



Personal Property Securities Reform
Discussion paper on Regulations

Personal Property Securities Reform

BY EMAIL

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Dear Sir/Madam

Personal Properties Securities Reform - Australian Securitisation Forum Submission

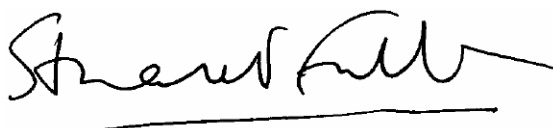
Thank you for the opportunity to comment on the proposed regulations to be made under the Personal Property Securities Act (the **Regulations**). As noted in our earlier submission on the Personal Property Securities Bill (the **PPS Bill**), the Australian Securitisation Forum (the **ASF**) is the peak industry body for the Australian Securitisation industry.

The ASF is aware that other bodies and groups who operate within, and represent sections of, the financial markets have provided comments on the Regulations. We support many of the points that they have made. However, rather than focusing on the content of those other submissions, and explaining how the issues and solutions raised in those other submissions may affect securitisation, we propose to deal specifically with the issues that most affect securitisation.

The ASF's submission on the Regulations is set out below.

Yours sincerely,

For the Australian Securitisation Forum

A handwritten signature in black ink, appearing to read 'Stuart Fuller', with a horizontal line underneath it.

Stuart Fuller
Co-Deputy Chair of the Australian Securitisation Forum

Personal Property Securities Reform

1. Part 2 – Interpretation

1.1 Section 19 – Details about a person

We submit that consideration should be given to the register allowing for registration under, and for searches to be made by reference to, the name of a trust or managed investment scheme, the ABN of a trust (which is not also a registered managed investment scheme) or the ARSN for registered managed investment schemes and the ACN in respect of the trustee or the responsible entity.

Many securitisation transactions in Australia involve a corporate trustee acting as trustee of a special purpose trust who grants security over the assets of that trust. Searching the ACN of the relevant trustee will return numerous registrations under that trustee's name and it would be difficult to identify any registrations in respect of the particular trust. As well, relying only on an ACN when conducting a search leaves room for error if the incorrect number is entered. It would be useful to be able to search both by name, ACN and ABN (as applicable) in respect of the trust and the trustee as this would provide greater certainty of a correct search.

Additionally, we submit that a registration should only be invalid if each of the ACN or ABN (as applicable) in respect of the trust and the trustee and the name of the trust or managed investment scheme are incorrect.

1.2 Section 21 – Meaning of *Security Interest*

As noted in our submission on the PPS Bill, we submit that the transfer of assets under a trust-back or seller trust arrangement and the extinguishment of a securitisation vehicle's interest in assets transferred back to the seller should be excluded from section 21(3)(a) of the Act. We submit that if section 21(3)(a) of the PPS Bill is not amended to exclude such transfers or extinguishments, they should be excluded under the Regulations pursuant to section 21(4)(b).

2. Part 10 – Personal Property Securities Register

2.1 Section 195 – Registration contents - Table item 4(c) classes of collateral

We submit that a separate category for "accounts" should be included as a class of property (e.g. in the context of a security interest held by a special purpose vehicle that takes an assignment of a pool of trade receivables). We are unclear on why provision has been made for the category for "transfer of account or chattel paper" as this is inconsistent with the fact that collateral, rather than security interests in collateral, are registered.

It is not clear to us why separate registrations must be made for each class of collateral. A security agreement may provide for security to be taken over different assets and it would be an administrative burden to lodge multiple registrations in order to perfect the security

interests granted (or transfer of accounts) by a debtor to the secured creditor under a single agreement. Additionally, there would be an administrative burden on persons who undertake a search of the register as they would need to review multiple registrations in respect of a debtor. It would be preferable if the legislative objective on this issue (that is, ensuring that there is no ambiguity about the collateral description) be achieved without the need for multiple registrations.

2.2 Section 195 – Registration contents - Table item 9 any other matter prescribed by regulation

We support the proposed Regulation which would allow registrants to provide descriptive material about the collateral in a free text field and to attach an electronic file or files to a registration in order to provide additional descriptive information about the collateral.

We submit that it is critical in the context of securitisation transactions that the registrant is able to provide free text in the context of a transfer of accounts. We submit that appropriate free text can be provided about the accounts that have been assigned in a manner that would not disclose the identity of the account debtor whose account is being transferred, whilst still providing important additional descriptive information in respect of such receivables.

Not being able to provide a free text description in respect of a transfer of accounts will prevent parties from describing them in a way which distinguishes between different registrations in relation to a single transferor. If the collateral is simply described as “accounts” then future purchasers of all accounts are significantly curtailed as they can only proceed with the agreement of prior registered purchasers, even if different accounts are being sold. However, if the registration permits additional information to be added which can distinguish between accounts (for example by origination dates, receivable type or designations made in the books and records of the transferor), then the parties can ensure that the registration includes a description which will not impinge on future sales of other accounts.