RECOMMENDATIONS

Recommendation 1

4.19   The committee strongly recommends that the Department reconsiders the balance between certainty of the law and the accessibility of the provisions with a view to:

- **simplifying the language of the exposure draft bill – for example, wording provisions clearly and limiting them to deal only with common circumstances;**

- **simplifying the structure of the exposure draft bill – to minimise the cross-referencing needed;**

- **simplifying the terms used - for example instead of 'tangible goods' use the term 'goods' appropriately defined to ensure the full meaning needed for the reform is ascribed to the term; and**

- **using overseas provisions as often as possible to allow overseas experience to provide guidance for the Australian model.**

Recommendation 2

4.27   The committee recommends that the commencement date for the scheme be extended by at least 12 months to May 2011 for the committee's recommendations to be implemented and for advice from stakeholders to be taken into account before the content of the bill is finalised.

Recommendation 3

4.35   The committee recommends that the bill include a requirement that the operation of the bill be reviewed three years after it commences in a process that includes extensive consultation with industry, governments, lawyers, consumers and academics.

Recommendation 4

5.27   The committee recommends that the primary legislation for the personal property securities reform include the key privacy protections for individuals, including a prohibition on making the address details of any individual public.

Recommendation 5

5.33   The committee recommends that either:

- **(a) a Privacy Impact Assessment be undertaken by a person or organisation that is independent from the government and who has experience in undertaking such assessments and the results of the assessment are made public, or**

- **(b) the Department's Privacy Impact Assessment is reviewed by a person or organisation that is independent from the government and**

who has experience in undertaking such assessments, and the results of the review are made public.

Recommendation 6

5.34 **The committee recommends that if any issues raised by the Office of the Privacy Commission in its submission are not considered as part of the Privacy Impact Assessment then these matters should be separately considered by the Attorney-General's Department and a response to the issue be provided to the Office of the Privacy Commission in writing or made public.**

Recommendation 7

5.44 **The committee recommends retaining the requirement for rights and duties to be exercised honestly and in a commercially reasonable manner. The intended scope of these requirements should be explained in detail in the bill's explanatory memorandum.**

5.45 **The explanatory memorandum should particularly explain that the requirement to act in a commercially reasonable manner should not fetter or undermine the ability of parties with similar bargaining power to contractually agree about what constitutes commercially reasonable behaviour.**

Recommendation 8

5.55 **The committee recommends that the bill adopt existing international personal property security conflict of laws provisions, such as the New Zealand conflict of laws model, unless there is a particular reason to depart from those provisions.**

Recommendation 9

5.62 **The committee recommends that the scope and content of the enforcement provisions of the exposure draft bill be reviewed by the Department with particular attention to ensuring that the provisions are comprehensive and adequate.**

Recommendation 10

5.70 **The committee recommends that consideration be given to improving the priority of an unperfected lessor as against unsecured or other unperfected interests in the goods.**

Recommendation 11

5.78 **The committee recommends that the explanatory memorandum and the proposed education campaign adequately explain the purpose and effect of the draft intellectual property provisions, including disseminating the information to appropriately targeted international industries, organisations and stakeholders.**