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Telephone: (07) 3227 7124
Facsimile: (07) 3238 3400

Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

**Senate Standing Committee on Legal And Constitutional Affairs
Inquiry into Personal Property Securities Bill 2009**

Legal Aid Queensland (LAQ) welcomes the opportunity to make a submission to the Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Personal Property Securities Bill 2009 ("the Bill").

Legal Aid Queensland's ("LAQ") civil law services seek to make legal rights a reality for disadvantaged people. We provide community legal education, legal information, legal advice, extended assistance and casework services in relation to consumer issues.

We provide advice to approximately 50,000 people each year across all legal areas. Around 30% of those advices are in relation to civil law issues. We also have a specialist Consumer Protection Unit (CPU) with a focus on consumer credit which is staffed by 3 full time lawyers. That unit provides advice to over 1000 Queenslanders each year and conducts limited casework to the extent our resources permit. The unit gives priority to matters where there may be a more wide-ranging beneficial effect for all consumers and where clients have been victims of consumer injustices.

LAQ gives advice to many vulnerable consumers who will be affected by the introduction of a Personal Property Securities Register ("The Register") and welcomes the opportunity to comment on the aspects of the Bill that risk adversely impacting on the most vulnerable consumers in our society.

LAQ strongly supports Recommendation 9 of the Senate's Report which recommends that the scope and content and the enforcement provisions be reviewed by the Department to ensure the provisions are comprehensive and adequate.

LAQ is encouraged by the government's response which indicates that the Bill will be amended to enhance the sanctions for improper use of the Register and that consideration will be given to the possibility of civil and criminal sanctions for misusing the Register.

Without seeing the changes that are proposed by the government it is difficult to comment on whether these changes will assist the vulnerable consumers represented by the CPU and LAQ.

However, as part of any strengthening of the enforcement provisions, the government should consider the following.

(a) Blackmail Securities

LAQ welcomes the introduction of the anti-Blackmail Securities regulations that are being introduced into law by the National Consumer Credit Protection Bill ("Credit Bill") and submits that the Personal Property Securities Bill should not be allowed to commence until after the Credit Bill.

The reason for this is that the banning of the taking of Blackmail Securities will prevent any unscrupulous company taking security over and then registering on the Register basic household items such a child's car seat or 'banana's in pyjamas' doona cover, which has happened in Queensland since the introduction of 'pay-day lending' in the past 10 years.

Recommendation

The Personal Property Securities Bill should not come into force until after the Credit Bill begins operation in order to ensure that the protection offered to vulnerable consumers by the blackmail securities legislation is available from the beginning of the register's operation.

(b) Pattern of behaviour

LAQ anticipates that many of securities registered will be for finance contracts entered into between payday or short term lenders and vulnerable consumers represented by LAQ and other community organisations.

LAQ also points out that the improper use of the Register is likely to typically involve a pattern of behaviour by that company of improperly taking security over a vulnerable consumer's car or attempting to take security on the Register over items that the Blackmail Securities legislation excludes.

For the register to function effectively deterrence is an important factor. Consequently, it is critical in LAQ's submission that as a part of any enforcement provisions that the registrar be able to identify patterns of behaviour and if appropriate ban companies from taking enforceable security over goods using the Register. In addition, any company that improperly registers a security should be prevented from being able to enforce it against a vulnerable consumer.

Recommendation

Companies which repeatedly attempt to improperly register securities on the Register should have their right to register securities suspended. Further, companies should not be able to enforce securities that are improperly registered.

(c) Release of Security, Amendment of the Register and External Dispute Resolution Schemes

LAQ is also concerned that the process for amending the Register, the removal of data from the Register and the correction of registration errors requires the direct involvement and investigation by the Registrar. LAQ remains concerned that the sheer number of complaints about improperly registered securities or mistakes on the Register may overwhelm the Registrar and lead to a considerable delay in applications for the Register to be amended being considered and resolved.

The problem with this is that both vulnerable consumers and companies providing finance to vulnerable consumers will be relying on the accuracy of the Register in order to make sound

financial decisions. Any delay in correcting errors is likely to cause significant financial loss to both vulnerable consumers and lenders.

LAQ acknowledges the insertion of section 191 which allows an application to review to be made to the Administrative Appeals Tribunal concerning the decisions of the Registrar about the Register, however, LAQ suggests that this process will not overcome any of the problems created by a delay concerning the resolution of complaints about the Register. Both vulnerable consumers and lenders need a quicker resolution of dispute about the register than the current process in the Bill is likely to provide. LAQ also points out that under section 173(5)(b) the Registrar retains the ability to decline to investigate any complaints that involves inappropriate searching of the Register. This ability to decline to investigate could cause similar problems that which are currently experienced in the operation of the Privacy Commissioner.

Instead, LAQ proposes that this problem could be overcome by looking to the Credit Bill. Under the Credit Bill, all credit providers and any providers of credit assistance must be a member of an External Dispute Resolution Scheme. LAQ submits that the vast majority of companies wishing to use the Register will be credit providers or the providers of credit assistance and as a result will already be members of an EDR Scheme.

Recommendation

The scope of the operation of EDR Schemes should be expanded to allow them to make a determination on whether a security has been properly listed on the Register under the Bill and whether or not it is required to be removed or altered. The Registrar would be required to act on the EDR Scheme's determination concerning the Register within 7 days.

(d) Companies in Liquidation

A problem that the CPU has encountered over a number of years in assisting vulnerable consumers is the issue of what happens to security taken out over a client's property when the company holding the security goes into liquidation or ceases to operate. Receivers, liquidators and lawyers are often very uncertain both concerning the continuing nature of the product and what happens to the security provided by a vulnerable consumer, where the party receiving the security has ceased to operate. The Bill contains no provisions addressing these issues.

Recommendation

The Bill should set out a clear process concerning what happens to a security interest that is on the Register when the company holding the security goes into liquidation.

If you have any questions please contact me or my colleagues Loretta Kreet and Catherine Uhr on 1300 65 11 88 or (07) 3227 7124.

Yours sincerely



Ross Beer
A/Chief Executive Officer
Legal Aid Queensland