



16 October 2020

PPSA Reform Team
Attorney-General's Dept
Canberra ACT

By email: PPSAReform@ag.gov.au

Attention: PPSA Reform Team

**Industry consultation on financial products
and the Personal Property Securities Act 2009**

The Australian Financial Markets Association (AFMA) is responding to the *Industry consultation on financial products and the Personal Property Securities Act 2009* (Consultation) & (PPSA). AFMA welcomes the Government initiative to take forward the recommendations of the 2015 final *Report on the Review of the Personal Property Securities Act (2009)* (Review) in relation to financial products.

AFMA is a member-driven and policy focused industry body that represents participants in Australia's financial markets and providers of wholesale banking services. AFMA's membership reflects the spectrum of industry participants including banks, brokers, market makers, energy traders, market infrastructure providers and treasury corporations.

The questions posed in the Consultation are considered of high commercial and legal importance to AFMA members. Secured finance transactions are vital to financial market activity and the legal regime governing them must provide a high level of confidence to market participants and be efficient. Improvements to the functioning of PPSA are seen as consistent with the objective of the Government to promote measures that aid economic recovery from the COVID-19 situation.

There has been considerable discussion among AFMA members about the nature of the response to the Consultation given the legal technical nature of the questions posed by it. The brief consultation window has convinced us that a fully elaborated legal analytical response is not feasible given the complex interaction of the definitional questions posed and the appropriate approach at this time is to set out the process for dialogue with the PPSA Reform team in order to produce an optimal outcome. We are also aware that legal

advisers are preparing several responses to the Consultation, the content of which we have not yet been able to consider.

Our starting point is to agree with the proposition that the recommendations of the Review in respect of financial products merit policy development work. Securities law has long been recognised as a highly complex area of the law and those drafting the original legislation did a fundamental rewriting of the rules for secured finance without the benefit of having had extensive first-hand experience of how those rules work in commercial practice. As a result, the PPSA is often not reflective of the way that secured finance functions in Australia. As we have discussed each of the consultation questions it has become clear that the answer to one question has consequences for the response to the others and the intimate relationship definitions have to aspects of the Corporations Act.

This leads to industry caution given the experience with the tumultuous introduction and implementation of the PPSA in 2010 and adaptations that have developed to deal with its shortcomings identified in the Review. The Review itself understood this when it said –

Making major changes to legislation of this complexity is itself a complex task. Care will need to be taken to ensure that the changes do not inadvertently upset existing rights, to ensure that the amended Act is internally consistent, and to ensure that the detail of the drafting is effective to respond to the concerns that it is designed to address.¹

Accordingly, the key message I wish to convey is that AFMA wants a policy development dialogue process to be put in place to take work forward on the questions posed in the Consultation. While the current distanced communications environment makes collaboration difficult, AFMA considers that a Working Group should be formed to assist the PPSA Reform Team. The Working Group needs to include persons who have first-hand experience of securing financial product transactions and their legal advisers expert in the field. AFMA representatives stand willing to be part of this proposed Working Group. Careful deliberation over haste should regulate the pace of the work on these reforms.

Please contact David Love either on 02 9776 7995 or by email dlove@afma.com.au if follow up is desired.

Yours sincerely



David Love
General Counsel & International Adviser

¹ Review section 1.6