



Australian Finance Conference

Australian Equipment Lessors Association

C/- Level 7, 34 Hunter Street, Sydney, 2000. GPO Box 1595, Sydney 2001

ABN 13 000 493 907

Telephone: (02) 9231-5877

Facsimile: (02) 9232-5647

26 April 2010

Ms Julie Dennett
Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Dear Ms Dennett

Personal Properties Securities (Corporations and Other Amendments) Bill 2010

The Australian Finance Conference (AFC) and the Australian Equipment Lessors Association (AELA) appreciate the opportunity provided by the Committee to participate in its Inquiry on the Personal Properties Securities (Corporations and Other Amendments) Bill 2010 (the Bill).

By way of background, the AFC is the national finance industry association. AELA is the national association for the equipment leasing and financing industry. Together they represent more than 100 financial service organisations providing equipment finance to both the consumer and commercial markets. AFC and AELA have been pleased to have participated in the development of the personal property securities (PPS) reform and continue to support its introduction. The AFC and AELA also appreciate the strategic approach and constructive processes being undertaken by the Attorney-General's Department to address consequential issues arising from the enactment of the PPS Act, including the amendments to the Corporations Act and other Acts contained in the Bill.

Our submission has focussed on two aspects of the Bill:

- firstly, the interface of the enforcement provisions under the PPSA and external administration provisions of the Corporations Act (Schedule 1 of the Bill); and
- secondly, a general consideration of the consequential amendments proposed to the PPS Act (Schedule 2 of the Bill) (eg priority of PMSIs s. 62).

Paramount to that consideration has been the principal objective to be achieved through the PPS reform process: a single national law governing security interests in personal property that will result in more certain, consistent, simpler and cheaper arrangements for personal property securities for the benefit of all parties. Also, AFC and AELA estimate that equipment finance provided to commercial entities in Australia is a \$95 billion market; with leasing and hire-purchase representing 55% (ie \$52.25 billion) and chattel mortgage the

balance. In this context, unambiguous regulation with clear and equitable outcomes is critical to AFC and AELA members.

A summary of the issues we have identified together with a recommendation for resolution are detailed in this letter with the detail provided in the attachment.

SCHEDULE 1 – Amendments to Corporations Act 2001 (CA) Chapter 5 External Administration

Issue 1: Potentially unintended expanded definition of controller.

We understand that it is not intended to expand the definition of controller to include secured parties exercising enforcement rights against PPSA ROT property.

AFC/AELA Recommendation: We recommend further amendment (eg of s. 51F(2)) to align the CA provisions with the policy. This matter has been informally raised with the Attorney-General's Department and we understand some clarification is being considered.

Issue 2: Corporate Customers – Non-title based security interests – default enforcement regime

The exclusion of generic non-titled based security interests with a corporate grantor from the PPSA Chapter 4 enforcement provisions and application of the CA Division 5.2 Receiver and Other Controller provisions may have unintended consequences.

AFC/AELA Recommendation: We suggest amendment of PPSA s. 116 to address this.

Issue 3: Enforcement processes - definition of controller – impact on charge / mortgage over a single asset with a corporate grantor

The expansive definition of controller coupled with PPSA s. 116 and the PPSA Chapter 4 enforcement provisions application to equipment lease and hire-purchase will require an equipment financier transacting with corporate customers to have separate compliance processes dependent on the type of secured interest to which the property the subject of the enforcement action is financed under. For chattel mortgage products, compliance with CA Part 5.2 may be required. For other products (eg equipment lease / hire-purchase / commercial consignment) compliance with PPSA Chapter 4 needs to be considered.

AFC/AELA Recommendation: For chattel mortgages securing as single asset that does not represent the whole or substantially the whole of the company's assets, amendment to align compliance with PPSA Chapter 4 is recommended (eg either through amendment of PPSA s. 116 or the CA definition of controller. This amendment would achieve the underlying policy of the PPS reforms.

Issue 4: Part 5.2 s. 419A Liability of a Controller / Receiver for Third Party Property – Pre-Existing Agreement – Used by Corporate Customer

Under the Bill's amendments as drafted, pre-existing agreements in relation to PPS ROT property do not have to be considered in a decision of a receiver or other controller of whether to take on the liabilities or disclaim the property.

AFC/AELA Recommendation: To ensure existing rights are not prejudiced, we recommend amendment to achieve status quo under the current CA provisions (ie consideration of third party property should include PPSA ROT property).

Issue 5: CA Part 5.3A Voluntary Administration & PPSA ROT property (eg lease / hire-purchase)

The variation in the definition of property of a corporation relating to the inclusion or exclusion of PPSA ROT property and further qualified on whether the secured interest has been perfected or not raises complex compliance issues with outcomes that may not have been intended.

AFC/AELA Recommendation: Further consideration of the amendments against the underlying policy of the CA external administration provisions and the PPSA objectives is recommended with a view to further amendment to align the provisions with those policies and objectives.

SCHEDULE 2 – Amendments to PPS Act 2009

Issue 1: PMSI – Priority - Secured interest in non-inventory goods - perfection by registration – trigger commencement of period within which to register

AFC and AELA support the expansion of the period to register a PMSI to facilitate super priority from 10 to 15 business days.

AFC/AELA Recommendation : However, in line with earlier submissions, we recommend a starting time that turns on date of settlement or provision of finance which is easily identifiable by the secured party rather than date the grantor takes possession.

Issue 2: Transitional Issues

We understand that a number of submissions that have been made to the Committee have identified a range of issues with transitional arrangements flowing from amendments contained in the Bill.

AFC/AELA Recommendation: We do not propose to reiterate those issues but support amendment to reflect the underlying policy with transitionals; namely, that the transitional provisions:

- should be designed to allow a period of 24 months after the registration commencement time for existing security interests to be registered; and
- ensure that transitional security interests which will be migrated from existing registers retain the priority they had prior to migration.

Thank you, again, for the opportunity to provide comment on the Bill. We would be happy to provide additional information or clarification of the points we have raised, should the Committee require. Please feel free to contact me (ron@afc.asn.au) or Helen Gordon (helen@afc.asn.au), Corporate Lawyer, or either through 02 9231 5877 in this regard.

Kind regards.

Yours truly,

Ron Hardaker
AFC Executive Director & AELA Federal Director

Attachments:

1. AFC / AELA Comments on PPS (Corporations & Other Acts) Amendment Bill 2010
2. AFC and AELA Membership Lists

PERSONAL PROPERTIES SECURITIES (CORPORATIONS AND OTHER AMENDMENTS) BILL 2010 – AFC / AELA SUBMISSION

SCHEDULE 1 – Amendments to Corporations Act 2001 (CA) Chapter 5 External Administration

General Overview

In brief, AFC and AELA Members principally utilise three finance products to enable corporate customers to acquire equipment; namely, equipment lease, hire-purchase or fixed charge / equipment mortgage. For corporate customers acquiring inventory, floorplan / bailment finance is provided. In the case of equipment lease, hire-purchase and floorplan/bailment, the financier is (generally) the owner of the financed asset(s).

Under the current CA Chapter 5 external administration scheme, title or ownership of the financed property largely drives the enforcement processes followed by our members should a corporate customer default on their repayment obligations. Assets not owned by the corporate customer involved in external administration proceedings are not generally the subject of those proceedings. The financier is at liberty to repossess the asset that they own and take action (eg sell the asset) to recover what they are owed (subject to the terms of the agreement and general law principles). In contrast, assets financed by way of a chattel mortgage (ie a loan secured by a fixed charge or mortgage over the asset) are not owned by the financier but by the corporate customer. Enforcement action taken by the financier against these assets is currently subject to the external administration provisions of the CA.

The policy underpinning the amendments is to amend the CA with the aim of adopting the PPS functional approach to secured interests in personal property. Where there is no reasonable policy rationale for distinguishing between different security transactions and existing rights will not be prejudiced, then the rights of all secured parties should be the same.

It is in this context, that we have reviewed the amendments and identified the following issues and, where possible, propose a resolution.

Receivers & Controllers – Chapter 5 Division 5.2 Corporations Act & s. 116 PPS Act

Issue 1: Potentially unintended expanded definition of controller

Current position

A controller has been broadly defined in CA s. 9 to include “a person who is in possession of, or has control of, that property for the purpose of enforcing a **charge**” (Corporations Act s9). The wide definition of controller (coupled with definitions of property and charge) captures those who enforce mortgages or charges over equipment or other personal property, including a mortgage over a single asset (eg a motor vehicle). The definition does not currently capture a financier who takes action to repossess personal property financed under a lease, hire-purchase or floorplan / bailment agreement (ie the property is not property of the corporate customer but is property owned by the financier).

Proposed amendment

Policy:

Based on the drafting instructions and explanatory memorandum to the Bill, we understand that the amendments are not intended to expand the current definition of controller to capture a secured party exercising control over personal property the subject of a security interest (including a PPSA retention of title security interest) but not owned by the company. In effect, a financier / owner under a lease, hire-purchase or floorplan arrangement is not to be a controller for the purposes of the CA Chapter 5 Division 5.2.

Potential Impact as currently drafted:

As currently drafted, we are concerned that there is some ambiguity as to whether the amendments reflect this policy.

In short, the Bill contains an amendment that changes the definition of controller by replacing “charge” with the broader concept of “security interest.” A broad definition of security interest is also proposed to be included in the CA and encompasses the PPSA concept of security interest (ie covers retention of title (ROT) interests including lease, hire-purchase, floorplan / commercial consignment) (CA new ss. 51, 51A). Consequent amendments to the definition of “property” (s. 9 CA) have also been proposed, as has a definition of “PPSA retention of title property” (CA new s. 51F(1)). Also, the term ‘property of a corporation’ has been defined (CA new s. 51F(2)), so that unless provided otherwise expressly or by necessary implication, a reference in the Act to “property of a corporation” does not include PPSA ROT property (eg property subject to an equipment lease / hire-purchase / commercial consignment).

The definition of controller (as amended) includes the term “property of a corporation”. The definition (as amended) potentially encompasses property of a corporation the subject of a secured interest (ie including a PPSA ROT security interest – property the subject of a lease / hire-purchase / commercial consignment) and a person who is in possession or has control of that property for the purposes of enforcing the security interest (including a PPSA ROT interest) would be a controller. However, the default position (based on new s. 51F(2)) is that PPSA ROT is excluded from the term unless provided otherwise expressly or by necessary implication. PPSA ROT property is not expressly included in the term. Whether it is included would appear to turn on whether it is included “by necessary implication”. It might be argued that because a secured interest that is covered by the controller definition (para (b)) includes a PPSA ROT security interest then by necessary implication the term property of a corporation includes property the subject of a PPSA ROT security interest and therefore includes PPSA ROT property.

The result would be that PPSA ROT secured parties (ie under a lease / hire-purchase / commercial consignment) would be controllers and subject to Division 5.2 when taking possession or control of the PPSA ROT property to enforce their security interest. This would be a significant expansion of the current definition.

Conclusion and recommendation

Based on the policy underpinning the amendments to the controller provisions in the Bill noted earlier, expansion of the controller definition is not intended. However, for the reasons outlined above, whether the policy is reflected in the amendments as currently drafted, is, at best, ambiguous.

AFC and AELA estimate that equipment finance involving commercial customers in Australia is a \$95 billion market: with leasing and hire-purchase representing 55% of that market (ie

\$52.25 billion). In this context, regulatory ambiguity is not acceptable to AFC and AELA members.

For this reason, AFC and AELA **recommend**:

- modification of the current Bill to ensure the amendments to reflect the policy in relation to controllers. For example, we suggest omission of the words “or by necessary implication” from s. 51F(2) so that a reference to property of a corporation will only include PPSA ROT property when it is expressly provided, including in the definition of controller.

This matter has been informally raised with the Attorney-General’s Department and we understand some clarification is being considered.

Issue 2: Corporate Customers – Non-title based security interests

Issue:

It would appear that the amendment to PPSA s. 116 to include subsection (3) has confirmed the policy intention that enforcement action under PPSA Chapter 4 will have limited application where the grantor of a security interest is a company. For non-title based security interests this will have ramifications for security interest agreements and the need to incorporate contractual remedy provisions in to these agreements rather than being able to rely on the default application of the PPSA Chapter 4 provisions.

Policy:

At a strategic level, the PPS policy is to achieve a single, national law governing security interests in personal property to enable more certain, consistent, simpler and cheaper arrangements for personal property securities for the benefit of all parties. This includes enabling secured parties to rely on the statutory provisions in the PPSA (including the enforcement provisions) to streamline documentation.

Conclusion and recommendation

The AFC has read the 14 April 2010 submission to the Committee from Piper Alderman (authored by Craig Wappett) and support the amendment to PPSA s. 116 proposed in that submission to address this issue.

Issue 3: Enforcement processes - definition of controller – impact on charge / mortgage over a single asset with a corporate grantor

Current position:

As noted above, the current definition of controller is broad enough to capture a financier taking possession or control of a single asset for the purpose of enforcing a charge or mortgage over that asset. This would be the case even if the asset did not constitute a substantial or significant component of the company’s assets (eg a charge over a motor vehicle securing a loan of \$30 000) and whether the company was otherwise able to meet its debts (ie not subject to, or likely to be subject to, action by an administrator or liquidator). As a consequence, enforcement action by the chattel mortgage financier against the corporate customer to recover financed equipment secured by a fixed charge or mortgage is regulated by the external administration provisions (Part 5.2) of the Corporations Act. In contrast, had the equipment (eg car) been financed by way of an equipment lease or hire-purchase agreement, they would not. Recovery or enforcement would be largely dictated by the terms of their agreement and general law principles.

Proposed amendments

Policy:

At a strategic level, the PPS policy is to achieve a single, national law governing security interests in personal property to enable more certain, consistent, simpler and cheaper arrangements for personal property securities for the benefit of all parties. The approach adopted is to emphasise the substance of the security transaction over traditional legal form.

Amendments

With the support of AFC and AELA Members, the PPS reforms have been developed to apply to three finance products generally utilised by our members with corporate customers; equipment lease, hire-purchase and chattel mortgage (ie substance vs. form). In line with the PPS policy, this support was provided on the understanding that the end result of this regulation will ensure consistency, certainty, reduced complexity and cost savings for our Members to the benefit of their customers.

We accept that in relation to the interface between the enforcement provisions of the PPSA and CA controller provisions that the policy is that the PPSA is not intended to intrude on the CA controller provisions. The CA provisions provide comprehensive rules for receivers and other controllers when exercising enforcement and other functions in relation to property of a corporation.

Where the controller is controlling a significant or substantial component of the corporate customer's assets, we accept that, as a matter of policy, this is appropriate. However, where a charge has been taken over a single asset, that is **not** substantial or significant, and the amount realised on sale of the secured asset does not meet what is owed (which is generally the experience of AFC and AELA Members), we question the value of the process and justification for requiring compliance with the CA Part 5.2 controller provisions. The PPSA Chapter 4 Enforcement contains notification and financial accounting obligations for holders of security interests in personal property and imposes duties in relation to the sale and handling of the property. In large measure, these are similar to (but unfortunately not the same as) those imposed on a controller under the Corporations Act. A chattel mortgage, like an equipment lease (that secures payment or performance of an obligation) and hire-purchase, involving a corporate customer grantor would be a secured interest for the purposes of the PPSA. Without PPSA s. 116 (and the broad definition of controller in CA s. 9), the PPSA Chapter 4 regime would govern enforcement of all three of these products.

However, as it currently stands, a financier will have to have in place two separate compliance processes when enforcing a security interest over an asset involving a corporate customer. Which process would be followed essentially turning on the type of secured interest (ie whether it was a chattel mortgage or an equipment lease / hire-purchase product). The former subject to the CA and the latter products covered by PPSA. This would appear to be at odds with a PPS reform that has the objective of ensuring more certain, consistent, simpler and cheaper arrangements for personal property securities, including with corporate customers. We accept that for controllers of a significant or substantial component of the property of the corporate customer that this may be appropriate. However, in the scenario we have outlined, which represents a large component of the equipment finance market of AFC and AELA members, it is not. We therefore submit that, in line with the PPS strategic policy, that the default enforcement processes provided for in the PPS Act (Chapter 4) to apply rather than the CA Part 5.2 controller provisions should apply when a financier is enforcing a security interest that is a

chattel mortgage over a single non-significant and non-substantial asset where the grantor is a company.

In this regard, we also note comments made by the Australian Law Reform Commission in the *Report on the General Insolvency Inquiry* (the *Harmer Report* – 45/1988), the recommendations of which, as we understand, provided the basis for the inclusion of the controller provisions in the CA. In considering whether a mortgagee in possession should have the responsibility of a receiver, the Commission noted (at para 186):

As a preliminary and general matter, the Commission takes the view that the provisions of the companies legislation should only seek to regulate receivers of the whole, or substantially the whole, of the property of a company. The existing legislation covers receivers or persons who enter into possession or assume control of any of the property of a company. It appears unnecessarily burdensome to require a receiver who, for example, has taken control of a single item of property constituting only a small part of the total property of a company to comply with the reporting requirements under s 328.

In our view, the Bill provides a unique opportunity to correct an unintended consequence of the CA controller amendments made in response to the Harmer Report.

Conclusion and recommendation

We recommend that a consequential amendment is made to enable a streamlined enforcement process to be followed under the PPSA regardless of the form of the equipment finance transaction where a secured interest is taken involving a corporate customer and the asset the subject of that interest is not a substantial or significant asset in the context of the property holdings of the company. This could be achieved building of the amendment to PPSA s. 116 proposed by Piper Alderman in their submission to the Committee of 14 April 2010 and noted earlier. For example, the proposed PPSA s. 116(4) could be reworded as follows:

Despite s. 116(1), while a person is a controller of the property (but not as a receiver, or receiver and manager) this Chapter applies in relation to the property, including the following provisions:

- (a) s. 115
- (b) s. 123
- (c) s. 124
- (d) s. 128.

The alternate would be to qualify the CA definition of controller at paragraph (b) to encompass only a person taking possession or control to enforce a security interest over the whole or substantially the whole of the property of the corporation.

In our view, this would provide certainty, consistency, reduce complexity with the attendant savings in compliance cost for our Members and their customers, while meeting the public policy or interest in enabling other creditors and interested parties to become informed of enforcement action and outcomes with corporate property.

Issue 4: Part 5.2 s. 419A Liability of a Controller / Receiver for Third Party Property – Pre-Existing Agreement – Used by Corporate Customer

Current position

Under an equipment financing transaction by way of lease or hire-purchase with corporate customers, AFC and AELA members are the owners of the financed equipment. Should a

corporate customer get into financial difficulty that sees a controller / receiver appointed, the controller / receiver is currently obliged to make a decision within a set period of taking control, of whether they propose to:

- continue to use the equipment subject to the pre-existing lease / hire-purchase agreement (ie the third party property) and personally take on the liability for the rent or other payments, or
- give the AFC / AELA financier notice (as the third party property owner) that it does not propose to exercise rights in relation to that the leased / hired property. The AFC / AELA financier is therefore at liberty to repossess the leased / hired property and undertake enforcement action provided for under the agreement (eg sell the equipment) in order to recover what they are owed and minimise any loss.

Proposed amendments

Policy:

Based on the drafting instructions and explanatory memorandum it would appear that it is intended that where it would not prejudice existing rights that “property of the company” for the purposes of the CA is to include PPSA Retention of Title (ROT) property. Further, it is not intended that the CA Part 5.2 – Receivers & Other Controllers provisions is to apply to PPSA ROT property. In particular, under CA s419A a controller would not be liable for PPSA ROT property.

Potential Impact as currently drafted:

The outcome of CA s. 419A as amended by the Bill would appear to be that a receiver or other controller does not have to consider property that is PPSA ROT property (eg equipment leased / hired under a hire-purchase agreement with an AFC / AELA member) when they are determining whether to take on the company’s liabilities in relation to third party property the subject of a pre-existing rental / hire agreements. While this would appear to reflect the intended policy, we do not understand the basis for outcome. Also, it would appear be at odds with the overall policy objective not to prejudice existing rights of third party property owners including AFC / AELA members in their equipment lease and hire-purchase transactions with corporate customers.

Conclusion and recommendation

We submit that for the purposes of CA s. 419A third party property should be defined to include PPSA ROT property.

Also, in the interests of clarifying the intended qualification of the term property of a corporation for the purposes of CA Division 5.2 we suggest a note be included (eg under the heading to the Division) reflecting the position in CA s. 51F(2) (as amended in line with our comments at Issue 1 above), that unless expressly provided, a reference to property of a corporation does not include PPSA retention of title property.

Issue 5: CA Part 5.3A Voluntary Administration & PPSA ROT property (eg lease / hire-purchase)

Current position

At present, AFC and AELA owners of property used by a corporate customer (eg under an equipment lease / hire-purchase) do not have rights to appoint an administrator under the CA external administration provisions. In contrast, should the property be the subject of a mortgage and the asset represent the whole or substantially the whole of the corporate property, then the AFC or AELA chargee would have rights in this regard. Also, during an administration period there is usually a moratorium over actions against the company

including enforcement action. However, this does not apply to a chargee who holds a charge over the whole or substantially the whole of the company's property. In determining the degree of property the subject of the charge, the CA does not apply to property where a third party is the owner of the property (eg an AFC or AELA member for property financed by way of equipment lease or hire-purchase). Administrators have obligations to determine whether for third party property the subject of a pre-existing agreement (eg under an equipment lease or hire-purchase) they propose to continuing using the property and are personally liable for the rent or other payments or disclaim the property and notify the owner / lessor accordingly.

Proposed amendment

Policy:

In order to align the CA with the PPSA, where it would not prejudice existing rights, property of a company for CA purposes would include PPSA ROT property so that PPSA ROT secured parties could enforce their security interests as secured parties. CA Part 5.3A is intended to apply to PPSA ROT property, unless the contrary intention appears.

Potential impacts as currently drafted

As currently drafted, the position of the PPSA ROT secured party during a administration is somewhat unclear. This is because the new provisions vary in application depending on:

- whether the PPSA ROT security interest is perfected or not; and / or
- whether the PPSA ROT secured party holds a security interest in the whole or substantially the whole of the property of the corporation (that includes PPSA ROT property).

For example, while a secured party with a perfected PPSA ROT security interest in the whole or substantially the whole of the property of the company can appoint an administrator, a PPSA ROT secured party with a perfected interest in a lesser proportion of the assets is not able to; nor is a holder of an unperfected PPSA ROT security interest even if over substantially the whole of the assets.

Also, the inclusion of PPSA ROT property as property of the company will impact on the determination of whether a secured party that holds a security interest over all assets of a company holds an interest in substantially the whole of the company's property. Currently that property is excluded from the consideration.

In contrast, however, an administrator must determine whether to continue using or possessing third party property the subject of a pre-existing agreement (eg a lease) and be liable for the repayments or other obligations or disclaim the property; UNLESS the third party property is PPSA ROT property (CA s.443B). As with a similar provision in Part 5.2 Receivers and Other Controllers (CA s. 419B), it is unclear why this carve out has been provided. Further the interplay between CA s. 440B which restricts a third party property owner (including PPS ROT property) in the exercise of their rights in property used by the company and the rights of the PPS ROT secured party under CA Division 7 (eg s. 441A) is unclear.

Conclusion and recommendation

We submit that further consideration of the concept of property of a corporation for the purposes of Part 5.3A is required with amendment to reflect the position of PPSA ROT property to ensure existing rights are not prejudiced.

SCHEDULE 2 – Amendments to PPS Act 2009

Issue 1: PMSI – Priority - Secured interest in non-inventory goods - perfection by registration – trigger commencement of period within which to register

Current position

PPSA ss. 62 and 63 set out the rules that regulate the priority of competing perfected purchase money security interests (PMSIs) and the priority of perfected PMSIs against other security interests in the same collateral. In general, PMSIs in non-inventory goods will have priority if perfected by registration before the end 10 business days after the grantor obtains possession of the goods.

Proposed amendment

Policy:

A secured party under a PMSI in non-inventory goods will not always know precisely when a grantor has obtained possession of goods. The intention is to extend the deadline for registration to allow secured parties to register and still maintain priority of their PMSIs.

Impact of proposed amendment

The proposed amendments will extend the deadline for registration from 10 to 15 days. These amendments align with earlier AFC and AELA submissions on this issue to the Committee and the Department. While we support the extension, we remain committed to the view that the appropriate trigger for commencement of the period should be the time of settlement of the transaction or when finance is provided (ie when value is given by the secured party) rather than when the customer takes possession. The outcome being sought by the AFC and AELA is consistent with overall PPS policy, as the time at which finance is actually paid is when attachment will arise. Time of settlement or provision of finance is within the knowledge of the secured party, whereas they will not know precisely when a grantor has obtained possession. A trigger that reinforces compliance certainty under the PPSA reflects the policy underpinning the PPSA reforms. Also, the requirement (eg PPSA ss 62(2)(c), 62(3)(c), 153(1) Table Item 7) to declare on registration that a PMSI priority is being claimed reinforces the need for a financier to know when the time begins within which it must register. Also, if a registered financing statement indicates that a security interest is a PMSI to any extent, and it is not, then the registration is ineffective (PPSA s. 165(c)).

Conclusion and recommendation

Relevant provisions in the PPSA (eg PPSA s. 62(3)(b)(i) and s. 63(d)) should be further amended to provide that the 15 business days commence from the day when finance is provided or the transaction is settled.

Issue 2: Transitional Issues

AFC and AELA Comment

We understand that a number of submissions that have been made to the Committee have identified a range of issues with transitional arrangements flowing from amendments contained in the Bill. We do not propose to reiterate those issues but support amendment to reflect the underlying policy with transitionals; namely, that the transitional provisions:

- should be designed to allow a period of 24 months after the registration commencement time for existing security interests to be registered; and
- ensure that transitional security interests which will be migrated from existing registers retain the priority they had prior to migration.

AFC MEMBER COMPANIES

Advance Business Finance	Mercedes-Benz Financial Services
Alleasing	Nissan Financial Services
American Express	Once Australia t/as My Buy
Automotive Financial Services	PACCAR Financial
Bank of Queensland	Provident Capital
BMW Australia Finance	Profinance
Capital Finance Australia	RABO Equipment Finance
Caterpillar Financial Australia	RAC Finance
Centrepont Alliance	RACV Finance
CIT Group	Resimac Limited
Citi Australia	Retail Ease
CNH Capital	Ricoh Finance
Collection House	RR Australia
Commonwealth Bank of Australia	Service Finance Corporation
Credit Corp Group	Sharp Finance
De Lage Landen	SME Commercial Finance
Dun & Bradstreet	Solar Financial Solutions
Enterprise Finance Solutions	St. George Bank
Esanda	Suncorp
FlexiGroup	Suttons Motors Finance
Ford Credit	The Leasing Centre
GE Capital	The Rock Building Society
Genworth Financial	Toyota Financial Services
GMAC	United Financial Services
HP Financial Services	Veda Advantage
HSBC Bank	Volkswagen Financial Services
Indigenous Business Australia	Volvo Finance
Institute of Mercantile Agents	Westlawn Finance
International Acceptance	Westpac
John Deere Credit	Wide Bay Australia
Key Equipment Finance	Yamaha Finance
Komatsu Corporate Finance	<u>Professional Associate Members:</u>
Leasewise Australia	Allens Arthur Robinson
Liberty Financial	Bartier Perry
Lombard Finance	CHP Consulting
Macquarie Equipment Rentals	Clayton Utz
Macquarie Leasing	Dibbs Barker
Max Recovery Australia	Henry Davis York

AELA MEMBER COMPANIES

<p>Advance Business Finance Alleasing Group Alliance e-finance Australasian Asset Residual Management Australian Structured Finance Allens Arthur Robinson Baker & McKenzie Bank of Queensland Bendigo & Adelaide Bank Blake Dawson BMW Australia Bynx Australia Canon Finance Australia Capital Finance Australia Caterpillar Financial Australia Challenge Consulting Australia CHP Consulting Cisco Systems Capital Australia CIT Financial Clayton Utz CNH Capital Australia Colin Biggers & Paisley Commercial Asset Finance Brokers Assoc. Commonwealth Bank of Australia De Lage Landen Deloitte Touche Tohmatsu DibbsBarker EDX equigroup Esanda Experien Flexirent Capital Freehills Fuji Xerox (Finance) Australia GE Commercial Finance Henry Davis York Holman Webb Lawyers HP Financial Services IBM Global Financing Innovation Fleet Insyston International Decision Systems ISIS Capital John Deere Credit Kemp Strang Key Equipment Finance</p>	<p>KPMG Komatsu Corporate Finance Lanier (Australia) Macquarie Leasing Mallesons Stephen Jaques Medfin Australia Members Equity Bank Mercedes-Benz Financial Services Mercer Australia Meridian International Capital Minter Ellison Musgrave Peach National Australia Bank NLC Norton Rose Australia PACCAR Financial Pitney Bowes Credit Australia Protecure Queensland Treasury Corporation RBS Group (Australia) Realtime Computing RentSmart Ricoh Finance RR Australia Selectus Managed Services Service Finance Corporation SG Equipment Finance Sharp Finance Sofico Services Australia Solutions Asset Management Southern Finance Group Spectra Financial Services St. George Bank Suncorp Metway SunGard Asia Pacific The Leasing Centre (Australia) Traction Group Toyota Finance Australia United Financial Services Capital Upstream Print Solutions Volvo Finance Westlawn Finance Westpac Institutional Banking White Clarke Asia Pacific Yamaha Motor Finance</p>
---	--

April 2010