

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [5.38 p.m.], on behalf of the Hon. John Hatzistergos: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The New South Wales Personal Property Securities (Commonwealth Powers) Bill 2009 and the Commonwealth Personal Property Securities Bill 2009 are the product of several years of work undertaken by the governments of Australia to reform the law of personal property securities.

The Bills have been developed in consultation with all Australian jurisdictions.

The Personal Property Securities (Commonwealth Powers) Bill 2009 provides for the referral of power to the Commonwealth Parliament to establish a single national legislative scheme for the regulation and registration of security interests in personal property.

The reforms proposed by the Personal Property Securities Bill - the PPS Bill, are landmark. In a broad sense they are part of the package of reforms approved by the Council of Australian Governments (COAG) aimed at moving towards a seamless national economy through the reform of business and other regulation. The reforms will make it easier for businesses to operate across State and Territory borders.

More particularly, the reforms proposed by the PPS Bill will make life simpler for businesses and consumers. They will establish national comprehensive rules governing security interests in personal property. Central to the reforms will be a clear set of rules relating to security interests in personal property and for ordering priorities between competing secured interests in personal property, and the creation of a single national personal property securities register.

For those Members who are not familiar with this area of the law, I offer a brief background and outline of the PPS reforms.

The Standing Committee of Attorneys General first considered the concept of reform of the law relating to personal property securities in 1992, following the publication of an interim report by the Australian Law Reform Commission.

However, concerns raised by the finance and legal sectors resulted in no further action being taken. This position changed following the 2004 publication of a favourable report on the New Zealand personal property securities legislation, which had been passed five years earlier.

In early 2005, SCAG Ministers agreed to establish an officers' working group to examine reforms in this area. A great deal of work has subsequently been undertaken in examining existing PPS schemes in overseas jurisdictions and in consulting stakeholders.

The streamlining of Australia's personal property securities system follows similar reforms in the United States, Canada and New Zealand.

In April 2007 COAG gave their in principle support for the establishment of a national system for the registration of personal property securities supported by a referral of legislative power by the States to the Commonwealth.

In its communiqué of 3 July 2008 COAG acknowledged that Australia's overlapping and inconsistent regulations impede productivity growth.

The key objective of the reforms is to remove the uncertainty arising from the vast amount of Commonwealth, State and Territory legislation and its uneasy interaction with the common law and equitable legal principles governing personal property securities.

A personal property security is created when a financier takes an interest in personal property as security for a loan or other obligation, or enters into a transaction that involves the provision of secured finance.

Personal property is any form of property that is not land or buildings. It includes tangible property such as motor vehicles, machinery, office furniture, currency, artworks and stock-in-trade. It covers crops and livestock, and extends to accessions (like an engine that is affixed to a boat) and commingled goods (such as steel rods transformed into machinery). It also includes intangible property such as contract rights, uncertificated shares and intellectual property rights, for example, trademarks and patents.

Many Australians are affected by personal property security laws:

as buyers of property that is subject to an encumbrance

as consumers or business borrowers who might, for example, borrow money to buy a new car or equipment to expand their businesses

as investors who might be contemplating buying into a business whose assets are heavily geared or owned by others

or as financiers who provide the funds to facilitate such activities

The Commonwealth PPS Bill takes a functional approach to personal property securities by applying the same rules to all security interests in personal property regardless of the form of the transaction, who the grantor of the interest is, or the jurisdiction in which the transaction takes place. The PPS Bill also sets out:

clear priority rules for all security interests in personal property

a streamlined enforcement regime

protections for businesses and consumers purchasing and dealing with personal property

The Bill will create a PPS regime that will benefit individuals, consumers and businesses by delivering more certain, consistent, less complex, and cheaper arrangements for securing loans with personal property.

A single national PPS Register will replace numerous registers currently operated by the Commonwealth, States and Territories. The PPS Register will be a publicly accessible, electronic record of personal property securities and will be updated and searchable in 'real time'.

A report on the general costs and benefits of PPS reform prepared by Access Economics identified the key benefits as being lower costs for lenders and borrowers, greater access to lending and improved certainty.

The main cause of high costs under the present system is the existence of multiple regimes and, more specifically, multiple registers. Lenders are subjected to the high cost of having to search multiple registers to check whether pledged property is already subject to a claim. Having one universal register will reduce costs as lenders will only have to pay one access fee for the information required, and may be able to reduce staff costs as the search and verification process will be less time consuming under the reforms.

Debtors will also benefit from lower costs, as lenders cost savings will be passed on. This could occur by way of lower fees or lower interest rates.

Reform to current PPS regulation will result in greater access to lending. Aside from reduced costs, the proposed reforms should encourage lenders to grant loans on the basis of a security interest in personal property.

At present, the scales are tipped in favour of real property, meaning that businesses without holdings of real property are at a disadvantage when seeking debt financing.

This imbalance is not reflective of the changing economic environment, in which "non-traditional" personal properties, such as intellectual property, are increasing in value relative to real property.

Greater access to lending will also have the flow-on effect of better borrower screening. Aside from increasing the pool of potential borrowers, lenders will get a more complete and accurate picture of a borrower's real worth and capacity to repay. By expanding the types of property that can practically be used to secure debt, there is greater scope for "good" lenders to signal their credit worthiness, reducing lenders' risk.

The PPS Bill was developed in consultation with the PPS Review Consultative Group, which included the Australian Consumers Association, nominees of the Ministerial Council on Consumer Affairs and the Standing Committee of Attorneys General, the Law Council of Australia and relevant industry bodies including the Motor Traders Association of Australia and the Australian Bankers Association.

The reforms provided for by the PPS Bill represent a significant change in the way personal property securities are regulated in this country.

I now turn to the referral legislation.

In accordance with existing practice, the Commonwealth cannot introduce legislation, which relies on a referral from a State Parliament, until at least one State has enacted and commenced referral legislation.

New South Wales has agreed to take the lead in introducing the legislation. This will enable the Commonwealth Government to introduce the Personal Property Securities Bill 2009 into the Commonwealth Parliament later this year.

I note that the referral legislation is underpinned by and reflects the provisions contained in an Intergovernmental

Agreement.

The referral legislation provides that statutory licenses created under State and Territory legislation that are transferable will in principle be personal property security for the purposes of the PPS legislation. However, where State legislation expressly excludes a licence, right, entitlement or authority from the application of the PPS legislation, the State legislation will prevail.

There may be sound public policy reasons for preventing any form of security interest being registered against a statutory licence or other entitlement. In the coming months the Government will be introducing consequential amendments to various pieces of State legislation to clarify which transferable licenses and entitlements created under New South Wales statutes will be exempted from the national PPS regulatory scheme.

Nevertheless, the referral Bill does specifically identify that both water rights and fixtures are excluded from the PPS Bill.

To ensure an efficient trade in water the New South Wales Government established the Water Access Licence Register. The Register holds a separate record for each water access licence issued. Security interests are only one small part of the information contained on the Register, but they are integral to it. Under the proposed National Water Market System, each jurisdiction will maintain its own register.

The water sub-group of the COAG Working Group on Climate Change and Water has agreed that security interests in water rights should be excluded from the PPS Register. This will avoid inconsistencies between the Water Access Licence Register and the proposed national PPS Register.

Private sector stakeholders have shown strong interest in the PPS Act applying to fixtures. However, their inclusion would have significant potential to impact on the operation of the State Torrens Register and the integrity and indefeasibility of the Torrens title system.

The Standing Committee of Attorneys General has agreed to further work being undertaken and to a review of the current law and the future treatment of fixtures as personal property for the purposes of the PPS Bill.

Should New South Wales consider it appropriate to include water rights or fixtures in the PPS scheme at a later stage, the referral legislation includes separate commencement provisions in relation to these matters.

Lastly, the referral legislation does not refer power regarding State laws that provide for the confiscation, seizure, extinguishment or other forfeiture of property or interests in property, in connection with the enforcement of State laws. Examples include property confiscated the Confiscation of Proceeds of Crime Act 1989 or the Criminal Assets Recovery Act 1990.

I am sure that Honourable members will appreciate the importance of the passage of the referral legislation - it will give certainty to both business and government agencies alike.

Business is supportive of the proposed reforms to personal property securities and will need to revise business practices before the commencement of the scheme in 2010.

Similarly, Government agencies, particularly those involved in the transfer of data to the proposed PPS Register, will need to take the necessary steps to facilitate the transfer of data and inform stakeholders about the proposed changes.

I am pleased that the New South Wales Government is taking the initiative in introducing this legislation.

It will facilitate the introduction of new arrangements that will apply consistently throughout Australia and make it easier for businesses to operate across State and Territory borders. The reforms should promote more certain and consistent outcomes; and have the potential to stimulate growth in areas currently squeezed out of lending by the current system.

This has obvious benefits both in the current economic climate and for the future of the Australian economy.

The passage of the referral legislation is a major step in bringing these important changes to fruition.

I commend the Bill to the House.