

PERSONAL PROPERTY SECURITIES (COMMONWEALTH LAWS) BILL 2011
PERSONAL PROPERTY SECURITIES (CONSEQUENTIAL REPEALS AND AMENDMENTS) BILL 2011

Cognate Debate — Motion

On motion by **Hon Simon O'Brien (Minister for Commerce)**, resolved —

That leave be granted for Personal Property Securities (Commonwealth Laws) Bill 2011 and the Personal Property Securities (Consequential Repeals and Amendments) Bill 2011 to be dealt with cognately.

Second Reading — Cognate Debate

Resumed from 16 February.

HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition) [11.34 am]: I am not the lead speaker on behalf of the opposition. Our lead speaker is currently rushing at great speed back into the chamber so that she can commence her words on this very substantial and important piece of legislation.

Hon Simon O'Brien: If it would help, we are quite happy to wait for a minute so the Deputy Leader of the Opposition does not have to do this.

Hon KATE DOUST: Now that I am on my feet, I might actually start talking about it.

Hon Simon O'Brien: Getting enthusiastic, are you?

Hon KATE DOUST: I am getting all excited about this! We are obviously dealing with uniform legislation. I fully expect that the Chair of the Standing Committee on Uniform Legislation and Statutes Review is very keen to make some comments on these particular bills because I know that committee always does excellent work. It would have conducted a very intensive inquiry into this bill and I am sure that if there are issues, Hon Adele Farina is perfectly qualified to alert us to them. I am sure she is very keen to make those comments so I will take my seat and allow her that opportunity. I am sure we are all very keen to see the swift passage of this bill.

HON ADELE FARINA (South West) [11.35 am]: I need to advise the house that I am not the lead speaker for the opposition on this bill; I am merely speaking in my capacity as Chair of the Standing Committee on Uniform Legislation and Statutes Review.

Hon Simon O'Brien: And a very good chairman you are, too.

Hon ADELE FARINA: These two bills were referred to the committee in February this year. At the time, the committee had a number of bills before it, but unfortunately we were unable to provide the level of scrutiny we would normally provide to these bills. However, within the time and resource constraints the committee had, we noted a number of matters. Another issue the committee had a difficulty with in replying within the time required was that the supporting documentation was not provided to the committee in a timely manner. I would like to put on the record that I received a phone call from the minister during the recess in July. The minister indicated his personal apology and embarrassment for that situation and said that he had taken steps within his own department to rectify that. I put that on the record because the minister, as a former chair of this committee, has always responded very well to the issues that have been raised by the committee, and I think that is worthy of noting on the record, so I thank the minister for that.

As I said, the committee did not have an opportunity to do a detailed analysis of the bill; we nonetheless identified a number of issues in relation to it. The minister has provided a response to the committee on those issues which, unfortunately, I do not have in front of me. Did the minister table that response?

Hon Simon O'Brien: By way of brief interjection, on Tuesday, 9 August, I made a brief ministerial statement to the same effect.

Hon ADELE FARINA: Thank you.

The issues raised by the committee about the way in which the bill may impinge upon Western Australia's sovereignty were that the commonwealth Personal Property Securities Act 2009 was not annexed to the bill; therefore, the Western Australian Parliament would not be able to consider the implications of its adoption in this state. With the bills before us, we are effectively adopting an act that has been passed in the federal Parliament. The Western Australian bill, which will effect that adoption of the commonwealth act as law in this state, was presented to the committee. However, the committee was not provided with the commonwealth act, nor was the house provided with it at the time the minister made his second reading speech.

Hon Simon O'Brien: I will read it into the record during my response if the member likes!

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Hon ADELE FARINA: No, I do not think that is necessary; it is quite a weighty tome, and I am sure the minister's offer to read it into the record will be declined by every member in this place because it would take quite some weeks to do so!

Hon Simon O'Brien: Take it as tabled then.

Hon ADELE FARINA: I just put on record that the minister has noted that that was an oversight and that there is a need for a Parliament—when it considers the adoption of laws from another place—to see the law that it is adopting. I cannot remember the date, but I think on Tuesday of last week the minister tabled that document, and we thank the minister for that.

The Standing Committee on Uniform Legislation and Statutes Review also raised the issue that the commonwealth Parliament is provided with the power to amend and adopt the commonwealth act without any input from, or consideration by, the Western Australian Parliament. This is an ongoing issue that the committee addresses on each occasion we look at a uniform bill. It is a problem when we adopt the law of another jurisdiction into this state and that jurisdiction then has the power to amend that legislation without any recourse to this Parliament and there is no ability by this Parliament to decide whether we support the amendments. The minister has advised, through the letter he tabled in Parliament and through the statement he made, that he intends to make amendments that would require the commonwealth government to consult all states and territories prior to the introduction of their amendments to the commonwealth act, which would provide the Western Australian government with the opportunity to scrutinise the impact of the amendments and to ensure that they do not have any negative implications for the state. The minister also proposes that in each instance in which the commonwealth Parliament proposes to amend the legislation, that that amendment would not have effect in this state until the minister tables a notice in both houses of Parliament to notify of that amendment and that amendment receives positive endorsement by both houses before a proclamation can be made to commence the referral of power. Can I just clarify that that is what the minister intends to do in relation to amendments, or is it just in relation to the water and fixtures? I am sorry; I have been a bit caught on the hop!

Hon Simon O'Brien interjected.

Hon ADELE FARINA: I think that the minister has just indicated that the government will be consulted prior to the commonwealth making any amendments. That still leaves the concern that the committee raised that there is no capacity for the house to scrutinise any amendments made by the commonwealth. That remains an issue that we will need to address when we look at the bill in detail during committee stage. Although I appreciate the minister's indication that the commonwealth will consult with all the state and territory jurisdictions, that consultation only involves executive government; it does not involve consultation with the Parliament. The Parliament has a duty to scrutinise legislation and to ensure that the laws that affect the people of this state are in their best interests. Through the process that has been adopted through this uniform scheme, the ability for this house to scrutinise future amendments to the commonwealth act are nil, and that raises concerns about state sovereignty. I am sure the minister will address those issues when he has an opportunity to respond.

Another issue that the committee raised some concerns about is that the bill identifies the possibility of a referral of power to the commonwealth Parliament to legislate on personal property securities over fixtures and water rights. It is not proposing to confer that power on the commonwealth with the passing of the act at this time. The act provides for that referral of power to occur at some future date by way of proclamation. That means that, even though it is not being affected today with passage of this bill, if we do not debate and consider those issues now, the opportunity available to all members of Parliament to inquire into and examine that referral of power is effectively lost, because the powers that are intended to be referred, on referral, are actually contained in this bill. The bill provides that the referral will not take place until the date of proclamation. The committee has raised concerns that because power is not being referred at this time, the house should not overlook the need to consider those provisions, and that under the process proposed by the Western Australian bill for that referral of power and under the commonwealth act, the state Parliament will not get an opportunity to scrutinise and inquire into that referral of power at the time it takes place. The minister has kindly noted that that is a problem and he proposes that when the referral is intended to take place, which will occur by proclamation, he would notify both houses of Parliament and that proclamation would not occur until it was positively endorsed by each house. It will be achieved by way of the two houses of Parliament being required to approve the draft proclamation. I put on record my thanks on behalf of members in this place and the people of Western Australia that the minister has responded in this way. The minister has recognised that there was a deficiency in the bill and he has recognised the role of this Parliament in scrutinising legislation, and he has sought to make an amendment that will accommodate that. I think that his proposed amendment and the way he proposes to deal with the matter largely address those concerns that the committee identified.

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The committee also identified a number of concerns about four Henry VIII clauses contained in the bill. The minister stated, in response to the committee's concerns about the Henry VIII clauses, that he proposes amendments to remove clauses 17(3)(a) and (b) and 22 from the bill. These clauses provided regulation making powers to allow the Western Australian Parliament to respond to potential inconsistencies between the commonwealth act and the state legislation. Should the inconsistencies be identified after the scheme commences, these will be addressed by an amendment bill. Again, this is a very important concession that has been made by the minister in recognition of parliamentary sovereignty. As they currently stand, the provisions would have enabled all of these matters to be dealt with by regulations, and as members know, regulations do not get the level of scrutiny in this place that amendments to bills get. The minister has accommodated that concern by ensuring that any amendments identified as being covered under those Henry VIII clauses in those provisions will now come through the house as amendments. That is an important concession, and we thank the minister. In regard to the Henry VII clauses in clauses 7(1) and 9(1) of the bill, which allow the Western Australian government to terminate by proclamation the adoption of the commonwealth act in this state and any or all of the references in regard to the personal property security matters, the minister advises that if he were to remove those clauses from the bill, it may compromise a future government's capacity to terminate the referral power. I am not convinced that that is the case, but nevertheless I am prepared to accept that that is the advice that the minister received and that raises a question of concern that we need to address. The minister is addressing this concern by preparing amendments to be put before this place that will require positive endorsement of both houses of Parliament before a proclamation can be made to terminate the adoption of the commonwealth act or any of the amendments' references. This will provide the people of Western Australia and the Western Australian Parliament with the opportunity to consider the implication of any proposed termination. The method proposed by the minister provides a more than adequate way to address those issues, so I thank the minister again for that. Although the Standing Committee on Uniform Legislation and Statutes Review is embarrassed that, because of time constraints, the workload and the resources available at the time, it did not have an opportunity to scrutinise the bill to the level of detail that it normally would, it nevertheless tried to identify some of the key concerns in the bills.

The minister, a former chairman and member of this committee, understands the importance of the issues raised and the committee's work and has appropriately addressed those concerns and issues, for which I thank the minister. I also take this opportunity to thank members of the committee for their ongoing hard work and the commitment and dedication that they show. The committee is tasked with a difficult job. We very frequently do not get all the information that we need to scrutinise uniform legislation. It is not the usual process one undertakes in scrutinising legislation because we need to look at intergovernmental agreements and a range of other documents; therefore, the committee's workload is great. Of course, we could not achieve anywhere near the work that we do without the support of the dedicated advisory staff and the committee clerk. I place on record the committee's thanks to the advisory officers and the committee clerk for the excellent work that they do in supporting the committee with its endeavours.

HON LIZ BEHJAT (North Metropolitan) [11.51 am]: I thank Hon Adele Farina for handing me a copy of the Standing Committee on Uniform Legislation and Statutes Review's fifty-ninth report—we are a caring, sharing committee; we share everything here!

As a member of the Standing Committee on Uniform Legislation and Statutes Review, I will place on the record some of my thoughts about the personal property securities legislation. Although most of the issues have been canvassed most eloquently by the chair of the committee, Hon Adele Farina, it never hurts to go on the record praising one of our own ministers, so here goes!

Hon Simon O'Brien: Hear, hear!

Hon LIZ BEHJAT: As Hon Adele Farina said, having a minister with Hon Simon O'Brien's experience, who is a former Chairman of the Standing Committee on Uniform Legislation and Statutes Review, really helps a lot. As one of the newer members of the committee, going through a number of the things that are put to us by bureaucrats is sometimes fraught with danger as we wade through what is right, what is wrong and where we should really take the people of Western Australia with what we do in legislation. In this instance, as Hon Adele Farina said, we did not have the opportunity to scrutinise the bills to the extent that we normally would. If people look at *Hansard* over the two and a half years that this current committee has been in place, they will see that on most occasions ministers have praised the committee's work and the scrutiny we give the bills that come before us. In this instance, due to time constraints and staffing constraints—which now we know are in the past; the committee has moved on—we tabled what could be termed an inadequate report. However, the minister, with his experience and in wanting to ensure that he does the best thing by the people of Western Australia, took it upon himself to provide a very good government response to, as I said, a somewhat inadequate report.

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There are a couple of issues that I want put on the record, and again Hon Adele Farina canvassed them. I know that in my party in particular we hold very dear to us our property and water rights. My colleague Hon Jim Chown has taken a great interest in this legislation and we have had discussions about it. I know that Hon Jim Chown will closely watch with great interest anything that happens in this area in the future to see how it will affect the people in the region that he represents. Although the draft proclamation will come to both houses for their approval prior to that happening, my fear is about how much explanation will be provided at the time of those draft proclamations. Given the size of the commonwealth bill sitting on the minister's desk, which he has promised that he will not read to us—that is what he said —

Hon Simon O'Brien interjected.

Hon LIZ BEHJAT: I know that we have a bit of spare time today, but I do not think we have that much!

Hon Simon O'Brien: It doesn't mean we have to use it all either!

Hon LIZ BEHJAT: My fear is that the draft proclamation would come to the house and it would simply state that as at this date of proclamation, section 34K(3)—or however it might be cited—as from this day will be proclaimed. No-one will actually go into the detail of what that is, the houses will agree to it and then, bingo, we will have signed our rights over to the commonwealth.

Members know that one thing I have spoken on in the past year that I am passionate about is the rights and sovereignty of Western Australia. The uniform legislation committee is the one committee in this place that protects those rights of Western Australians and all matters to do with state sovereignty. So, for goodness sake, when these matters of uniform legislation come up, I urge members to take notice of the reports that we do and the work of our ministers who are well-versed in the work of the uniform legislation committee and take that on board. We are a truly non-partisan committee; there are two members from the opposition and two from the government. The matters we look at relate to the sovereignty of this state; we do not look at the politics or the policy behind bills. The committee looks at important issues, such as the fundamental legislative principles that we stand by and the sovereignty of this state. This is a prime example of, again, the commonwealth government by stealth taking power away from the states, but under the good guidance of our minister and the amendments he has proposed, we will ensure, I am certain, that that will not happen. Also, members such as Hon Jim Chown, who will be ever vigilant in matters that concern property rights, will not let go. Hon Jim Chown is in this chamber because he stands for the rights of the people of Western Australia. It is vitally important that we pay attention to these sorts of bills. Looking around, I notice that there are not so many members in the chamber, and I hope all members will take the opportunity to look at today's *Hansard* at the record of what the members of the Standing Committee on Uniform Legislation and Statutes Review say about this important legislation. It is important that the minister takes this on board. I urge all members to protect our state's rights whenever they can.

HON LYNN MacLAREN (South Metropolitan) [11.57 am]: The Greens (WA) support the Personal Property Securities (Commonwealth Laws) Bill and the Personal Property Securities (Consequential Repeals and Amendments) Bill. I also express my appreciation for the minister's work over the break and the amendments that he has tabled. We share the concerns about state sovereignty that were articulated quite well by Hon Adele Farina and Hon Liz Behjat.

As a party that does not have representation on the Standing Committee on Uniform Legislation and Statutes Review, we rely most heavily on the reports about the uniform legislation that comes to this house. As I previously stated in the debate on the Electronic Transactions Bill, when the reports give us very little to go on, it is very difficult for us to carefully scrutinise the legislation before us. However, in this case I am appreciative of the work that has been done and the issues highlighted. We reviewed the minister's statement given on 9 August, which flagged the two amendments that we will consider at the Committee of the Whole stage. Those amendments clearly state, as we will see when we look at them carefully, that this Parliament will have a role when these proposals come up. When the proclamations are made, they will have to be approved by each house of Parliament. I flag that we will support those amendments to these pieces of uniform legislation.

With those brief comments, I will not take too much of the house's time other than to say that the Greens support the bills.

HON LJILJANNA RAVLICH (East Metropolitan) [11.59 am]: I rise on behalf of the Labor Party to support the bills before us. I am pleased that they are being debated cogently. The second bill, the Personal Property Securities (Consequential Repeals and Amendments) Bill 2011, is a tidy-up bill in most part as a consequence of the introduction of the Personal Property Securities (Commonwealth Laws) Bill 2011.

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I want to make some comments on the bills before us. Firstly, I understand that the genesis of these bills goes back to 2006. They started during the time of the former government and were commissioned by the federal Attorney-General's Department. The federal Attorney-General at the time commissioned Access Economics to report on the potential costs and benefits of PPS reforms. It is interesting to note that the Access Economics report concurred with what the Standing Committee of Attorneys-General had suspected; that is, the net benefit of PPS reform was greater than any cost, and there would be some significant benefits for a range of people, particularly those who hold personal property securities, and also for banking institutions, small businesses and the like. Consequently, the legislation is indeed a very positive move. In fact, the Access Economics report concluded that the reforms had the potential to reduce borrowing rates for a loan secured with personal property, as opposed to an unsecured loan, in the order of three to four percentage points; that the new arrangement should increase certainty for secured lending over personal property; and that the greater certainty would bring about reduced risks associated with transactions by making outcomes more predictable. In conclusion, it was therefore recommended that there be a PPS scheme of a single electronic registry, which would mean significant reductions in registering and research costs, and would be far advanced on the current system of every state having its own scheme, with differences between the states as to what is and what is not on their registers. Of course, when people travel interstate throughout the nation and so on and so forth, it is very difficult to deal with these complex issues. Indeed, some people move around frequently and live in different states and are consequently affected by different registers in different states. That is totally unacceptable. Having one streamlined national system is the way to go for efficiency and uniformity. Even if the system has teething problems—I have not heard of any teething problem—I understand that pretty much the entire data on the Register of Encumbered Vehicles from all around the nation has been migrated and is well underway to meet the 11 October deadline. However, other data is being migrated, but I have not heard of any major issue with that migration process.

Personal property is any form of property other than land, and includes tangible goods such as vehicles, crops and artwork, and intangible goods such as statutory licences and intellectual property rights. I note that with statutory licences for water rights, for example, some states have been a bit reluctant to hand over power to the commonwealth. I note that Western Australia has taken a cautious approach, and through the work of the committee, ably led by Hon Adele Farina, information will be brought back into this Parliament before we make a final determination on the legislation. Today we are dealing with legislation that hands over power to the commonwealth, but the statutory licences in question will need to come back for approval by both houses of Parliament.

I understand that the Personal Property Securities Register—the minister might want to pay some attention here—will in fact replace more than 40 registers across the commonwealth, states and territories, including the Register of Encumbered Vehicles established by the Chattel Securities Act 1987, which is the act that everyone is probably unanimously agreed upon should be transferred to a national system; the bills of sale register; and the register of cooperative charges. However, I understand that the original number of 40 registers has dropped. I do not know the final number but clearly some registers will not be transferred to the national register. I wonder whether the minister could provide us with information on which registers they are and why they will no longer be included on the national register. I would appreciate it if the minister would give us some information on whether it is intended that they be not included forever, or whether this is a work in progress and inclusion is being delayed with the objective that they will be included in due course. I understand that Tasmania and Western Australia were the last to get on board with these reforms. I also understand that Tasmania has in fact got on board and that we are now the last state to do so. I do not know whether the minister wants to make some comment on that.

I also wonder whether the minister could provide me with some information on the exclusion of statutory licences. I understand that a number of licences administered by some agencies have been excluded from the operation of the commonwealth act and the consequential bill. I wonder whether the minister could explain to the house in his response what the basis for that is. For example, somebody may hold a fisheries licence; a racing, gaming and liquor licence; or a licence for a mining tenement. Why are they not considered to be personal property for the purpose of this bill, because ultimately these licences have a value attached to them and could be used as security? There may very well be a simple reason for that, but when I read through the legislation, it did not make sense to me.

I now want to make some comments on the work of the Standing Committee on Uniform Legislation and Statutes Review. I thank the committee for the work it did on this legislation. In fact, I had not realised that the committee had produced a report, as I last heard that it did not intend to do any work on these two bills. I am pleased that committee members had a chance to look at the legislation. That is one of the points I have made in this place.

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Hon Simon O'Brien: I reckon they had a fairly good look at it.

Hon LJILJANNA RAVLICH: No. They made the point that they did not have enough time to look at it. I am sure that a lot of that was governed by a lack of resources. The minister will note that the recommendations in the report make direct reference to that fact. The committee recommends —

1. The Legislative Council to immediately consider the reporting time for 230A Bills, with the view to increasing the reporting time from 30 days to 60 days, and not wait on the Procedure and Privileges Committee of the Legislative Council to table its Standing Orders Review.
2. The Premier to issue a Premier's Circular regarding uniform legislation emphasising the need to provide the Committee with supporting documents on the date of tabling a uniform bill in the Parliament.

Firstly, there is not a lot of money to undertake these inquiries. Secondly, there is not a lot of time. When departments do not, in a timely way, hand over documentation that is required by the committee to do a forensic analysis of the legislation, which this committee, under the stewardship of Hon Adele Farina, does, then it makes that task much, much harder. In fact, the report states at paragraph 2.6 —

Although the Committee did not undertake a full inquiry, the Committee did seek information about a specific aspect of the PPS Bill with the Department of Commerce.

Clearly, the inquiry was not as fulsome as it should have been, but I commend Hon Adele Farina and the members of that committee for the work they did in really getting to the heart of the matter; that is, the need for amendments to be made concerning property and water rights. Two critical amendments, and also a lot of consequential, tidying up amendments, are before us today. The two key amendments relate to changes to water rights and fixtures, and the requirement that these be approved by both houses of this Parliament. I will not go into the forensic analysis of the bills. That has already been done by Hon Adele Farina.

I understand that all jurisdictions are to complete the migration of data from state and territory registers by October 2011. Could the minister provide the house with a schedule of the things that are being migrated for certain, and comment on whether we are on schedule to complete that migration within that time frame?

I will make some other comments about the benefits of this legislation. I have already made the point that the introduction of a national personal property securities register will bring all the information together in one national system. The aim of the reform is to improve the ability of individuals and businesses—particularly, small to medium-sized businesses—to use all their property to raise capital. In these economic times it is becoming increasingly difficult to borrow from banks. This is one issue that is brought to my attention when I speak to small business people. They say that the retail sector is tough at the moment, but the fact that the banks will not lend money to small businesses makes it even harder. This reform is timely, because it will allow small to medium-sized businesses to use all their property to raise capital. I understand that personal property securities reform has been successful in a number of other jurisdictions, including the United States, Canada and New Zealand. In Australia, there are significant limitations on the use of personal property for such things as security due to difficulties and gaps in registering security interests and in the rules for registering those interests, which happen to be different for the commonwealth, the states and the territories, because each has its own personal securities scheme. I do not doubt that the benefits of this legislation will prove to be very fruitful. The consequential bill deals with what will happen to the existing security interests registers. A number of commonwealth, state and territory personal property security registers will close. We have already touched on the migration of what is on those registers to the commonwealth register.

I will just make a quick comment on the Register of Encumbered Vehicles, which I assume comes under the Department of Transport or the Department of Commerce. This legislation will replace the Register of Encumbered Vehicles. The minister might enlighten us on which department it comes under. It will be transferred to the national register. People who contemplate buying a vehicle will be able to search the national register to see whether anyone has registered an actual or prospective security interest in that vehicle. I cannot think of anything worse—well, I can really—than going to buy a car and finding out that money is outstanding on it. We can certainly think of a lot worse things than that, but it is not a nice thing to happen. For example, young people might have worked very hard in a part-time job and used all their disposable income to get their first car only to find that it has money outstanding on it, and the next thing they know they are embroiled in a whole lot of legal actions and so on. It is important that people have confidence that what they are buying does not have money outstanding on it.

I touched on the benefits to small business from this legislation. I will quickly touch on cost. This is not a free service by the commonwealth government. I understand that some costs will be associated with putting personal

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property on that register. I do not know what that fee will be. The minister might be able to provide the house with information on whether a fee has been set. It is interesting; I would have thought that this legislation would have made it compulsory for everybody to register their security interests, but it does not. It is voluntary. The minister might also provide some information to the house on whether that has ever been discussed and why it has not been mandated. Maybe that is just a bridge too far. I do not know. It might be worth having a look at.

This is good uniform legislation. I think there will be a net benefit from the legislation. Over time, I think we will come to accept that some things are better dealt with at a national level. We have the odd argument about state–commonwealth rights. On the one hand we talk about the need to be one nation, and on the other hand people talk about the independence and rights of states and territories. It is important to strike that balance. But efficiencies certainly flow from good legislation that delivers net benefits to a nation as a whole and to the people of that nation. I have to say that I think this legislation will do just that. I am confident in supporting the Personal Property Securities (Commonwealth Laws) Bill 2011 and the Personal Property Securities (Consequential Repeals and Amendments) Bill 2011.

HON PHILIP GARDINER (Agricultural) [12.19 pm]: I rise to offer the Nationals' support for the Personal Property Securities (Commonwealth Laws) Bill 2011 and the Personal Property Securities (Consequential Repeals and Amendments) Bill 2011. At first blush when I saw these bills I thought, "Why do we need to give information on our personal property to the commonwealth?", but as I read a bit deeper I came to the view, as members have already said, especially Hon Ljiljanna Ravlich and Hon Adele Farina, that this is good, sensible legislation.

A personal property security is created when a financier takes an interest in personal property as security for a loan or other obligation. It is not as if we have to register assets in our homes, such as cars, paintings and so on. It is only when a relationship between a borrower and a citizen of Western Australia comes into play that these particular assets are required to be placed on a register. It is easy to see the benefit. A financier would want to know whether an asset is already encumbered by another lender, because, if it is and they do not know about it, that financier is at serious financial risk. This legislation takes approximately 40 different registers of personal property security across the commonwealth, states and territories—that is, property that is in the hands of a financial arrangement with a lender—and brings them into one. In our view this is a sound case in which centralisation and scale reduces the cost of an essential operation without any impingement upon the individual liberties of citizens.

When the Minister for Commerce gives his speech in reply, I would like clarification on the mandatory or non-mandatory element of this legislation. I would have thought that having a mandatory aspect, which I understand is in the state legislation anyway, is almost essential if we are going to ensure that the financial relationship between lender and citizen is transparent and sound. I would like to hear the minister's comment on that.

This legislation, as Hon Ljiljanna Ravlich said, is expected to substantially lessen the cost of maintaining these registers, for which there will already be a cost. I imagine that the costs will lessen if they reflect those changes to which she referred.

As the mobility of people across the nation continues to increase, this legislation is essential in maintaining the transparency and validity of financial relationships. The mobility of people who have the capacity to work in jobs across the country will become increasingly important. We now have a number of a fly in, fly out workers. This legislation is not really going to be relevant to that mobility; rather, it is relevant to people who go and reside in a different location and, in doing so, enter into different financial arrangements, and their assets may be in different states. That is a situation which will become increasingly pervasive in our lives and to which this legislation will no doubt apply.

As other members have said—I mention this only because I have a bit of a question on this—personal property is any form of property other than land and, I think, water licences. It includes tangible goods such as vehicles, crops, artwork, furniture, jewellery and that kind of thing, but also intangible goods such as statutory licences and intellectual property rights. I presume intellectual property rights would include patents. It seems that the statutory licences have been excluded in some instances but not in others. I would like the minister to comment on when there are risks to this state in the event that there is a direct inconsistency between state and commonwealth legislation and when this legislation will prevail. I want to know whether there is any risk in regard to that particular issue and what effect it would have on the citizens of Western Australia.

In conclusion, the Nationals are happy to support this legislation. The work of the Standing Committee on Uniform Legislation and Statutes Review, from the Nationals' point of view, is highly regarded, because it keeps an eye on the danger of Western Australia losing jurisdiction on matters. We appreciate the work of that committee.

Hon Simon O'Brien; Hon Kate Doust; Hon Adele Farina; Hon Liz Behjat; Hon Lynn MacLaren; Hon Ljiljanna Ravlich; Hon Philip Gardiner

HON SIMON O'BRIEN (South Metropolitan — Minister for Commerce) [12.26 pm] — in reply: I would like to thank members for their indications of support for the Personal Property Securities (Commonwealth Laws) Bill 2011 and the Personal Property Securities (Consequential Repeals and Amendments) Bill 2011 and for their personal contributions during the second reading debate. In turn, I propose to address matters and issues that have been raised to the best extent that I can, noting that there will be another opportunity for members to raise issues during the committee stage. However, I am confident that, given the tenor of the debate thus far and given the detail in the amendments in my name on the supplementary notice paper, which have been referred to by a number of members already, we will be able to deal with most matters now during the second reading stage and then approach the committee stage in a way that deals with those matters of substance that have been highlighted, particularly by the committee inquiry, without having to go through each clause, although it is up to members how they want to handle that.

There are two main ways we can look at this legislation. We saw quite different perspectives from different speakers. Firstly, Hon Ljiljanna Ravlich, on behalf of the opposition, looked through the mechanics of the bill, the considerations that may be visited on Western Australians and the general policy of the bill. Hon Adele Farina looked instead at the perspective of commonwealth–state relations and questions of uniform legislation, harmonised systems and state rights. Both those perspectives need to be discussed before we move forward.

I will turn firstly to the questions that arise from the examination of the bill by the Standing Committee on Uniform Legislation and Statutes Review. I think it was a pretty good report. I will put Hon Adele Farina out of her misery now. Even though she did not have all the time she might have liked to look at these bills, I think she found all the deliberate mistakes. She has not overlooked any Henry VIII clauses or anything; she is on the ball. She has found all those mistakes, so she can relax; none has slipped through the net. Indeed, it was the height of optimism for the authors of these bills to think they would get the referral of fixtures and water rights through at a later stage by the model proposed. We will deal with that when we get to the committee stage, and we will fix that. That is the first thing. I thought it was a valuable exercise and a good committee inquiry. It did what a standing committee of this house is meant to do.

I will highlight for members, particularly those who have not had the opportunity to serve on a committee that examines a bill, how this committee has gone about its business. As members know very well, the reason we have committees in this place in particular is to take matters of detail away from a plenary session of the house and deal with them in some other environment so that they do not take up time on the floor of the house. Matters can then be looked at in detail. They can be looked at, if necessary, in secret or with discretion. They can be looked at in a non-partisan, non-hothouse environment, coolly, calmly and dispassionately, with recourse to the requisite advice and other information that of course is not necessarily available to us when we go live here in the Legislative Council chamber. That is what it is all about. That is why we maintain and staff a system of standing committees for those and other purposes. As a house of Parliament it means we not only get the thoroughness that I have alluded to, but also, in an environment that is more conducive, we take it out of the sometimes hothouse political environment of the chamber and get it behind closed doors to have a proper look at these things. In so doing we free up the time of the house to do the sorts of things that are meant to be done in plenary session. As I have already indicated, I think the committee's report was a good report, and I have seen a lot of reports. Committees are often hamstrung a bit by time. Mr Deputy President (Hon Matt Benson-Lidholm) and I have worked on committees together over the years; we have seen them. I know what a good one looks like and the sorts of things it needs to address.

The fifty-ninth report of the Standing Committee on Uniform Legislation and Statutes Review is useful because anyone who has not been involved in a detailed examination can pick the report up and get an overview of what the bill is all about, what the issues are and what the particular items of interest are, because the committee has highlighted those for us. It has even identified issues the house may wish to consider in addressing some of the issues highlighted. Also, by receiving a report, it gives members confidence that someone, or some group of our colleagues, backed up appropriately by staff, has had a good, detailed look at this detailed legislation on behalf of all of us and thereby made sure the bills have received the attention they deserve. It is not possible for any private member to scrutinise all the legislation that comes before this place on their own. For all those reasons we value our committee system and the benefit of an examination of bills like this. Yes, sometimes ministers, bless them, do not want to see their bills held up and sent off to some committee that can ask a whole lot of impertinent questions! Although I have never held that view myself, in government I have a little more receptiveness towards it. Nonetheless, I recognise that it is a very necessary step and a very —

Hon Ed Dermer: It is not uncommon, honourable member, for a minister to complain a lot about how long the committee has taken, but when the committee completes its work the same minister accepts all the amendments suggested by the committee.

Hon Simon O'Brien; Hon Kate Doust; Hon Adele Farina; Hon Liz Behjat; Hon Lynn MacLaren; Hon Ljiljanna Ravlich; Hon Philip Gardiner

Hon SIMON O'BRIEN: It just shows we all get over things, Hon Ed Dermer! Members have not heard me complain about this committee, I do not think—not in public anyway! Members have not heard me complain in public.

Hon Sue Ellery: Perhaps not today.

Hon SIMON O'BRIEN: Perhaps not today.

The fact is there are procedures in place, which have been put in place over a long period and which are based on experience, designed to produce the outcomes we need. Even though they may be inconvenient in the short term, they give us the result we need. In the same way there are reasons that we do not adopt a committee report on the same day the Committee of the Whole concludes its examination of a bill if that bill has been amended—so we can make sure the amendment act will work and we then third read the bill on a subsequent sitting day—there are reasons we refer bills to committee. There are reasons we put in time scales, and generally the system works pretty well. On this occasion I think that members can take some relaxed comfort from knowing that we have had a bipartisan committee examine this from the point of view of the terms of reference of the uniform legislation committee. I will come back to those particular points in a moment.

The other question that looms large here is a question of policy. There is no disagreement that we need personal property registers. I do not think that is held up as a problem here. That is not the issue that we have to deal with. Indeed, we have plenty of personal property registers—there are about 70 nationally, as I understand it, that could be involved in the areas of activities we are talking about, although only about 25, to answer Hon Ljiljanna Ravlich's question, will be rolled into the national register as envisaged. No, the single point of policy that is most attractive of attention here is the question of referral of power. The committee referred to this, and members of course are now considering this in their contemplation of these bills and whether they be agreed with.

The Constitution of Australia provides for certain matters to be within the power of the commonwealth. It also provides that certain residual powers that reside with the states may be referred by the states to the commonwealth for the commonwealth to administer and take sovereignty over. This happens from time to time. We have seen any number of these over the years. This is another case of a referral of power. We do not need to be scared about that. A referral of power occurs, or is meant to occur, when the states and the commonwealth look at a particular issue and decide, "Hang on; this is most convenient for all of us if it is dealt with by the commonwealth under its legislation and its administration." That is why we federated in the first place, because there are certain matters best dealt with at a federated level rather than by individual states.

There seems to be general agreement that the registering of personal property securities is such an area of activity. We have already heard from Hon Ljiljanna Ravlich some of the history of how this particular chain has brought us to the position we are now in. It is the government's view, and I think it is the general view amongst the house, that this is a suitable matter to be referred, but of course we want to make sure we get a deal that advances Western Australian interests rather than detracts from them. Certainly we do not want something that reduces the level of service and convenience currently available to us to some other lower common denominator simply for the sake of, and in the name of, harmonisation. I believe that the PPS bills before us will in fact deliver the outcomes we would like.

I turn now to some of the specifics that have been raised. Hon Ljiljanna Ravlich asked a series of questions, including about closing the registers. As the member is probably aware, not all registers that contain information about personal property securities will be closed as a result of these reforms. The registers that will continue to operate are generally those that contain additional information. For example, we want to keep the information contained in the WA fishing register about security interests for fishing licences and other licensing information and details that are useful for the fishing industry. It was determined that this information should continue to be made available in one place and not be split over two registers, because we have to retain it. There is no point having it on two separate registers. I have already indicated that approximately 25 registers across Australia will be migrated to the personal property securities register.

Hon Ljiljanna Ravlich also canvassed and asked me to comment on the sorts of things that are excluded from the definition of "personal property securities". The act contains exclusions for a number of things. For example, a range of state statutory licences are not to be dealt with as personal property securities. Those sorts of licences could include, for example, fishing licences, mining lines, liquor licences and, I suppose, a driver's licence because that is another statutory licence. They are not intended to be part of the central national register. The reason for that is that they have a regulatory function. It was never, nor will it ever be, conceived that these licences would be used as collateral for a loan; they are not transferable in title to someone else. A person's driver's licence or fishing licence is for that person's use and cannot be traded to someone else.

Hon Simon O'Brien; Hon Kate Doust; Hon Adele Farina; Hon Liz Behjat; Hon Lynn MacLaren; Hon Ljiljanna Ravlich; Hon Philip Gardiner

Hon Ljiljanna Ravlich: Couldn't you sell a fishing licence previously, and can't someone sell a taxi licence plate?

Hon SIMON O'BRIEN: There is provision in the legislation to deal further with this matter, and I think my next point will answer the member's question. Hon Phil Gardiner concluded his speech on this matter. I refer to protections for the state about future changes. As it happens, it was very convenient to raise this issue now because I was going to comment on it anyway. The state is proposing to refer this power. Although it is, in part, a conditional referral, it is nonetheless a referral of power. We are saying that we will give up our jurisdiction and that in the future it will be up to the commonwealth to exercise the functions and powers that we are referring. However, that is not completely unfettered. The tenor of Hon Phil Gardiner's point—if I have understood it correctly—is that we might agree to this today but what will happen if the commonwealth wants to move the goalposts in the future? The bills we are dealing with deal specifically with how the commonwealth may change matters that are referred. In particular, the bills provide that an enduring power will reside with the state. That power cannot be overridden by the commonwealth declaring that any of its statutory licences may not be considered as a personal property security. Explicitly, the commonwealth cannot turn around in the future and declare that it is. That is in the legislation in black and white. I believe that deals with the matter raised by Hon Phil Gardiner and Hon Ljiljanna Ravlich.

Work has gone on behind the scenes into the schedule of the migration of the registers, particularly with the publicly available information. It is not up to our agencies to pre-empt how Parliament deals with this referral of power. It is a very serious matter and it is not done and dusted. This house has not dealt with it and it must go to the other place. Nonetheless, the agencies can get work done on this in the meantime and that is happening right now. There is a program for it and it is on schedule. We want to finish dealing with this and be ready to go by 31 October this year. We are cutting the implementation of this referral of power a bit fine.

I should point out that as part of the construction of this bill—this is contained in a couple of amendments I have on the supplementary notice paper—there are two models for the referral of power in a broad sense. The first is that the state can pass legislation that says it refers such and such a power to the commonwealth. The second is that the commonwealth can legislate and the states, by their own legislation, adopt the commonwealth legislation. That is often referred to as adoption and referral. We have gone the way of adoption and referral on this occasion. I will not go into the relative merits of that, but when that happens, we must adopt the commonwealth legislation—as we are doing by adopting the bills before us—when that legislation is up to date, as these bills are. The trouble is that in the course of this process and after we had drafted our legislation, the commonwealth amended its legislation after having already passed it. That is why there are amendments on the notice paper. We now have to amend our bills to ensure that we adopt the whole of the up-to-date legislation. The reason that we are doing it today and are getting close to the 31 October deadline is that we knew these changes were being made by the commonwealth Parliament and that we would have to wait and see what the final outcome was before we could proceed with these bills. That explains the delay.

Hon Ljiljanna Ravlich asked about the Register of Encumbered Vehicles. That register is held by the Department of Commerce and will be transferred to the national register. It is a convenient source of information for potential car buyers, be they from Western Australia or interstate. The fees to register will be in the province of the commonwealth. A draft schedule of fees, which I do not have to hand, has been released. It can be sourced out of session if Hon Ljiljanna Ravlich would like to see it; I would be more than happy to facilitate that. I understand that the existing fees between Western Australia and the other states are much of a muchness—some are more and some are less—but that a lot of them will be significantly cheaper under the national system because much of the access to the new system will be done online. Apparently the fees for those who pay online are significantly cheaper.

We are not mandating the registering of personal property securities because we do not think it is necessary. That has not been done up to now because it is obviously in the interests of the financial institutions to register and to advertise to people that the property, whatever it might be, is encumbered and that others need to be aware of that. The difference is that where now there are about 25 different registers all over the country that could need to be checked by someone seeking to establish those sorts of encumbrances, through this referral of power, there will in future be a single point. We think that is worthwhile. It is a good development for a federation, and it is in the interests of Western Australia so to do.

I gave a brief ministerial statement on Tuesday last week in response to the issues raised in the committee report. That has already been canvassed a couple of times today in addition to what I outlined on Tuesday last week, so I do not intend to restate that except to say we have accepted the committee's concerns and we have acted accordingly. I hope, therefore, that the house can accept those amendments as they are written, as well as the proposition that we read these bills a second time.

Extract from *Hansard*
[COUNCIL — Thursday, 18 August 2011]
p6099d-6109a

Hon Simon O'Brien; Hon Kate Doust; Hon Adele Farina; Hon Liz Behjat; Hon Lynn MacLaren; Hon Ljiljana Ravlich; Hon Philip Gardiner

Questions put and passed.

Bills read a second time.