



Personal Property Securities Reform

Personal Property Securities Reform

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BY EMAIL

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15 August 2008

Dear Sir/Madam

Personal Properties Securities Reform - Australian Securitisation Forum Submission

1 Introduction

Thank you for the opportunity to comment on the Personal Property Securities Bill 2008 (the **Bill**). The Australian Securitisation Forum (the **ASF**) is the peak industry body for the Australian Securitisation industry. Its members include Australian Banks, other ADI's, Australian and off shore financial institutions, non bank originators, specialist service providers such as trustee companies, rating agencies, law firms and accountants, and many other interested parties.

Australia has one of the most developed, and proportionately significant, securitisation markets in the world. Over the last twenty years many hundreds of billions of dollars of assets in Australia have been securitised. At the end of 2006 the size of the market was over \$200 billion, based on the value of securities outstanding by Australian securitisation vehicles.

Securitisation has successfully contributed to the development of the Australian financial markets. The benefits have included lower funding costs for both the wholesale and retail markets, greater competition (particularly in the residential mortgage sector), diversification of funding, a greater ability to manage regulatory capital and a greater range of products for investors.

2 General response to the Bill

The ASF is aware that a number of other bodies and groups who operate within, and represent sections of, the financial markets have provided detailed and wide-ranging comments on the Bill. We have seen a number of those submissions. We support many of the points that they have made and encourage you to take the time to assess those submissions thoroughly. 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 Bill is set out below.

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As a general comment, we would say that the Australian securitisation market does not need PPS. The legal system works tolerably well, and domestic and overseas investors, rating agencies, participants and lawyers appreciate the flexibility and clarity of the current law. That being said we acknowledge that the Bill may bring some tangible benefits to securitisation, particularly in relation to the benefits that would flow from registering a statement for the sale of receivables. However it is too early to say whether the benefits will outweigh the undoubted costs, complexities and uncertainties that will also flow from the Bill, particularly in its present form. It is unclear to us why substantial parts of the law of contract, securities law and private international law need to be radically reformed in order for there to be an effective and useful register of personal property securities that replaces the multiplicity of current legislation.

3 The shape of Securitisation in Australia

The following transactions or legal features are often found in Australian securitisations and will be affected directly by the Bill:

- (a) The legal and/or equitable assignment of receivables (e.g. residential mortgages, commercial mortgages, finance and operating leases, commercial hire purchase, licences, trade receivables and other contractual rights) and inventory (e.g. minerals, motor vehicles and stock in trade). The consideration for the assignment may be on deferred purchase terms.
- (b) Assignments of the proceeds of the receivables (i.e. the “fruit” rather than the “tree” or the “tree and the fruit”).
- (c) A range of mortgages and charges, including charges over specific assets and fixed and floating charges.
- (d) Security trust arrangements.
- (e) The creation of non-registered trusts, and the issue of the units in these trusts, both as a means of distributing residual income and also as an alternative to debt funding.
- (f) The issue of debt instruments (some of which are listed on domestic or overseas stock exchanges, but most of which are not), including registered medium term or short term notes and negotiable and non-negotiable promissory notes (including dematerialised securities). Often proceeds of the issue of debt instruments are used to acquire other debt instruments (i.e. repackaging transactions).
- (g) A wide range of debt facilities, some of which may involve the issue or transfer of securities.
- (h) The extensive use of derivatives.
- (i) Many international transactions including the issue of securities to offshore investors and the commingling of both domestic and overseas receivables in multi-jurisdictional securitisations.

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4 The Key Issues

(a) Registration Statements

The ASF has no fundamental objection to the preparation and the registration of one registration statement for each securitisation, and sees some benefits flowing from this. However, as the sale of assets within a securitisation can often happen not only monthly and weekly, but daily, it is **absolutely essential** that the registration scheme be sufficiently flexible to permit the registration of a statement that refers to assets generically, and contemplates the statement covering assignments of and/or security interests over future assets. Assets should be able to be described by reference to the records of either the Grantor or the holder of the "Security Interest", as well as to documents or schedules of assets generated between them.

(b) Role of Credit Rating Agencies

The securities issued in securitisations are usually rated by Credit Rating Agencies. The need for legal certainty is fundamental to the rating process, as is the need to know at all times exactly what assets actually back the asset-backed securities. Any uncertainty, or ability for the legal ground on which the securitisation is based to move, may result in transactions ceasing to be rateable, and, at the least, the cost (in the form of greater legal complexity to structure around the uncertainties or variabilities, or greater credit enhancement) of securitisation becoming substantially more expensive.

(c) Bankruptcy Remoteness and certainty of asset terms

The ability to create and maintain 'bankruptcy remote' entities is also absolutely essential to securitisation. Typically these are special purpose trusts or special purpose 'orphan' companies. The ability of these entities to acquire, deal with and dispose of their assets must be capable of being tightly controlled. Furthermore, any change to the ability to isolate assets within these special purpose entities, and severely control the ability of other parties to deal with those isolated assets (e.g. by changing the terms of receivables, or substituting assets, or anything else that may impact upon the certainty of payments generated by those assets) would be highly detrimental to the Australian securitisation industry. We will discuss our concerns in relation to section 117(3) below.

(d) Non-Assignability

The ASF also sees a substantial problem with section 116. The parties to a contract should be able to agree between themselves whether rights under the contract are assignable. Giving parties the ability to assign any contract that is an "Account" challenges the efficacy of isolating assets in special purpose vehicles. It also can lead to adverse tax and stamp duty consequences e.g. transfers of units in trusts that undermine the availability of the withholding tax exemption in section 128 of the Income Tax Assets Act (1936) or which result in the trust being resettled. Rather than permitting assignability, section 116 should provide that a contractual prohibition or assignment is effective. This should include an assignment by way of mortgage or charge.

(e) Choice of Law

Australian law has generally been well accepted in relation to international securitisations. Although English and US Law is favoured as the governing law in relation to securities

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issued into Europe, Asia and the US capital markets, Australian law has been well accepted as the governing law of documents (e.g. assignments and mortgages, charges etc.) in relation to Australian assets. It is highly desirable that this ability to choose the appropriate governing law continue and for the law, once chosen, to be applicable throughout the life of the securitisations.

(f) Form of Assignment

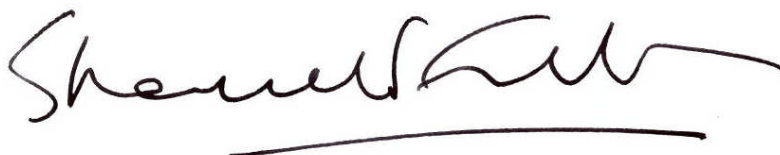
It appears that the distinction between legal assignments of receivables and equitable assignments of receivables will not survive the passing of the Bill, although this is not as clear as it might be. It appears to us that the distinction between these forms of arrangement will be replaced by some form of statutory assignment. It is common in securitisations for the initial assignment of receivables to take the form of an equitable assignment. This is for three reasons. The first is to avoid the costs of compliance with the requirement to give notice to each Debtor. The second is to avoid confusion that could arise from such notice when the Originator/ Seller (ie the Grantor) remains the 'Servicer' of the assets. An equitable assignment will generally not result in any change to payment arrangements or communications in relation to the ongoing management of the receivables. Thirdly, an equitable assignment is more convenient if the receivables end up being repurchased by the Originator/Seller e.g. as part of a clean up call or because the Seller/ Originator wishes to refinance the receivable. Legal assignment in these types of transactions will occur only if there is a 'Title Perfection Event'. These typically are serious events relating to the solvency or capability of the Seller Originator. The registration process needs to ensure that assignments get the benefit of registration without the need to give notice to Debtors.

(g) Stamp duty

We submit that a provision be included that says that any change to contract, property or security law arising from the Act, and any requirement for registration statement will not result in any change to the way that transaction would have been stamped under any applicable State or Territory stamp duty legislation before the Act.

Yours sincerely,

For the Australian Securitisation Forum



Stuart Fuller
Co-Deputy Chair of the Australian Securitisation Forum

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2. Part 2 – Interpretation

2.1 Section 19 – Definitions

<p><i>Investment Instrument/Account</i></p>	<p>We understand from discussions with the Attorney General's Department that this definition is to be broadened to include listed and unlisted instruments.</p> <p>We support an amendment to the definition of investment instrument that ensures no distinction is made between listed and unlisted instruments. Securitisation notes may be listed on the Australian Securities Exchange or offshore exchanges but are not actually traded through the exchanges. Interests in these instruments will generally be held through the Austraclear system or a foreign clearing system and transfer will occur only through those clearing systems (and in accordance with their rules). In our submission, there should therefore be no difference in treatment between listed and unlisted securitisation notes. In this regard paragraph (b) should include interests in a managed investment scheme (whether or not the scheme is registered) and paragraph (d) should include all debentures (whether or not listed).</p> <p>The definition of account should also exclude units of a securitisation trust. These units may or may not fall within the definition of interests in a managed investment scheme (depending on whether the unit holder is required to make any contribution of its units) and therefore may not be included in the broader definition of investment instrument recommended above. We understand that it is proposed that a new definition of "securities entitlements", based on the Hague Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary is to be included as a category of personal property in the Bill and excluded from the definition of account. It would appear from our discussions with the Attorney General's Department that this definition will include units of a securitisation trust and therefore we support this amendment.</p>
<p><i>Negotiable instrument</i></p>	<p>Consideration should be given to the inclusion of dematerialised securities issued in accordance with the Austraclear rules within the definition of negotiable instrument. Dematerialised securities are securities created within the Austraclear system and are intended to replicate a promissory note. Asset-backed commercial paper issued by conduit vehicles tends to be issued in this form.</p>

2.2 Section 21 – Meaning of Security Interest

<p><i>Security Trust Instruments</i></p>	<p>We submit that reference to "security trust instruments" be excluded from section 21(2) of the Act. A security trust deed should already be caught by the definition of security interest in 21(1) if it in fact creates an interest in personal</p>
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	<p>property (noting that in some cases a security trust deed will not, under current market practices, include charging or mortgaging provisions).</p> <p>In the debt capital markets, the definition of "security trust instrument" would extend to a note trust arrangement. Under such an arrangement, the promise to pay the debt instruments is made by the issuer to a trustee who holds that promise on trust for the persons who are from time to time holders of the debt instruments. The security interest which actually secures the repayment of the debt instruments will be a charge granted in favour of a separate security trustee to be held on trust for the secured creditors (who will include the note trustee (on behalf of the holders of the debt instruments or the holders themselves) and other secured parties in connection with the securitisation transaction). That security interest will be evidenced in a separate document and will be a security interest which will need to comply with the requirements of the Act. The note trust arrangement should be excluded from the operation of the Act.</p>
<p><i>Transfer of assets under a trust-back or seller trust arrangement</i></p>	<p>Often in connection with a securitisation transaction, the company that acts as trustee of the securitisation trust (the trustee) also agrees to act as trustee of a bare trust the sole beneficiary of which is seller of the assets in connection with the securitisation (the seller trust). The seller will assign receivables and securities relating to those receivables to the securitisation trust. Where those securities by their terms also secure other moneys owing to the seller (for instance other loans made by the seller to the relevant obligor and which are not being assigned to the securitisation trust (other receivables)), those other receivables may be assigned to the seller trust. Each security (relating to the receivables and other receivables) assigned to the trustee is held by the trustee:</p> <ul style="list-style-type: none"> • on trust for the securitisation trust, to the extent required to repay the relevant receivable assigned to the securitisation trust to which it relates; and • as to the balance, on trust for the seller trust. <p>This ensures that on enforcement of a security the seller will continue to have some benefit from that security in connection with the other receivables.</p> <p>Notwithstanding the sole beneficiary of a seller trust is the seller, who will continue to hold bare legal title to the seller trust assets, the transfer of assets into the seller trust will be deemed by the Act to be a security interest. The operation of the Act is not clear in these circumstances and raises a number of issues:</p> <ul style="list-style-type: none"> • attachment issues - assets are assigned to a seller trust for no value, in this regard no valid security interest will be created in these circumstances; and • enforceability issues - no provision is made for possession or control of these types of accounts by the Act. <p>We submit that the transfer of these accounts, where they will continue to be</p>

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	held on bare trust for the transferor, should not be deemed to be a security interest in accordance with section 21(3)(a) of the Act.
<i>Extinguishment of SPV's interest</i>	<p>In certain circumstances during the term of a securitisation transaction the securitisation vehicle's interest in the assets assigned to it will be extinguished in favour of the seller or the assets transferred back to the seller (who will have generally continued to hold bare legal title to the assets). For instance, the seller may "re-purchase" assets in the following circumstances:</p> <ul style="list-style-type: none"> • where the seller makes a further advance to the underlying obligor and the receivable cannot remain in the securitisation structure; • where the seller breaches a representation and warranty made in relation to the assets when they were assigned to the securitisation vehicle; or • where the seller exercises its rights to buy the assets when the securitisation transaction is almost near the end of its term (and its assets have amortised down to a relatively small percentage of their original value). <p>The operation of the Act is not clear in these circumstances and raises a number of issues:</p> <ul style="list-style-type: none"> • enforceability issues - no provision is made for possession or control of these types of accounts by the Act and the "security agreement" is unlikely to comply with the requirements in section 59(3) of the Act on the basis that for stamp duty reasons there is generally no writing evidencing the transfer (other than the written agreement evidencing the obligation to "re-purchase" the assets in the circumstances described above). <p>We submit that the extinguishment of a securitisation vehicle's interest in the securitised assets in favour of the seller should not be deemed a security interest for the purposes of the Act in accordance with section 21(3)(a) of the Act. In our view, in these circumstances the records retained by the seller and/or the securitisation vehicle should be the conclusive register of the beneficial owner of the relevant collateral.</p>

2.3 Section 22 – Application of Act to interests

<i>Trustee's lien</i>	Section 22(b)(ii) of the Act should not exclude rules of equity but rather include them. A trustee's equitable lien would otherwise potentially be caught by the Act.
<i>Mortgage-backed securitisations</i>	Section 22(e)(ii) of the Act seeks to exclude from its operation the transfer of a right to payment in connection with an interest in land, where the land is specifically identified. This may have the effect of excluding mortgage-backed securitisations from the operation of the Act, notwithstanding that the securitisation of all other types of assets will be caught by the deemed security interest provision in section 21(3)(a). Mortgage-backed securitisations may be

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	<p>excluded because the writing evidencing the transfer may identify the land secured by the mortgages which are being transferred. On the basis that the transfer of accounts and chattel paper are deemed security interests and so the Act will prima facie apply to securitisations, there is no reason why any mortgage-backed securitisations should be excluded from its operation. In our view inclusion of mortgage-backed securitisations could be achieved by carving out of section 22(e)(ii) the transfer of a right to payment in connection with a pool of mortgages for creating, issuing, marketing or securing a mortgage-backed security. We refer you to the stamp duty exemptions in connection with mortgage-backed securities in the Queensland Stamp Duty Act in section 130I and the definition of mortgage-backed security in that Act for an example of language that could be used to achieve this outcome. We believe this is preferable to the approach suggested by the Attorney General's Department of limiting the exclusion to circumstances where the writing evidences one mortgage transfer. There are many non-securitisation transfers that affect more than one mortgage that should not be caught by the operation of the Bill.</p>
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2.4 Section 24 – Meaning of *Purchase Money Security Interest*

Deferred Purchase Price Arrangements	<p>The assets in connection with a securitisation transaction may sometimes be assigned to the securitisation vehicle on a deferred purchase price basis. In this regard, the vehicle pays the seller an initial purchase price for the assets at the time of their transfer to the vehicle and the seller is then a creditor of the vehicle for payment of the balance of the purchase price. The vehicle will grant a security interest over its assets (generally in favour of a security trustee, to be held on trust for certain creditors of the vehicle). A creditor having the benefit of that security interest may include the seller, in respect of the balance of the purchase price owing to it.</p> <p>It is submitted that this arrangement should be excluded from paragraph (a) of the definition of a purchase money security interest. The seller generally does not have priority for the balance of the purchase price and so it is not appropriate that it be afforded priority on the basis that its interest would constitute a purchase money security interest.</p>
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2.5 Section 28 – Meaning of *Chattel Paper*

Certificated chattel paper	<p>We understand from discussions with the Attorney General's Department that further consideration is being given to the concept of "chattel paper" generally and whether it should be included or if it should be included only where the chattel paper is evidenced electronically.</p> <p>One of the primary concerns with the current treatment of chattel paper in the Bill is that if chattel paper is in a physical paper form, a person with a security interest having possession of that paper will have priority under the default</p>
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	<p>priority rules over a person that has a registered security interest but does not have possession of the paper. This would be an issue in securitisations where, on the initial transfer of the chattel paper which is not evidenced electronically, the SPV securitisation vehicle would not take physical possession of that paper. Therefore there is a risk that another security interest in the chattel paper could be subsequently created by the originator and the SPV would lose priority.</p> <p>If the definition is to be limited to chattel paper evidenced electronically we would welcome the chance to be involved in further consideration of this issue. We are particularly concerned as to how a determination is made that the chattel paper is evidenced electronically.</p> <p>If the current definition of chattel paper is to be retained, we believe it should be amended to cater for instances where the terms of the relevant agreement are evidenced in writing but the agreement itself is created by another form of action, for example, oral acceptance, delivery of leased equipment or the like. In those circumstances, because acceptance is not evidenced in writing, it is arguable the entire arrangement would not constitute chattel paper.</p>
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2.6 Section 37 – Definition of *Circulating Asset*

Exclusions from circulating assets	<p>We understand that the inclusion of accounts in the definition of circulating assets is intended to replicate the existing general law position that, in the ordinary course (that is, unless a degree of "control" is exercised by the holder of the security), a charge over receivables and book debts will be a floating charge.</p> <p>Given that the definition of account is currently very broad, section 37 will have broader implications than this. We understand from discussions with the Attorney General's Department that the category of accounts to which section 37 is to apply is to be limited under the next draft of the Bill to include primarily accounts for payment of goods and ADI accounts. We would support such a limitation with respect to accounts for payment of goods. We support the combined submission of Allens Arthur Robinson, Blake Dawson, Freehills and Mallesons Stephen Jaques on ADI accounts not automatically being treated as circulating assets.</p> <p>We also understand that section 38 is to be expanded to include further examples of how control would be obtained over these types of account and again we would support this clarification.</p>
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3. Part 5 – Acquiring personal property free of security interests

3.1 Section 77 – Scope of this Division

77	We submit that this Part should not apply where the “security interest” is an absolute assignment. In that case, the grantor has no interest capable of being dealt with.
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4. Part 6 – Priority between security interests

4.1 Section 102 – Non-proceeds security interest in an account

102	<p>We understand this section to provide that if a perfected money security interest (“PMSI”) in collateral is existing at the time when a perfected security interest (the “priority interest”) is granted by a grantor in the same collateral, the priority interest has priority over the perfected money security interest (assuming all other requirements of section 102(3) are satisfied) if the holder of the priority interest gives notice to the holder of the PMSI in accordance with section 102(4) prior to the registration of the priority interest. However, if a PMSI in the same collateral arises after the priority interest is registered, the priority interest will have priority over that PMSI (assuming all other requirements of section 102(2) are satisfied) without the holder of the priority interest having to give any notice to the holder of the PMSI.</p> <p>Assuming our understanding is correct, the main comment we have on section 102, is that it is critical from a securitisation perspective that notices to be given under section 102(4) are sufficiently flexible so that the holder of a priority interest would not have to notify a holder of a PMSI each time additional collateral in the same category was acquired for new value (e.g. in a trade receivables securitisation where receivables are often sold on a daily or weekly basis. In this scenario blanket notices would be appropriate. Having to notify the relevant PMSI holders under section 102(4) each time trade receivables are acquired by the holder of the priority interest would be an administrative burden.)</p> <p>As a general comment we support the inclusion of section 102 in the legislation as this section provides commercial certainty in trade receivables securitisations where receivables financiers have provided new value.</p>
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5. Part 7 – Transfer and Assignment of Rights in Collateral

5.1 Section 116 – Transfer of grantor's rights in collateral

116	Please see introductory comments under paragraph 4(d) of the Key Issues section above.
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5.2 Section 117 – Rights on transfer of account or chattel paper

117(1)	We submit that there is no need to alter the position that currently exists under general law.
117(3), (4) & (6)	<p>We submit that this is an unnecessary departure from current principles: it should be left to the parties to decide. These sub-sections should be removed. If a secured party has an assignment of all (or any) of the rights under a contract, the parties should not be free to deal with it: why can a party change what it has sold? Why should substitution be available?</p> <p>Rating agencies and investors will have insufficient certainty as to the nature and contractual terms underpinning a securitisation if the seller and debtor are able to change the terms of the contract after assignment.</p> <p>Use of terms such as "commercially reasonably" and "material adverse effect" are open to broad interpretation and are unlikely to provide sufficient comfort to rating agencies and investors.</p> <p>Making express provision for recourse to the seller for a breach of the terms of the assignment agreement (as contemplated by sub-section (6)) will not assist in a securitisation transaction. The fundamental feature of a securitisation transaction is to isolate the assets from the insolvency risk of the seller. Accordingly a transaction cannot be structured on the basis that a claim for damages against the seller for breach of contract is sufficient protection.</p>
117(7)	<p>Why is this limited to intangible property or chattel paper? If it is to extend to "accounts" we submit that it may not be necessary for (a)(iii) to apply in certain situations.</p> <p>As to section 117(7)(b) - why should proof of sale be required (for example, if the notice has come from the transferor (even if it was given by the transferee under a power of attorney granted by the transferor to the transferee). The concept of "proof of sale" should be clarified. Often securitisation transactions are effected by way of a "clayton's contract" where there is a written offer accepted by the payment of a cash purchase price. There is no formal legal assignment which contains a description of the assets sold. We submit that proof of sale should not be required as the risk of an assignee wrongfully asserting a right to a debt against a debtor is slim.</p>

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6. Part 9 – Enforcement

6.1 Section 158 – Application of this Part

158(1)(a)	<p>We understand that securitisation transactions where accounts are transferred or assigned to an SPV not in connection with the securing of a payment or performance of an obligation (but rather a true sale of the accounts) are not covered by this Part. We would request that this section be amended to expressly clarify this as this certainty is essential from a securitisation perspective (and the application of this Part to such transactions would raise additional issues).</p> <p>We would, however, expect this section to cover traditional forms of security granted in a securitisation transaction (i.e. the SPV granting a charge over all of its assets in favour of the Security Trustee for the benefit of the secured creditors).</p> <p>Based on our understanding of this section we assume section 186 does not apply to securitisation transactions with respect to the assignment of accounts however we have commented on section 186 below in case our understanding is incorrect.</p>
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6.2 Section 174 – Seizure by higher priority parties

174(4)	<p>A higher priority party should not be obliged to pay costs incurred by a lower ranking party. If the lower ranking party elects to seize collateral it should do so on the basis that any enforcement costs it incurs will be reimbursed only to the extent of money available after higher ranking parties have been paid secured monies owing.</p> <p>This section changes the normal rules applicable to enforcement of security in favour of lower ranking secured creditors. The obligation of a higher priority party to reimburse a lower ranking party for enforcement costs provides an incentive for a lower ranking party to take possession of collateral as the lower ranking party would no longer bear the risk of possession or enforcement costs.</p> <p>We note there is no test in relation to the reasonableness of costs incurred and that the reimbursement obligation extends to items such as repairing and maintaining collateral which could result in the higher priority party having to reimburse uncontrolled costs incurred by the lower ranking party.</p>
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6.3 Section 186 – Distribution of proceeds received by the secured party

186(1)	<p>Sub-sections 186(1)(a) and (b) should be combined and, to the extent (a) is in respect of costs incurred by a lower ranking party in connection with the possession or enforcement of collateral, these costs should be paid to the lower ranking party after senior ranking parties have been paid.</p>
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	<p>We submit that in section 186(1) higher ranking secured creditors should be paid in priority to lower ranking secured creditors not only in respect of costs, but also in respect of other secured obligations, including advances.</p> <p>It does not appear that the order of priority in section 186(1) can be contracted out of. Commercially secured creditors may wish to enter into their own arrangements with respect to payment priorities. As sections 168 and 175 can be contracted out of we submit that section 186 be included in the contracting out provisions of section 158.</p>
186(4)	<p>We would request that the language “to the extent of the obligation” be changed to “to the extent of the amount paid”. This section as currently drafted suggests that a partial payment of a secured amount owing would discharge the entire secured obligation.</p>

7. Part 10 – Personal Property Securities Register

7.1 Section 195 – Registration contents

195	<p>We understand the prescribed classes for collateral may include “present and after-acquired property”. We support the inclusion of this prescribed class. In a securitisation, the security interest granted typically covers all present and after-acquired property and it would be an administrative burden to register a security interest each time property is acquired by the debtor SPV (e.g. in a trade receivables securitisation where receivables are often sold on a daily or weekly basis).</p> <p>As well, we suggest that registration statements refer broadly to collateral (e.g. receivables and related security) and that the detail of those receivables be set out in documents referred to in the registration statement (e.g. sale notices and periodic reports given from time to time under the documents). In a securitisation transaction (for example a receivables transaction where receivables are transferred on a daily or weekly basis), it would be an administrative burden on the Register and on parties to the transaction to have to describe each receivable in detail on a registration statement.</p> <p>In part 4 of the table in section 195 it says that the collateral must be described as one of either consumer property or equipment or inventory or both. We are not sure how “accounts” and “chattel paper” assuming they are the relevant collateral (e.g. under a securitisation transaction) are covered. We submit that this needs to be clarified.</p> <p>In relation to searching by ABN, clarification may be required for a situation where there is more than one ABN, e.g. a corporate ABN and a trust ABN?</p>
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8. Part 11 – Miscellaneous

8.1 Section 236 – Certain perfected security interests in personal property of company void against liquidator or administrator etc. & Section 237 Certain unperfected security interests void against liquidator or administrator etc.

236/237	We submit that absolute assignments which do not secure repayment of money should be excluded from sections 236 and 237.
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8.2 Section 239 – Rights and duties to be exercised honestly and in a commercially reasonable manner

239(1)	We support the combined submission of Allens Arthur Robinson, Blake Dawson, Freehills and Mallesons Stephen Jaques on this section.
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8.3 Section 272 – Presumption in cases of related entities etc.

272(2)(c)	We submit that there should be a carve out from this section. The presumption that value was not given where the transferee and the transferor are associated entities should be not apply in a securitisation transaction where the seller holds an equity interest or subordinated debt in the SPV.
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