PERSONAL PROPERTY SECURITIES REFORM

CONSUMER FINANCING

WORKSHOP CHAIR

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DRAFT BILL: POINTS FOR DISCUSSION

1. Should the Bill apply to individual consumers?

The Bill does not exclude consumer transactions. The Bill contemplates a name based register. At present, consumer securities are listed on asset based registers so that it is not possible for a creditor or other person to search against a person's name. Note that the New Zealand Act restricts access to the name based register to specific purposes in order to address privacy concerns. The idea behind the Bill is that the financing statement will alert another financier to the existence of a security interest. A potential creditor can then seek full details of the security from the other financier.

- What privacy concerns does a name based register raise?
- How should these concerns be addressed?
- Are there other privacy concerns relating to the sharing of information between creditors which need to be addressed?

2. The financing statement

The Bill provides (Section 5, Schedule 2) that it is sufficient if the property is described as "all personal property and fixtures of the debtor". Note the provisions of the Consumer Credit Code s 40 which require the mortgaged property to be identified. The Bill allows a financing statement to be registered without authorisation by the debtor (contrast the NZ Act which requires the authorisation of the debtor).

- Should the Bill be modified to reflect these policy concerns?

2. Content of mortgage

The Consumer Credit Code restricts the form of mortgage, the extent to which after acquired property can be secured, the maximum amounts which can be secured and so on. Generally the Bill allows security interests which are unrestricted.

- How should the Bill be amended to ensure that the code prevails?

4. Priorities

The Bill confers a super-priority on purchase money securities. One view is that this is necessary in the interests of commercial efficacy. Another is that credit is indivisible. It provides that the interest of a buyer who buys from a seller in the course of the seller's ordinary business prevails over securities granted by the seller. Purchasers of motor vehicles take free of all security interests, whether granted by the seller or another so long as there is no filed financing statement indicating serial numbers. Purchasers of consumer goods for value without notice take free of all security interests. There are potentially two sets of priority rules applying to assets: the Bill and any asset register. The assumption behind the Bill is that the Bill's priorities will prevail. The question is whether a purchaser will understand that they should check the name register as well as the (REVS) asset register.

- Should the priority system be maintained?
- How should the REVS register and the PPSA register be linked?

5. Should the Bill seek to standardise remedies and enforcement procedures?

The Bill confers on creditors a range of remedies and permits them to choose the remedy they prefer. The reason is that parties can create a generic security interest. The Bill needs to deal with remedies because the common law willl not of itself provide for remedies for breach of such an agreement according to pre-PPSA classifications. The Consumer Credit Code currently provides for a default notice to be served in relation to all mortgages (unless the statutory exceptions apply) and for other notices to be served relating to the enforcement of goods mortgages. There are other restrictions on the power of enforcement of regulated goods mortgages and a prescribed standard of care (for the best price reasonably obtainable).

- Should the Bill standardise remedies and enforcement procedures?
- Should the Bill's provisions be subject to Consumer Credit Code provisions?
- Is the "commercially reasonable" standard appropriate to protect Australian consumers?
- What other pieces of legislation wil need to be amended? (eg Rural Finance Act Qld)

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