



24 September 2010

Personal Property Securities Branch
Attorney-General's Department
3-5 National Circuit
Barton ACT 2600

**Personal Property Securities Program
Consultation Draft Cost Recovery Arrangements**

The Australian Institute of Credit Management (AICM) makes the following submission in relation to *Personal Property Securities Program Consultation Draft Cost Recovery Arrangements Consultation Paper*.

AICM submit's that in determining the fees and charges to be applied in relation to the Personal Property Securities Register (PPSR) the following principles should be taken into consideration.

Encouraging use of the PPSR

Intrinsic to the successful utilisation of the principles enshrined in the Personal Property Securities law reform is the lodging of registrations on the PPSR. Unless and indeed until there are sufficient registrations on the PPSR, the PPSR will not be as useful in relation to amongst other things:

- Informing prospective secured parties
- Informing prospective grantors
- Informing insolvency practitioners of the relevant parties and their interests

Whilst the Australian economy has emerged from the global financial crisis in a far better condition than many other developed economies there is still a reluctance on the part of Australian business to incur expenditure without the prospect of an appropriate return on investment.

This situation has the potential to create a self-fulfilling negative attitude as without large scale participation in the PPSR then a less than optimum number of PPSR registrations will be made. Consequently this situation will serve to create a perception that the PPSR is less than useful.

A threshold issue in relation to participation will therefore be the cost of registration.

In the period preceding the passage of the legalisation representatives of the PPS Branch consistently stated that costs would be kept low. This frequently repeated statement has created an expectation in the market which does not correlate to the fees and charges proposed in the Consultation Document.

AICM does not believe that a fee of \$130 for an undefined registration and \$37 for duration of more than 7 years but less than 25 years will be well received by prospective users. Indeed AICM has already received considerable feedback from members expressing dismay at the proposed fees.

Further AICM would question the basis upon which the number of registrations which will fall into either of these categories has been calculated.

AICM notes that the forecast level of demand is based upon data supplied by state and territory jurisdictions and the Australian Securities and Investments Commission (ASIC).

Whilst AICM does not question the integrity of these sources AICM would submit that it would be difficult for these sources to forecast demand from those potential secured parties who are currently outside the scope of ASIC and the states and territories.

In confirmation of this statement AICM would advise that the indicative figures available from the recently concluded AICM National Credit Industry Survey would conservatively indicate that on average a commercial credit provider would have an accounts receivable ledger of at least 14,000 accounts.

Figures published by the Australian Bureau of Statistics would appear to offer additional insight into the potential number of businesses who could utilise the PPSR. The ABS figures reveal the following information that as at June 2007 there were:

- 641,538 (32%) Companies,
- 620,037 (31%) Sole proprietors,
- 385,801 (19%) Partnerships and
- 364,075 (18%) Trusts

AICM is aware that not every account may fall within the scope of the legislation however it is reasonable to conclude that more than 75% of a commercial ledger would be eligible for inclusion on the PPSR.

AICM is mindful that forecasting demand levels can be complex and subject to many factors however AICM would strongly advocate that the predicated level of demand for these two categories of registration would be significantly higher than predicted.

Therefore AICM would recommend that the fees for registration in these two categories be substantially lower.

As the cost recovery is to occur over a three year time period AICM would also recommend that should the level of registrations fall below expectations then the fees could be reviewed.

Application of Principles underpinning PPSR Cost Recovery

AICM's apprehensions concerning the level of fees and charges proposed is heightened by the statement at p9 of the Consultation Paper which states

"...the imposition of fees that are cost reflective and appropriately structured sends an important pricing signal to users of the register and discourages excess demand, because it is a free resource..."

This statement is completely at odds with the intention of the legislation indeed the more the PPSR is used the greater will be its relevance and reliability. Further, except for a few matters, use of the PPSR will not be free.

Exclusion of GST

It is AICM's position that all fees and charges relating to the PPSR must be GST free. It would be inequitable if GST was imposed and at odds with the overall direction and intention the Consultation Paper.

The relationship between the Consultation Paper and Australian Cost Recovery Policy

It is stated at p6 of the Consultation Paper:

'...The underlying principle of the policy is that entities should set charges to recover the costs of products or services where it is efficient and effective to do so, where the beneficiaries are a narrow and identifiable group...'

AICM is unable to ascertain how the users of the PPSR could be defined as a narrow group. The benefits to the Australian economy and community of the PPSR are incalculable. If the proposed fees and charges do not reflect the benefit of PPSR on the total consumer population then there is a serious misunderstanding of the significance of these reforms amongst government decision makers.

AICM Recommended fees for the PPSR

Registration of a financing statement for an undefined duration \$65.

Registration of a financing statement where the duration is more than 7 years but less than 25 years \$18.50.

Amending a financing statement with an undefined duration \$32.50.

Amending a financing statement where the duration is more than 7 years but less than 25 years \$9.25.

AICM is proposing these figures based on the data provided above and on the basis that such fees and charges will facilitate the take up and utilisation of one of the most significant law reforms since Federation.

Yours sincerely



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Manager External Affairs