

Our Ref: CCW  
Your Ref:



28 April 2010

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

Dear Sir

**Inquiry into the Personal Property Securities (Corporations and Other Amendments) Bill 2010**

We apologise for the lateness of this supplementary submission; however, we wish to raise with the Committee two issues which have been brought to our attention since our earlier submission dated 14 April 2010.

Although these issues are not directly related to the amendments proposed to be made to the Personal Property Securities Act 2009 (PPSA) pursuant to the Personal Property Securities (Corporations and Other Amendments) Bill 2010 we would like to raise them for the Committee's consideration.

**Amendments to the PPSA**

1. Section 12, sub-sections (1), (2) and (3) – The inclusion of the words 'in relation to...' in each of these sub-sections is a departure from the wording of the corresponding provisions of the Canadian and New Zealand PPSA legislation. We believe these words should be removed as it may be argued (erroneously in our view) that these words:
  - are intended to broaden the concept of a 'security interest' beyond that contemplated by the comparable legislation in Canada and New Zealand; and
  - imply something less than a direct interest in personal property might constitute a security interest

In our view the deletion of the words 'in relation to' would provide more certainty.

2. A number of senior legal practitioners have expressed doubts as to whether the PPSA enables a security interest to be validly created simply by evidencing an intention to create a *security interest* (ie. without using traditional legal concepts such as 'charge', 'mortgage' etc) While we are of the view that sections 12(1) and 18(1) and the definition of 'security agreement' in section 10 clearly provide for the creation of a security interest by way of

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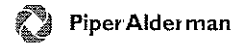
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an expression to that effect (without the need to refer to traditional legal concepts), we suggest the inclusion of an example provision capable of creating a valid security interest in section 12, to eliminate any confusion. An example along the following lines would provide sufficient certainty:

**Example:**

A security interest in personal property may be created by way of an express provision to that effect. For example, the following provision is capable of creating a valid security interest:

*A grants to B a security interest in all of its present and after acquired personal property as security for the payment of all amounts owing and the performance of all obligations to be performed by A to B from time to time*

We note that, as a practical matter, security agreements used in other PPS jurisdictions such as Canada and New Zealand regularly adopt this drafting approach. This is not to say traditional legal drafting cannot be used, simply that it is not necessary for personal property.

This submission is made by Piper Alderman. Piper Alderman has previously undertaken consultancy work for the Australian Attorney General's Department in connection with the PPS reforms. We also note that Craig Wappett is a member of the Attorney General's Consultative Committee on the PPS reforms.

Yours faithfully  
**Piper Alderman**

Per: \_\_\_\_\_

**Craig Wappett**  
Partner