

PERSONAL PROPERTY SECURITIES (COMMONWEALTH LAWS) BILL 2011

Introduction and First Reading

Bill introduced, on motion by **Hon Simon O'Brien (Minister for Commerce)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

HON SIMON O'BRIEN (South Metropolitan — Minister for Commerce) [7.44 pm]: I move —

That the bill be now read a second time.

The Personal Property Securities (Commonwealth Laws) Bill 2011 seeks to adopt the text of the commonwealth Personal Property Securities Act 2009 and refer to the commonwealth Parliament the power to amend that law pursuant to section 51(xxxvii) of the commonwealth Constitution. This bill is one of two bills being introduced to implement the Council of Australian Governments' personal property securities reforms in Western Australia. The second bill is the Personal Property Securities (Consequential Repeals and Amendments) Bill 2011, which I will refer to separately. These bills will give effect to the intergovernmental agreement endorsed by the Council of Australian Governments on 2 October 2008 to establish a single national legislative scheme for the regulation and registration of security interests in personal property. Currently, over 70 commonwealth, state and territory acts regulate interests in personal property. There is considerable overlap between jurisdictions, which places a burden on businesses and other users who deal with multiple systems, each with different rules and requirements. The personal property securities reforms have seen the introduction of a national law, the commonwealth Personal Property Securities Act 2009, which will create a uniform and functional approach to personal property securities. The introduction of the new personal property securities regulatory regime will provide greater certainty for both lenders and borrowers. It will lower the risk for lenders, improve the efficiency of financing against personal property, and increase competition among providers of finance. It is expected that the reforms will increase the availability and lower the cost of finance for people and businesses wanting to use personal property as security, in particular small and medium-sized businesses.

Background to personal property securities reform: In March 2008, COAG agreed to a broad regulatory reform agenda that included personal property securities reform. An intergovernmental agreement for the national personal property securities reforms was signed at the COAG meeting in October 2008.

The legislative scheme: The commonwealth Personal Property Securities Act 2009, which was passed in November 2009, established the Personal Property Securities Register and sets out a system that will apply to the creation, priority and enforcement of security interests in personal property when the register commences operation. Personal property is any form of property other than land. It includes tangible goods such as cars, machinery, crops and artwork, and intangible property such as statutory licences and intellectual property rights. A personal property security is created when a financier takes an interest in personal property as security for a loan or other obligation. The commonwealth act will not apply to land or land titles. At the insistence of the states, fixtures on land and water rights have also been excluded from the scope of the commonwealth act, at least for the time being. The Western Australian Personal Property Securities (Commonwealth Laws) Bill 2011 contains provisions that refer to the commonwealth government the power to legislate in respect of fixtures and water rights. However, there is currently no intention to proclaim these sections of the bill.

Commonwealth Constitution: The commonwealth Constitution enables the commonwealth Parliament to exercise a legislative power referred to it by a state Parliament. The Constitution also allows a state Parliament to adopt commonwealth legislation that has been enacted by relying on a power referred by another state Parliament. In both cases of referral and adoption, the law that ultimately applies in the state is commonwealth law. The commonwealth Parliament does not have sufficient legislative authority under the commonwealth Constitution to completely regulate the creation and enforcement of personal property securities. New South Wales enacted referral legislation when it passed the Personal Property Securities (Commonwealth Powers) Bill 2009 in June 2009. This referral of power enabled the commonwealth to enact the Personal Property Securities Act 2009. Referral legislation was subsequently enacted by Queensland, Victoria and South Australia prior to the passage of the commonwealth act. As Western Australia and Tasmania did not refer power before the commonwealth act was passed, some doubt was raised as to whether a referral was still possible. It was subsequently agreed by Western Australia, Tasmania and the commonwealth that instead of referring power, a legally cautious approach would be to adopt the text of the commonwealth act. The Western Australian government has previously used the adoption method of referral when enacting the Credit (Commonwealth Powers) Act 2010.

This bill provides for the adoption of the text of the commonwealth Personal Property Securities Act 2009 and a referral of power to the commonwealth Parliament to amend that act. The referred power is narrow and limited.

The bill also provides for the Western Australian government to revoke the adoption and referral of power should that prove warranted. The bill includes a regulation-making power that will allow matters to be excluded from the operation of the commonwealth act or specified provisions of that act. The commonwealth is planning to amend its act early this year to clarify issues and address concerns raised by stakeholders in submissions to the Senate Standing Committees on Legal and Constitutional Affairs. Subject to the timing of the passage of the commonwealth's amendment legislation, this bill may need to be amended to reflect the latest version of the commonwealth act. There is a need for the bills to be passed early in 2011 to ensure that the Western Australian government and external stakeholders have sufficient time to prepare for the introduction of the new regime. The personal property securities reforms will lead to more competition within the finance industry and also ensure that consumers throughout Australia have the same rights and benefits when dealing with personal property that is subject to finance. For the information of members, I also table an explanatory memorandum.

Leave granted. [See paper 2961.]

Debate adjourned and bill referred to the Standing Committee on Uniform Legislation and Statutes Review, pursuant to standing orders.