

APPENDIX 4

Consolidated table of many of the suggestions made to the committee intended to be considered by the Attorney-General's Department in accordance with Recommendation 1

Clause	Sub no.	Submitter	Issue	Comment
6	21	Australian Financial Markets Association	Need to include <i>investment entitlement</i> in the scope of the bill	
8(1)(f)	18	Australian Securitisation Forum	Clarification of extinguishment of beneficial interests of a transferee back to a transferor	
8(1)(f)(ii)	6	Clayton Utz	Mortgage backed securitisations should be included in the bill	Possible error
10	6	Clayton Utz	Definition of <i>goods</i>	Policy difference
10	10	Insolvency Practitioners Australia	Definition of 'insolvency' and 'bankruptcy'.	
10	17	Combined four law firms	Provisions relating to ADI accounts should extend to accounts with other financial institutions	
10	19	Mr David Turner	Definition of purchase price and value re credit charges and interest payable is confusing	
10	25	Independent Film & Television Alliance	Clarify that the definition of license includes a partial assignment of intellectual property operating like an exclusive license.	
12	26	The Victorian Bar	The definition of <i>security interest</i> is too broad,	

			Associated Alloys Case trust arrangements should be excluded from the operation of the Act	
12(2)	17	Combined four law firms	Confuses position in respect of leases as security interests	
12(2)(l)	17 21	Combined four law firms; Australian Financial Markets Association	Should not treat flawed assets as security interests	
12(3)	13	DLA Phillips Fox	Querying why a transferee of an unsecured monetary interest is taken to have a security interest	
12(4)	6 17 23	Clayton Utz; Combined four law firms Queensland Law Society	Does not apply to ADI – suggests amending to fix	Possible error
13	5	Consumer Action Law Centre	Amend definition of <i>consumer property</i> to ensure protections properly apply to consumers	Refine existing approach
14(1)(b)	25	Independent Film & Television Alliance	Ensure that this section allows a PMSI for intellectual property	
14(2)(b)	6	Clayton Utz	Amended clause is too broad	
14(2)(c)	2, 19 20	Piper Alderman; Mr David Turner; Australian Finance	Whether the clause will increase the cost of consumer finance of non-serial numbered goods	Policy difference

		Conference		
14(2)(c)	14 23	Australian Bankers' Association Queensland Law Society	Retention of provision will diminish choice in finance for consumer.	
14(3), (4) and (5)	19	Mr David Turner	Suggests the bill consider the Canadian <i>Chrysler</i> decision, reconsiders notice requirements	
15	6	Clayton Utz	There may be unintended consequences if the definition of <i>investment entitlement</i> is linked to the corporations legislation definition	Refine existing approach
18(4)	6	Clayton Utz	Unintended ambiguity	
19	26	The Victorian Bar	Needs to be expanded – how does 19(2) operate on after-acquired future property	
20	13	DLA Phillips Fox	Enforceability of security interests re: third parties, even when not perfected with registration	
20	17	Combined four law firms	Insufficient precision of what description should suffice	
21(2)	25	Independent Film & Television Alliance	Allow intellectual property interests subject to a specialised register to be perfected by registration in the specialised register	Policy difference
26(1)(a)	6	Clayton Utz	Clause does not deal with all circumstances	Possible omission
26	21	Australian Financial Markets Association	Should deal with investment instruments registered in the name of a 3 rd party as per clause 27	
28	18	Australian Securitisation	Relationship between 'control' and letter of credit	

		Forum	problematic in securitisation context	
32(2)	13 21	DLA Phillips Fox; Australian Financial Markets Association	Unclear restriction re: market value of collateral	
34(1)(c)(ii)	17	Combined four law firms	Fixing constructive knowledge on transfer is more harsh than overseas	
39(2)	17	Combined four law firms	'Gap' between foreign registration and perfection.	
Part 2.5 41-53	26	The Victorian Bar	Issues of concern relating to sections 46, 47, 49, 50, 51 and 53	
43	19	Mr David Turner	Section 43 is confusing and policy reasoning is not clear	
44	19	Mr David Turner	Complicated drafting	
46	19	Mr David Turner	Wording different from the NZ legislation	
47(1)	14	Australian Bankers' Association	Taking of personal domestic or household property free of security should be at arms length	
50	17	Combined four law firms	'Consensual' transactions; impact on efficacy of takeovers	
51	21	Australian Financial Markets Association	Clarify ambiguity about knowledge of interest in investment entitlement	Possible error
55(5)	6	Clayton Utz	Does not include 'perfection by control'	Possible error
58	26	The Victorian Bar	Concerns about the effect of the section	Policy difference

61	13	DLA Phillips Fox	Subordination as opposed to priority deeds	
62(3)(b)(i)	20	Australian Finance Conference	Change section to requirement to register within 10 days of the <u>finance</u> being provided, not within 10 days of the <u>grantor</u> taking possession	
63(3)	7	Motor Trades Association of Australia	Requirement that 'evidenced by writing, signed by the grantor' is impractical	
64(1)	18	Australian Securitisation Forum	Should clarify that holder of security interest can effect registration referring to future property of grantor	
64	12	Australian Institute of Credit Management	Recommends that the first in time priority rule should apply, or the period for notice be extended to 10 business days	Possible philosophical difference
69	17	Combined four law firms	'Obligor' and not 'debtor' suggested	
74	25	Independent Film & Television Alliance	Clarify the priority position of execution creditor who obtains a transfer of intellectual property rights	
74	26	The Victorian Bar	Should be contingent on the execution creditor having seized the collateral and the rule should be limited to goods	
77	17	Combined four law firms	Priority of unregistered foreign security interests should extend to investment entitlements, ADI accounts and other forms of intangible property.	
77	17	Combined four law firms	'Perfection' doesn't exist in all international jurisdictions	

79	6, 17	Clayton Utz; Combined four law firms	Should this clause apply only to agreements between the grantor and a secured party?	Possible error
79(1)	25	Independent Film & Television Alliance	Requires some clarification	
80(4)	18	Australian Securitisation Forum	subparagraph b should be deleted	
80(7)(b)	18	Australian Securitisation Forum	Requiring proof of transfer is unwieldy.	
80(7)	6	Clayton Utz	Should clause apply to all transfers of an account or chattel paper?	Possible error
81	17	Combined four law firms	Delimitation of rights on transfer of account	
81	26	The Victorian Bar	Include language with respect to the account debtor contained in Article 9-406	Refine existing approach
102	26	The Victorian Bar	Basis for a pro rata outcome should be cost of goods not the sum secured	
105(1)	25	Independent Film & Television Alliance	Remove	
105(2)	25	Independent Film & Television Alliance	Amend to reflect UNCITRAL Recommendation 243	
Part 4 107-144	6	Clayton Utz	The new enforcement regime is too complex	Suggests an alternative approach
109	7	Motor Trades Association of Australia	Requests that the bill explicitly provides that multiple registrations will not	

			be needed. Consider with operation of clauses 59, 67(1) and (2)	
109(1)(a)	18	Australian Securitisation Forum	Should delete 'that does not' and substitute 'the primary purpose of which is not to'	
109(5)	5	Consumer Action Law Centre	Concern that clause 126 and 142(2) should not apply to consumers	Refine existing approach
111	17	Combined four law firms	Contracting out of commercial reasonableness; still not possible to contract out; should at least not require party to disregard its own commercial interests	
111	19	Mr David Turner	Concerns about the <i>commercially reasonable manner</i> test	Policy difference
115	26	The Victorian Bar	Should be subject to a requirement of not being "manifestly unreasonable"	
115(2)	17	Combined four law firms	Where governed by foreign law, parties should be taken to have 'contracted out'	
116	14	Australian Bankers' Association	Corporations Act continues to apply – dual regimes	
123	26	The Victorian Bar	Section 123 notice should also satisfy other notice requirements	Refine existing approach
127(6)	14	Australian Bankers' Association	'Reasonable expenses paid or incurred' should be payable	
136	26	The Victorian Bar	The section needs more safeguards as it is effectively a foreclosure	
142	26	The Victorian	The right of reinstatement	

		Bar	should be limited to the debtor	
143	17	Combined four law firms	Reinstatement provisions cause significant difficulty when a party has to undo acceleration	
151	17, 18	Combined four law firms, Australian Securitisation Forum	Could be breached by assignees or consignors attempting to perfect interest.	
157	5	Consumer Action Law Centre	Believes proposed penalty is insufficient & should be strengthened to provide for civil penalties	
157(4)	8	Office of the Privacy Commissioner	Only individuals can make a complaint to the Privacy Commission, not all grantors	Correct error
166(2)(c)	17	Combined four law firms	Temporary effectiveness of defective registration – onerous on secured parties; continuous checking	
168	26	The Victorian Bar	Fee should accrue as a charge on the secured property	
172	5	Consumer Action Law Centre	Requests that items 7-10 in the table under clause 172 be amended to restrict the use of the PPSR for data mining for consumer credit assessment and marketing purposes	Refine existing approach
173	8	Office of the Privacy Commissioner	Could clarify the Registrar's ability to lodge complaints in 173(2), is 3 rd party misuse covered, plus changes to the Explanatory Memorandum	
Part 7.2 233-241	6	Clayton Utz	The provisions are too complex	Refine existing approach

237(2)	17	Combined four law firms	Types of property should not be quarantined	
267	6	Clayton Utz	Unsecured creditors can receive a windfall gain	
267	6	Clayton Utz	Should not apply to leases, bailments or commercial consignments – why should the interest of the legal owner be defeated where there is no competing perfected security interest	Querying policy intent
267	17, 18	Combined four law firms, Australian Securitisation Forum	Vesting of unperfected security interests on insolvency; drafting problems.	
267	10	Insolvency Practitioners of Australia	Note 2 should refer to s267 of Corporation Act also	
267	26	The Victorian Bar	Unnecessary and should be omitted as it expropriates the property of the secured party in favour of the unsecured creditors and incorporates notions of reputed ownership	
268(2)	17	Combined four law firms	Turnover trusts not successfully excluded from vesting provisions	
297	13	DLA Phillips Fox	Definition of 'constructive knowledge'	
299(1)(a)	6	Clayton Utz	This clause (and others) should refer to <i>an</i> interest in personal property	Possible error
Other	3	James Kimpton	Whether the bill precludes ratification of the Cape Town Convention and Aircraft Equipment Protocol	
	6	Clayton Utz	Time at which knowledge tested – now unclear in many	Seeking amendments

			provisions	to resolve
	6	Clayton Utz	Section 266 and 267 <i>Corporations Act</i>	
	7	Motor Trades Association of Australia	Will an innocent repairer have rights to recover goods from a defaulting supplier? Will repairer encumbrance details be evident from the register?	
	8	Office of the Privacy Commissioner	The coverage of the <i>Privacy Act</i> in relation to 'interferences with privacy' will need to be addressed.	Bill is inconsistent with <i>Privacy Act</i> .
	9	Office of the Victorian Privacy Commissioner	Include a legislative principle to retain personal information for the minimum amount of time, include a provision to prohibit the use of information for pre-screening and direct marketing, any extension of the use of the register should require legislative amendment or a further privacy impact assessment	
	10	Insolvency Practitioners Australia	Insolvency administrators' liens	
	10	Insolvency Practitioners Australia	Service of documents; consistency with <i>Corporations Act</i>	
	11	Legal Aid Queensland	Synchronise commencement of the bill with the National Consumer Credit Protection Bill	
	11	Legal Aid Queensland	Bill should include powers to address pattern of behaviour conduct	
	11	Legal Aid Queensland	Bill should provide for circumstances where volume	

			of requests to registrar leads to delay for example, expand EDR Schemes so they apply.	
	11	Legal Aid Queensland	Bill should outline a clear process for a security interest when the holding company goes into liquidation.	
	12	Australian Institute of Credit Management	Clarify the registering and searching where a trust is involved, fixtures and fittings should be reconsidered by the state and territory governments	
	13	DLA Phillips Fox	Complexity of priority rules	
	13	DLA Phillips Fox	Priority of unperfected lessors – apparently no changes to Bill	
	13	DLA Phillips Fox	Lack of guidance – when a lease secures payment or performance of an obligation.	
	13	DLA Phillips Fox	Definitions of 'New Value', 'document of title', 'financial property', 'investment instrument', 'located', 'constructive knowledge' and 'land' all problematic	
	13	DLA Phillips Fox	Transitional rules – still too complex	
	13	DLA Phillips Fox	'flawed asset arrangement' not defined	
	13	DLA Phillips Fox	PMSI issue	
	13	DLA Phillips Fox	Possession and control – ss 29, 27, 25, 27(3), 27(4), 27(5)	
	13	DLA Phillips Fox	Uncertainty over re-perfection, and apparent lack	

			of consistency between ss 67 and 32(5)	
	13	DLA Phillips Fox	Modification/substitution of contracts between grantor of interest and transferee	
	13	DLA Phillips Fox	Enforcement of security interests – ss 111, 118, 120.	
	13	DLA Phillips Fox	Registration	
	13	DLA Phillips Fox	Provision of information by secured parties – timeframe unreasonable	
	14	Australian Bankers' Association	Lack of clarity – impact on security interest over ships	
	14	Australian Bankers' Association	Possible conflict with s266 of Corporations Act – certain charges void against liquidator	
	14	Australian Bankers' Association	Uncertainty over proceeds when security interest in a company	
	15	Australian Privacy Foundation	Definition of consumer property	
	16, and additional comments	Professor Tony Duggan	Issues raised and commented on by the department: ADI accounts; consumer goods, inventory and equipment; low-value goods; priority time; inventory PMSIs and the notice requirement; clause 64 process; and collateral	
	17	Combined four law firms	Consumer property; reference to businesses should include those without an ABN	
	17	Combined	Intellectual property: should extend to forms of property	

		four law firms	under general law	
	17	Combined four law firms	Clauses 31-52 – inconsistent language and tests of knowledge	
	17	Combined four law firms	Clause 69 and related rules on negotiable instruments; should be moved.	
	17	Combined four law firms	'particular collateral' – requires clarification	
	17	Combined four law firms	Absolute assignments of accounts and chattel paper should not vest on insolvency unless when they don't secure money	
	17	Combined four law firms	Implementation phases insufficient; based on NZ experience	
	17	Combined four law firms	Investment entitlements are absent from Bill	
	17	Combined four law firms Australian Financial Markets Association	Repos, credit support annexes, securities loans and similar should be excluded from scope of Bill	
	17	Combined four law firms	Weakening of asset charges and other security	
	18	Australian Securitisation Forum	Equitable and legal assignment; consistency with other legislation	
	18	Australian Securitisation Forum	Query whether Bill includes or excludes mortgage backed securitisation	
	18	Australian Securitisation Forum	Minor drafting matters at p.5	

	19	Mr David Turner	Concerned about perfection by control in relation to ADIs	
	21	Australian Financial Markets Association	Suggest making bill compatible with other legislation dealing with negotiable instruments	
	21	Australian Financial Markets Association	Suggest regulation power with capacity to support substantive modification of the act similar to the <i>Corporations Act 2001</i> powers	
	22	Women's Legal Service Victoria	Makes suggestions to ensure that the operation of the register especially protects women and children from family violence	
	24	Director of Public Prosecutions Victoria	Requests the ability to be able to register property restraining orders on the PPSR	
	26	The Victorian Bar	'Control' as a method of perfection is problematic	
	26	The Victorian Bar	Floating charges - no ability to register negative restrictions	