



Australian Government

Insolvency and Trustee Service Australia
Office of the Chief Executive and
Inspector-General

07/016

10 December 2008

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

Dear Committee Secretary

Inquiry into the Personal Property Securities Bill 2008 [Exposure Draft]

I wish to make a submission to this Inquiry on behalf of the Insolvency and Trustee Service Australia (ITSA).

Background

ITSA is the government agency responsible for the administration and regulation of the personal insolvency system in Australia. ITSA operates the bankruptcy registry, where debtors petitions are lodged, debt agreement proposals are processed and public records on insolvency are maintained, and acts as a trustee in bankruptcy. Official Receivers exercise powers to assist trustees to obtain information and recover property. ITSA also has responsibility for the regulation of insolvency practitioners – that function is undertaken by the independent Bankruptcy Regulation Branch. ITSA's purpose is to provide a personal insolvency system that produces equitable outcomes for debtors and creditors, enjoys public confidence and minimises the impact of financial failure on the community.

Submission

ITSA is supportive of the proposed new Personal Property Securities (PPS) regime. The Personal Property Securities Bill 2008 (PPS Bill) promises to provide certainty in relation to whether a security interest is attached to personal property. The consistent and comprehensive application of the PPS Bill on a national level is also supported.

In particular, ITSA supports the establishment of a single national register of security interests. This register is especially significant for ITSA's role as a bankruptcy trustee (ITSA undertakes this role as the Official Trustee in Bankruptcy). In the initial phases of a bankruptcy administration the trustee's primary duty is to find out what and where the bankrupt's property is, and to obtain control of it. While a bankrupt is obliged to list all of his or her property (including secured property) in the Statement of Affairs, many debtors, either inadvertently or deliberately, fail to fully disclose such

information. The trustee may have to conduct searches of numerous state property registers in order to get an accurate picture of the bankrupt's financial situation.

Even if all registers are searched and creditors notified there are no guarantees that personal property is free from encumbrance. In many instances, a bankruptcy trustee is left to take a calculated risk in taking possession and selling property for the benefit of the unsecured creditors, many of which are small businesses.

Register searches can increase the cost of administering the bankrupt estate. The cost of the current system is illustrated in the need to conduct a bills of sale search in each business bankruptcy where there is equipment and stock to be sold. The trustee may need to engage an agent to undertake the search. That cost typically involves the search fee, time of the agent, as well as the fee for filing paper records. Overall each search may cost \$50 to \$100. Where it is necessary to sell vehicles there is also a need to conduct a separate motor vehicle search on the appropriate register, which of course entails a further fee. The problem is compounded if the bankrupt business is located interstate. As the laws relating to bills of sale differ slightly in each state, the trustee is required to have an understanding of a number of different laws to deal appropriately with the property.

The establishment of one national register as provided for in the PPS Bill would greatly assist the administration of bankrupt estates through lessening the cost and complexity of the current system, and ensuring greater certainty in relation to property rights.

Contact

Thank you for the opportunity to comment. The contact person for this submission in ITSA is Amanda Pearce, 02 6270 3400.

Yours sincerely



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