

The Senate

Standing Committee on
Legal and Constitutional Affairs

Exposure draft of the Personal Property
Securities Bill 2008

March 2009

© Commonwealth of Australia

ISBN: 978- 1-74229-015-7

This document was printed by the Senate Printing Unit, Department of the Senate,
Parliament House, Canberra.

MEMBERS OF THE COMMITTEE

Members

Senator Patricia Crossin, **Chair**, ALP, NT
Senator Guy Barnett, **Deputy Chair**, LP, TAS
Senator Don Farrell, ALP, SA
Senator David Feeney, ALP, VIC
Senator Mary Jo Fisher, LP, SA
Senator Sarah Hanson-Young, AG, SA
Senator Gavin Marshall, ALP, VIC
Senator Russell Trood, LP, QLD

Participating Members

Secretariat

Mr Peter Hallahan	Secretary
Ms Toni Dawes	Principal Research Officer
Ms Cassimah Mackay	Executive Assistant

Suite S1. 61	Telephone: (02) 6277 3560
Parliament House	Fax: (02) 6277 5794
CANBERRA ACT 2600	Email: legcon.sen@aph.gov.au

TABLE OF CONTENTS

MEMBERS OF THE COMMITTEE	iii
RECOMMENDATIONS.....	ix
CHAPTER 1	1
Introduction	1
Reference	1
Outline of the reform	1
Conduct of the inquiry	1
Acknowledgement	1
Structure of the report.....	2
Note on references	2
CHAPTER 2	3
Overview of the exposure draft bill	3
Purpose and objectives of the exposure draft bill.....	3
Support for the reform	4
The reform process	6
International approaches to PPS	8
Key concepts.....	10
Structure of the proposed draft bill.....	11
CHAPTER 3	17
What reform is needed?	17
Divergent views.....	17
Options for reform	19
CHAPTER 4	25
Consideration of broad issues.....	25

Drafting issues	25
Timing	29
Review	32
Process for amending the Act.....	33
Chapter 5	35
Consideration of more technical issues	35
Introduction	35
PPS national online register.....	36
New requirement to act in a <i>commercially reasonable manner</i>	42
International conflict of laws provisions	44
Enforcement.....	47
Impact on the leasing industry – especially the position of an unregistered lessor	48
Intellectual property.....	51
Chattel paper.....	52
CHAPTER 6	55
Other technical matters	55
Suggestions for technical amendments to be made to the bill	55
Liberal Senators' Dissenting Report	57
Overview	57
The majority report.....	57
More effective consultation and education	58
Review of the reform.....	59
Privacy protections	59
Privacy Impact Assessment.....	59
<i>Commercially reasonable manner</i> test - an unnecessary burden on business	60
International conflict of laws provisions	61
Enforcement.....	62

Intellectual Property	62
Regulations	63
Education campaign	63
APPENDIX 1	65
SUBMISSIONS RECEIVED.....	65
ADDITIONAL INFORMATION RECEIVED	66
APPENDIX 2	69
WITNESSES WHO APPEARED BEFORE THE COMMITTEE	69
APPENDIX 3 Consolidated table of some of the suggestions made to the committee for amendments to the Personal Property Securities Bill 2008 [Exposure Draft]	73

