

## Agreement in Principle

**Mr BARRY COLLIER** (Miranda—Parliamentary Secretary) [8.03 p.m.]: I move:

That this bill be now agreed to in principle.

Over the last few years the Commonwealth, State and Territory governments have been working cooperatively to reform the law relating to personal property securities [PPS]. The new scheme will establish a clear set of rules for security interests in personal property and for ordering priorities between competing security interests in personal property, and will establish a single national PPS register. The bill before the House is the third bill to be introduced into the New South Wales Parliament proposing legislative initiatives relating to personal property securities. In 2009 the New South Wales Parliament passed two pieces of legislation relating to personal property securities.

The first of these, the Personal Property Securities (Commonwealth Powers) Act 2009, was passed in June and referred power to the Commonwealth to implement a national scheme for the registration of personal property securities. The passage of the referral legislation by New South Wales, the first State to do so, enabled the Commonwealth to introduce the Personal Property Securities Bill 2009. The Commonwealth Parliament passed this legislation in November 2009. The second New South Wales bill, the Personal Property Securities (Commonwealth Powers) Amendment Bill 2009, was passed in December 2009. That bill provided for the repeal of the Registration of Interests in Goods Act 1986 and the Security Interests in Goods Act 2005, and the transfer of functions and information to the Commonwealth Government as part of the establishment of the national PPS scheme.

The passage of those amendments provided certainty regarding the transfer of data currently held on the Register of Encumbered Vehicles and on the Security Interest in Goods Register to the Commonwealth Personal Property Securities Register, prior to the commencement of the scheme in May 2011. The bill being considered by the House tonight provides for consequential amendments to various other New South Wales Acts as part of the PPS implementation process. The Commonwealth Parliament passed amendments to the Personal Property Securities (Commonwealth Powers) Act 2009 in late 2009 and passed further amending legislation last week to provide for consequential amendments to the Corporations Law and other Commonwealth legislation. As members would appreciate, the PPS legislation is complex and impacts on many areas of State and Commonwealth law.

The interaction of State and Territory laws with the Personal Property Securities (Commonwealth Powers) Act was considered in the development of the Commonwealth legislation. Sections 254 and 258 of the Personal Property Securities (Commonwealth Powers) Act provide that, to the extent possible, State and Territory laws may operate concurrently with the Personal Property Securities (Commonwealth Powers) Act. Read together, these sections provide that State laws will not be excluded or limited by the Personal Property Securities (Commonwealth Powers) Act to the extent that they provide for matters, such as the creation, or transfer, disposal or forfeiture, of statutory rights, entitlements or authorities granted by or under State law; the kinds of persons who may hold interests in a licence or other statutory authority granted by or under State law; the forfeiture of personal property or interests therein, in connection with the enforcement of the general law or State law; the transfer of property or interests in property by operation of State law.

The amendments in the bill before the House are designed to clarify the interaction of State law with the Personal Property Securities (Commonwealth Powers) Act in respect of these and other matters. I will now turn to the amendments proposed by the bill in further detail. Personal property covers a range of tangible and intangible property, such as a security interest in a licence and other statutory authorities. The expression "licence" is defined in the Personal Property Securities (Commonwealth Powers) Act as a right, entitlement or authority to deal with personal property, provide services, or explore for, or exploit resources—provided such right, entitlement or authority is transferable by the licensee. As previously outlined, the Personal Property Securities (Commonwealth Powers) Act does not apply to a particular right, licence or authority, a statutory right, granted by or under a law of the Commonwealth, a State or a Territory, if a provision of that law declares that kind of statutory right not to be personal property for the purposes of the Personal Property Securities (Commonwealth Powers) Act.

This bill provides that a number of licences and authorities established under New South Wales legislation are not personal property for the purposes of the national PPS scheme. There are sound reasons for excluding some licences from the scheme. For example, the Fisheries Management Act 1994 is currently undergoing significant reforms. The commercial fishing industry is being consulted on these reforms and other reforms, which relate to reporting and online trading. A discussion paper will be released for public consultation later this year. A report is due to be provided to Parliament on the outcomes of the statutory review in November this year. It is considered preferable that this process of reform be completed and consultation on the application of the PPS legislation to the fisheries legislation be considered during the statutory review of the Act.

In this context I am advised that the Minister for Primary Industries also proposes retaining the power to register security interests in the Share Management Fisheries Register as a permanent arrangement. The current scheme provides a one-stop shop for all parties having any interest in shares so there are benefits for the industry and financiers in retaining those efficiencies. This impacts also on the relevance of personal property security laws to statutory rights created under the fisheries legislation. Accordingly, licences and authorities under the Fisheries Management Act 1994 are being excluded from the PPS regimes at this stage. In the case of mining and petroleum licences under the Mining Act 1991 and Petroleum (Onshore) Act 1991, there are sound reasons for not transferring interests to the personal property securities register. There is already an industry specific scheme in place in relation to the regulation of financial interests in the particular industry licences.

Consequently, there would be limited efficiencies in transferring the registration of security interests in the licences to the Personal Property Securities Register, as financiers and industry stakeholders would still need to consult the New South Wales registers when undertaking transactions. Registration on the Personal Property Securities Register would duplicate this process. To maintain consistency with other licences in the minerals and energy portfolio, it is also proposed to amend the Mining Act 1992 to provide for the registration of security interests in mineral claims and opal prospecting licences on State registers.

This will ensure consistency in the treatment of licences issued under the legislation and will also mean that these licences will be excluded from the personal property securities regime. In relation to priorities for statutory interests, section 73 of the Commonwealth Personal Property Securities Act allows State law to determine the priority between security interests in personal property to which that Act applies and interests in the property created under a law of the State. To ensure that certain priorities continue to be determined by State law, the proposed bill amends the Building and Construction Industry Security of Payment Act 1999, Confiscation of Proceeds of Crime Act 1989, Criminal Assets Recovery Act 1990 and Warehousemen's Liens Act 1935.

In relation to the disposal of goods and the forfeiture of seized and confiscated property, the bill also amends the New South Wales Personal Property Securities (Commonwealth Powers) Act 2009 to make further savings and transitional provisions consequent on the Commonwealth Act. This includes amendments to ensure the continued efficacy of certain State laws relating to the disposal of abandoned, uncollected or impounded goods, the seizure and forfeiture of criminal assets and proceeds, and restrictions on dealings involving property. The amendments provide that a person may not take action to enforce a personal property securities interest if that would be inconsistent with specified relevant State property laws. The proposed bill also removes or updates references in various New South Wales Acts to the Registration of Interests in Goods Act 1986 and the Security Interests in Goods Act 2005, both of which are being repealed on the commencement of the Personal Property Securities Act.

Amendments are also being made to the Workers Compensation Act 1987 to ensure that compensation under the Act is not treated as being personal property for the purposes of the Personal Property Securities Act. A security interest in workers compensation cannot be taken, as section 235 of the New South Wales Workplace Injury Management and Workers Compensation Act 1998 provides that workers compensation is not capable of being assigned, charged or attached and does not pass to any other person by operation of law. The proposed amendment confirms that the Personal Property Securities Act does not apply to workers compensation in New South Wales. The bill also amends the Workers Compensation Act 1987 to prevent another person from enforcing an interest in certain deposits and assets in priority over the WorkCover Authority's or Nominal Defendant's interest.

The Personal Property Securities Legislation Amendment Bill 2010 implements the final amendments in a series of amendments designed to facilitate the implementation of the national personal property securities law and the Personal Property Securities Register of securities. The arrangements that will take effect under the national scheme will benefit both business and consumers by delivering more certain, consistent, less complex and cheaper arrangements in relation to personal property securities. They will promote lower transaction and compliance costs for all parties involved in personal property securities transactions, and encourage more diverse financing options. I commend the bill to the House.

**Mr GREG SMITH** (Epping) [8.14 p.m.]: The Personal Property Securities Legislation Amendment Bill 2010 is the third bill relating to personal property securities that has come before this House in the past two years. The first bill has been described as a referral bill and the second as a mechanical bill. This bill is also described as a mechanical bill. The purposes of this bill are to exclude certain licences granted under the New South Wales legislation from the personal property securities scheme; to preserve the operation of the New South Wales forfeiture, seized and confiscated property and abandoned goods legislation, and legislation creating statutory liens; and to make other minor consequential amendments to New South Wales legislation.

Among other things, the bill is to declare certain State statutory rights not to be personal property for the purposes of the Personal Property Securities Act 2009 of the Commonwealth—known as the Commonwealth Act; to displace priority rules set out in the Commonwealth Act in favour of rules set out in State law in relation to the determination of priorities between certain State statutory interests and security interests to which the Commonwealth Act applies; to remove or update references to the Registration of Interests in Goods Act 1986 and the Security Interests in Goods Act 2005, which are both to be repealed following the commencement of the Commonwealth Act; and to amend the

Personal Property Securities (Commonwealth Powers) Act 2009 to make further provision for savings and transitional matters consequent on the enactment of the Commonwealth Act, including enacting provisions to ensure the continued efficacy of certain State laws that make provision in relation to abandoned, uncollected or impounded goods, criminal assets and proceeds, and certain other restricted dealings involving property.

The Government advises that the bill is urgent because of a Council of Australian Governments agreement about implementing a whole range of reforms by 1 July 2010. Who is responsible for this urgency? Did the Council of Australian Governments only get its act together recently? Or was the State Government a bit slow? Who knows! We are not told. Certain milestone payments are payable by the Commonwealth contingent upon achieving certain goals—that sounds interesting. We are told that the introduction of this bill has been a long process. It has not been a long process for the Coalition. This bill was given to us only late this afternoon, allowing us virtually no time to properly consider its true ramifications. Once again we are being asked by this Government to accept a bill on trust.

This bill affects a number of Acts. We have not had the time to consult with the relevant special interest groups and shadow Ministers about each and every amendment contained in this bill. However, on the other hand, we do not want to give the Commonwealth an opportunity to financially punish New South Wales because of the incompetence of the Keneally Government. Accordingly, we will not oppose this bill, but I emphasise that we do so with the greatest reluctance having been forced into a corner by the disgraceful failure of this Government to provide us with appropriate time to properly consider this bill.