



**AICM Submission to Senate Legal and Constitutional Affairs Committee**

**Inquiry into the Personal Property Securities Bill 2008**

**Introduction**

This submission has been prepared by the Australian Institute of Credit Management (AICM) following consultation with members and the wider credit management industry.

AICM is the association for credit professionals in both commercial and consumer credit comprising both individual and corporate members from all industry sectors in Australia.

It has been estimated that some 150,000 people work in a range of financial management roles underpinned by understanding of credit management which goes beyond the traditional role of an accounts receivable officer. These personnel will be directly involved in the implementation of the proposed PPS legislation.

Further to highlight the significance of these legislative reforms the following indicative figures are provided.

Total Loans and Advances (Consumer and Business) By All Australian Financial Intermediaries <sup>1</sup>

|                      |  |                |
|----------------------|--|----------------|
| As at June 2001-     | \$629,500,000,000 (i.e. \$629.5 Billion) |                |
| Comprised of – Banks | \$502,600,000,000 (i.e. \$502.6 Billion) | - 80% of total |
| - Non Banks          | \$126,900,000,000 (i.e. \$126.9 Billion) | - 20% of total |

|                      |   |                |
|----------------------|---|----------------|
| As at June 2007-     | \$1,262,100,000,000 (i.e. \$1.262 Trillion) |                |
| Comprised of – Banks | \$1,097,400,000,000 (i.e. \$1.097 Trillion) | - 87% of total |
| - Non Banks          | \$164,700,000,000 (i.e. \$164.7 Billion)    | -              |

<sup>1</sup> Source: These statistics are extracted from the Reserve Bank of Australia reports however there were a number of changes to bank and non bank reporting between 2001 and 2007 such that these statistics give a general picture only of total loans and advances (consumer and business) by all Australian financial intermediaries over that period. It should also be noted that these figures exclude government bills.

13% of total

In the period June 2001 to June 2007 Total Loans and Advances by Australian Intermediaries increased by 100%. (\$629.5 Billion to \$1.262 Trillion)

In the period June 2001 to June 2007 Total Loans and Advances by Australian Banks increased by 118%. (\$502.6 Billion to \$1.097 Trillion)

In the period June 2001 to June 2007 Total Loans and Advances by Australian Non Bank Intermediaries increased by 30%. (\$126.9 Billion to \$164.7 Billion)

In the period June 2001 to June 2007 the proportion Bank Advances to Total Advances increased from 80% to 87%

#### Bank Lending To Business <sup>2</sup>

As at June 2007- \$539,250,000,000 (i.e. \$539.2 Billion)

As at June 2001- \$275,835,000,000 (i.e. \$275.8 Billion)

Bank lending to business increased by 96% over the period June 2001 to June 2007.

Whilst it is acknowledged that not all of this financing would be directly concerned with personal property it is reasonable to assume that a substantial proportion of this financing would be for the acquisition of personal property.

#### **AICM's Overall position**

AICM's overall position in relation to the draft *Personal Properties Securities Bill 2008* is one of support.

AICM believes that the introduction of the proposed legislation will enable creditors who generally come under the definition of unsecured creditors to become secured creditors with rights and entitlements previously not enjoyed.

Also, the introduction of this legislation will enable more effective and timely credit assessments of both new customers and existing customers. This should facilitate the provision of credit facilities, encouraging the development of business's growth and financial stability.

In addition, the proposed legislation will become a key component in the management of risk in relation to the provision of both commercial and consumer credit.

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<sup>2</sup> Source: These statistics are extracted from the Reserve Bank of Australia reports.

AICM notes that the development of the *Personal Properties Securities Bill* 2008 has been an iterative process commencing in 2006 under the guidance of the then Attorney-General and progressed under the current Attorney-General through the Standing Committee of Attorneys-General. The recognition by both the current and previous government, of the commercial significance of this legislative reform is commended.

### **Specific comments**

#### Naming of the proposed legislation

A threshold issue of concern to AICM is the name of the bill. Whilst it is legally sound to name the proposed legislation "Personal Property" in accordance with the legal definition that distinguishes between two types of property; "real" property being any interest in land and real estate; and all other types of property being categorised as "personal", for people unfamiliar with legal concepts and interpretations the term "personal" implies that the only type of property covered by the bill is that which would be of personal use. Communicating the breadth of application of the proposed legislation has been a major factor in AICM's communication strategy and overcoming this issue has been challenging. AICM recommends that the name of the legislation reflect its application to personal and commercial interests. Perhaps a subsidiary title could be included in the final draft which will reflect the broader application of the legislation. Reference to the broader application of the proposed legislation would facilitate the take up of the provisions and encourage the use to the proposed register.

If a subsidiary title is not appropriate, then perhaps in the Explanatory Notes of the proposed Act, which are usually part of the First Reading, there could be some reference to the fact that certain interests of a commercial nature are dealt with by the Act.

#### New terminology and definitions

An overriding concern expressed throughout the consultative process was the introduction of new terminology to describe the securitisation process. It is acknowledged that the terminology used has been designed to reflect what are

significant changes from the current securitisation arrangements and also to reflect terminology used in other countries, however the definitions in the draft bill are difficult to understand. In addition the new terminology has impeded the lay person's understanding of the practical application of the proposed legislation.

For example the definitions section (s26), instead of being a comprehensive set of definitions, in some cases whilst listing the term to be defined, does not include the definition. Instead, whilst the term is included, the reader is referred to a separate section in the bill. For instance the definitions for "accession" and "circulating asset" are located in s34 and s51 respectively. This impedes understanding and ease of use.

Equally where there is an interrelationship between definitions this is not clear. For example it would appear that a "debtor" (as defined) may also be a "grantor" (as defined) as in both situations there can be a requirement for the payment or performance of an obligation. It would seem to be useful to include a reference from one definition to the other for purposes of clarity.

#### PPS Register

The PPS Register will be a critical component in the successful implementation of the proposed legislation. The information provided in the revised commentary document released by the Attorney-General's Department in December 2008 gives a useful insight into the operation of the PPS Register which is intended to operate in a user friendly manner with appropriate privacy safeguards. However AICM remains concerned that searching criteria should be sufficiently flexible to achieve this outcome. AICM recommends that that multiple matches and multiple search criteria are essential as single criteria searching would seem to be unreasonably restrictive. The searching should allow for similar matching so that not only will the name initially register but also any similar names will be disclosed as well. This would allow for misspellings. In addition careful consideration should be given as to how security interests involving partnerships and trusts will be registered and searched.

The ability to differentiate between commercial and consumer property is a welcome enhance to the proposed PPS Register.

#### Leasing and Rental Arrangements

The application of the proposed PPS Bill in relation to leasing and rental arrangements continues to be of concern to AICM. AICM welcomes the revision of the definition of leases s31 that has been expanded to include renewable leases of less than one year and leases of more than 90 days as this is now closer to commercial practice. However, the expanded definition for leases of 90 days or more only relates to serial numbered tangible property. This seems to be an unnecessary and limiting definition. It is common commercial practice for other types of commercial tangible goods to be leased or indeed rented for short periods of time. The companies that offer both rental and leasing arrangement are keen to be able to avail themselves of the ability to register a security interest. AICM supports the inclusion of these arrangements as it will result in greater protection in the event of insolvency for the leasing/rental company and enhanced risk management as other prospective creditor providers will be more fully informed when determining access to credit and credit limits.

### **AICM's Consultative Process**

Given the significance of the PPS reforms the AICM has conducted an extensive consultation with the AICM membership and non members who work in the credit industry.

Notice was distributed to all members of the AG's briefings held in May 2008. Given the short notice of the AG briefings AICM also organised the following consultative forums in 2008 in relation to initial PPS Bill:

Breakfast Sydney 20 June  
Seminar Brisbane 10 July  
Seminar Melbourne 23 July  
Breakfast Adelaide 24 July  
Seminar Sydney 12 August

Representatives of the AG's Department attended all functions and a lawyer and an insolvency practitioner attended each seminar.

Questionnaires were distributed at each event seeking the attendees input.

In addition an online forum was established. The online forum enabled participants to review other contributions as well as contribute their own input.

In relation to the Discussion Paper concerning the proposed PPS Regulations consultations (to which all members were invited) were held as follows:

Sydney Seminar 23 September,  
Melbourne Seminar 25 September and  
Brisbane Seminar 25 September.

These seminars were attended by representatives of the AG's Department and a lawyer and an insolvency practitioner.

A teleconference with members from across Australia was held 3 December to consider the Exposure PPS Bill. Representatives of the AG's Department also participated in the teleconference.

Participants at these consultative forums represented a diverse range of industries and companies including:

- Lawyers
- Accountants
- Insolvency practitioners
- Debt Recovery agencies
- Credit insurance
- Factoring & invoice discounting
- Asset management
- Leasing
- Recruitment firms
- Building & construction
- Advertising
- Media
- Banking
- Credit unions
- Post and telecommunications
- Food and Beveridge
- Automotive

- Steel
- Utilities
- Waste management
- Transport & distribution
- Manufacturing
- FMCG

The participants welcomed the opportunity to contribute to the consultative process.

### **Conclusion**

Given the substantial growth in the provision of credit from both a business to business and business to consumer perspective the introduction of the PPS reforms are considered to be a key contributor to effective credit risk management and the concept of responsible lending.

Finally, AICM would like to place on record its sincere appreciation of the commitment and care with which the staff of the Attorney-Generals PPS Branch have endeavoured to provide timely and informative advice to stakeholders concerning this complex legislative reform.