆ The lack of a common method for the creation of rights. Some arise automatically, for example copyright, while others are created only on registration.

Inadequate use of intellectual property rights as collateral under existing law

Security interests are not being registered over a significant portion of intellectual property in Australia. Reasons for this include:

- ◆ The absence of standard procedures to ascertain or register intellectual property;
- ◆ A reluctance to acknowledge intellectual property as a valuable form of collateral;
- ◆ There is an erroneous belief that registration of charges in the Register of Company Charges affords sufficient protection;
- ◆ Many rights are registered on overseas registers;
- ◆ Capital is raised through equity and not through loan;
- ◆ The absence of a register for copyrights;
- ◆ Registration is no guarantee of priority e.g the *Patents Act 1990 (Cth)* protects earlier patents whether registered or not.

How can the draft PPSA Bill remedy these matters?

It is self-evident that the PPSA Bill can remedy many of the matters that are due to defects in the law, and facilitate the attitudinal changes that are also needed.

Some features of the draft PPSA Bill of particular relevance to intellectual property rights are:

- ◆ The legislation must make it clear that it applies to all personal property, including intellectual property, eliminating the possibility of conflicting laws.
- ◆ A foreign owner must register if dealing through a local agent. There is now a requirement to register on a federal register where there are assets in the country, but no business is carried on within a State.
- ◆ Courts must have jurisdiction in disputes extending across international boundaries.
- ◆ The Canadian model of a merged asset and debtor based register must be followed.

VI – Chairman’s Summary of Preferred Models

After lengthy discussion, the balance of opinion of the Workshop is in favour of a Commonwealth law with referral of powers from the States. This will provide uniformity of law and process and jurisdiction, and give greater certainty. It will come at a political cost. There was also support for a hybrid solution of Commonwealth and State legislation. No constitutional problems arising from The Queen v Hughes (2000) 171 ALR 155 were foreseen in relation to either proposal. But there is a need to be mindful of the issues arising from the limitations on Commonwealth judicial power. The framing of the referral does not present major difficulties. The draft PPSA Bill reflects policy settings already accepted as the framework of major Commonwealth legislation in the field of financial services. It provides coherence in national commercial regulation, and is closely linked to corporations law and the provision of financial services.

In relation to intellectual property, the draft Bill must mesh in the existing scheme of rights, and seek further to resolve the outstanding issues of when and how charges over intellectual property rights are created, and their priority rankings. This is part of the post-SCAG legislative procedures.

VII – Infrastructure – National Electronic Notice Filing

The discussion of the proposals for the national electronic filing system recapped the problems now experienced because of the complex but not

comprehensive nature of the protection of the present system, and the transaction costs it creates. The Canadian and the New Zealand experience were a major focus of participants. Many of the deficiencies of the Canadian system have been remedied in New Zealand, but that system still excludes some property. This will be kept under review.

Major issues discussed were:

- ◆ Existing registers do not provide a single comprehensive source of information to allow proper evaluation of risk. Significant benefits can be achieved by the implementation of a single, simplified, accessible electronic database and uniform legislation across the States and Territories.
- ◆ There is significant support for a single, electronic registry, searchable from any locality ('gateway'). Access must be seamless ('transparent') with built in redundancy to protect against downtime.
- ◆ It is agreed that, under the new legislation, the question of priority is clear, dating from the time the security interest is created, imposing less risk. A move to registration based upon *functionality* rather than *artificial constructs* is a clear improvement. By not specifying or limiting items that are included in personal property, there is the potential to increase coverage in the future as the concept of property expands.
- ◆ The system of notice filing on a national basis will reduce some of the difficulties experienced in North America where both the US and Canadian schemes have not been able to achieve national agreement and there are variations between Provinces and States, and within States.
- ◆ There is a degree of 'unlearning' required to implement the new system – it requires a "leap of faith going forward to this regime". This is the first law that both requires and enables things to be done only electronically. The New Zealand program of education is a current and impressive model.

- ◆ It was agreed that, to get this type of legislation up and running, a critical issue is to identify an appropriate technology infrastructure, and other interested parties should keep this in the forefront of their considerations.

VIII – Chairman’s Summary of Infrastructure

The issues concerning security interests over intellectual property support an argument for a single, Commonwealth-based register for personal property security transactions. Existing registers do not provide a single comprehensive source of information to allow proper evaluation of risk. Significant benefits can be achieved by the implementation of a single, simplified, accessible electronic database and uniform legislation across the States and Territories.

The proposed database and registry fit well within Commonwealth and State initiatives to enlarge the number of transactions that can be effected electronically and to have both the legal and the technological infrastructure that is needed.

This aspect of the reform will involve different portfolio interests from those of the Treasury, and the departments of the Attorney-General, Justice , and Consumer Affairs.

IX – The Chairman’s Perspective on the Way Ahead

A new Working Group has now been set up to deal with post-Workshop developments. As with all the work on this proposal, all the workers act in an honorary and voluntary capacity. The Working Group consists of:

- ◆ David Allan of Bond University as Chair
- ◆ Steve Edwards, a consultant to the Australian Finance Conference (and until recently their Associate Director for Legal Services)
- ◆ Ralph Simmonds, Chair of the Western Australia Law Reform Commission and Dean of Murdoch Law School

- ◆ Craig Wappett, Partner, Mallesons Stephen Jaques, in charge of financial services in the Brisbane office
- ◆ Chris Batt, Manager Policy & Legislation, Department of Consumer Affairs and Fair Trading, Tasmania
- ◆ Elizabeth Lanyon of Monash University, an expert in consumer credit and in e-commerce.

The tasks for the Working Group

- ◆ Although there is strong support from affected interests for the inevitability of the reform, several banks however still have concerns as do a number of governments in relation to consumer issues. The representatives of the ABA and of the governments have been asked to articulate and illustrate these concerns. The new Working Group will engage in discussions with these banks and governments to elucidate and resolve their concerns.
- ◆ The Workshop acknowledged that the proposed PPSA necessitates a supporting national electronic notice filing system. This would obviate the current array of registration procedures of paper. The Working Group needs to liaise with appropriate bodies, including government agencies and existing reform initiatives, to develop this proposal further in the light of the general movement towards a digital economy.
- ◆ A similar process of clarification of issues is going on at government level, as well as in the private sector. The scope of personal property security reform is wide, and it needs cross-portfolio consideration at both State and federal levels. At the federal level, issues of corporate law as well as intellectual property law are directly raised by the reform proposed.
- ◆ There is agreement that a cost benefit analysis should be undertaken. The nature and scope of this analysis is a matter to be addressed by the Working Group; in particular whether this should be done before or after the draft Bill is presented to SCAG for its consideration.

The Last Word. . .

- ◆ Although reform of personal property security law has been long neglected, it is too important to be ignored any longer. A clear consensus has emerged that the reforms incorporated in the draft PPSA Bill would do much to attain the desirable objectives within secured financing in Australia of a cheaper, faster, simpler, easier, and safer scheme of personal property security law on a national uniform basis of best practice. The reforms will also confirm Australia's position in the global financial network through a regime that is compatible with our trading and financing partners.

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