



ATTORNEY-GENERAL
THE HON ROBERT McCLELLAND MP

IFD Annual Luncheon

Heritage Ballroom, The Sydney Westin

1 Martin Place, Sydney

Thursday 6 March 2008, 1.50pm

CHECK AGAINST DELIVERY

[Acknowledgements]

- **First, may I acknowledge the traditional owners of the land we meet on – and pay my respects to their elders, both past and present.**

[Other Acknowledgements]

- **Chair – Peter Fitzpatrick, Chair Institute for Factors and Discounters**

[Introduction]

- 1. It gives me great pleasure to be here today, to speak at the Institute's annual luncheon.**
- 2. Personal Property Securities – or PPS – reform is at an exciting stage.**

And I'm keen to maintain the momentum we've finally achieved.

- 3. Many of you will be aware that attempts at PPS reform date back to the early 1990s, when Michael Lavarch was Attorney-General in the Keating Government.**
- 4. But the reforms have encountered several road blocks along the way.**

For many, it was easier to live with the existing complex and expensive system than to change it.

I'm pleased to say that the new Australian Government is injecting renewed vigour into the regulatory reform agenda.

And PPS is a key part of that reform.

- 5. On 20 December 2007, the Council of Australian Governments committed to pursuing an**

ambitious deregulation agenda.

To do that, COAG established a Business Regulation and Competition working group to oversight reform in the regulatory “hot spots”. Those hot spots are areas where reform will deliver tangible economic benefits.

- 6. PPS reform is high on that hot spot list.**

[Why PPS Reform?]

- 7. I think it’s useful to remind ourselves why we’re embarking on PPS reform in the first place.**
- 8. PPS reform will**
 - reduce red tape**
 - overcome unnecessary duplication**
 - harmonise our law, and**
 - promote more consistent outcomes in enforcing securities.**
- 9. Right now, there are more than 70 different Commonwealth, State and Territory Acts that regulate personal property securities.**

After the reform, there will be only one Commonwealth Act.

10. Right now it's not clear which Act or which register applies to some business transactions.

Businesses need to ask:

'Which is the appropriate register for my security interest?'

Or even: 'Is there a register I can use to register my security interest?'

11. After the reform, there will be one single national register for all interests.

12. Right now a finance provider in Queensland may have to research the law and the security interests of a borrower in Western Australia.

After the reform, there will be one register and one law to govern that register – for all Australia.

13. The new PPS regime will provide greater certainty and predictability. This certainty for credit providers will enable them to improve the quality and cost-effectiveness of their services.

It also will make it easier to assess the risks

associated with particular transactions and may result in more accurate pricing of risk in creditor transactions.

- 14. Overall, PPS reform will minimise the duplication we currently have in the laws and in the practices of the businesses involved.**

[Achievements to Date]

- 15. The new Australian Government is advancing the reform process.**
- 16. We have made significant progress on a draft PPS Bill – indeed I am hopeful that the Bill will shortly be released for public consultation.**
- 17. We have also been negotiating an Inter-Governmental agreement with the States to underpin the national scheme.**
- 18. And finally, we have been designing the national online register.**
- 19. In much of what we have achieved, the Government has been ably assisted by industry**

participants, including, of course, the Institute for Factors and Discounters.

20. The contribution made by business organisations helps to ensure that the reforms are relevant and useful to those most likely to be affected by changes.

It also ensures that our reforms benefit, and do not hinder, business activity.

After all, a main goal is to assist with economic growth.

21. Many of you would have heard recent comments about the importance of maintaining Australia's physical infrastructure – our ports, for example. I would argue that the Australian Government has an equal responsibility to ensure the adequacy of our national legal infrastructure.

22. I am committed to working with the States and Territories to pursue national solutions to national problems.

PPS reform is an excellent example of the benefits that can be realised by cooperation

between Commonwealth, State and Territory governments.

23. Some of the hard decisions still lie ahead with the States and Territories.

But I am confident that we can work cooperatively together to achieve a national outcome.

24. After all, we have a unique opportunity, with Labor Governments at State, Territory and Commonwealth levels, to cooperate effectively.

[The Draft Bill]

25. Shortly, I hope to be able to release an exposure draft Personal Property Securities Bill for public comment.

26. In preparing the draft Bill, the Government has been fortunate to have a number of models to draw on.

27. For example, New Zealand underwent reform in the early 2000s.

It seems sensible that where possible we

harmonise our business laws with those of New Zealand.

28. Also, we have been able to draw on the work of key organisations such as the United Nations Commission of International Trade Law and the International Institute for the Unification of Private Law.

And we have also benefited from looking at the existing systems in Canada and the United States.

29. We must use the experience in those other jurisdictions to develop arrangements that take account of international best practice and meet the needs of the Australian commercial environment.

30. Most importantly, our arrangements need to work well for us, and meet the special needs of our businesses.

For example, they need to acknowledge the special contribution made by the rural economy.

31. PPS reform also needs to recognise the potential for growth in the financial services sector.

We need to make sure our legal regime allows us to enhance our position as an international financial centre.

32. When you consider the Bill, you will see that it sets out when security interests are created and when they can be enforced against a third party. But I think it's important to note that the uniform Consumer Credit Code will continue to apply to consumer transactions for enforcement purposes.

33. I know the Institute has made a number of suggestions about receivable financing in its submissions to my Department.

I thank you for these comments.

We have considered your views closely in developing the legislation.

I am hopeful that we may be able to allay your concerns.

I look forward to hearing more from the Institute about the Bill.

[Information Technology]

- 34. One of the key challenges of the reform will be building the single national online register.**
- 35. Australia's personal property security arrangements should make the best use of contemporary information technology. This will be a key driver in realising the benefits of the reform.**
- 36. We're in the fortunate position of being able to learn from other jurisdictions that have already implemented PPS reform. With that information we'll be able to design a highly functional, but low cost, IT solution.**
- 37. Over the next few months, I hope that prospective users of the legislation will also consider how information technology can assist in their take up of, and benefiting from, the reform.**

[Future Processes]

- 38. So, where do we go from here?
I've mentioned the draft exposure Bill.**

Over the coming months, its release and the public consultation process to follow is the most important aspect of the reform.

39. It's the consultation period that will give practitioners, industry participants and academics, as well as members of the general public, the opportunity to comment on where we are going.

I'd like to encourage as many people as possible to participate in the last stages of the Bill.

40. And I look forward to receiving a submission from you – either individually or as members of the Institute – in relation to the Bill.

41. My call for submissions is a genuine offer aimed at gaining the benefit of your expertise and that of other individuals, industry participants and interest groups.

The more views that the Government receives on the draft Bill, the better and more informed the outcome.

42. If the response to the discussion papers is any indication, I imagine my Department will be receiving numerous submissions.

Some will be related to very specific issues, others will be more general in nature.

All will be examined closely and the points they make considered carefully.

43. Of course, there will be times when different submissions will make opposing arguments.

In such cases, we will ultimately have to make a policy decision as to which is the better alternative.

44. In making these decisions we'll be guided by the goals to

- promote certainty and reduce complexity in the law**
- develop a consistent national approach, and**
- reduce the costs associated with taking and enforcing security interests in personal property.**

[Challenges]

- 45. I'm committed to achieving this reform – I see a PPS register as a key plank in the Government's deregulation agenda.**
- 46. It's time to cut red tape for business and improve the quality and cost-effectiveness of our personal property law.**
- 47. But there are a number of challenges for industry that must be met before the Bill becomes law to ensure the new PPS system falls neatly into place.**
- 48. I'm keenly aware of the work to be done by institutions in preparing for PPS reform.**
- I recognise that the establishment of the system will mean businesses will have to implement procedures and information technology to interact with the new legislation and register.**
- 49. I hope that we'll be able to assist businesses in undertaking this work.**
- For example, you might benefit from information sessions or seminars, online information and training materials.**

I would find it useful to know your views about how we can help facilitate implementation of the reform.

[Conclusion]

50. I think you will agree that the time has come to improve and harmonise Australia's business laws, to reduce red tape, provide greater certainty, improve the quality and cost-effectiveness of services – and help create a more competitive nation.

51. PPS reform needs to happen.

I wholeheartedly support it and also appreciate the support that the Institute has given.

52. Thank you for your time today – and I look forward to working with you.