

## Second Reading

**The Hon. PENNY SHARPE** (Parliamentary Secretary) [3.19 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 my second reading speech incorporated in *Hansard*.

### Leave granted.

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 it 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 today 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 Commonwealth PPS Act in late 2009 and passed further amending legislation last week to provide for consequential amendments to the Corporations Law and other Commonwealth legislation.

As honourable members will appreciate, the PPS legislation is complex and impacts many areas of State and Commonwealth law.

The interaction of State and Territory laws with the PPS Act was considered in the development of the Commonwealth legislation.

Sections 254 and 258 of the PPS Act provide that, to the extent possible, State and Territory laws may operate concurrently with the PPS Act.

Read together, these sections provide that State laws will not be excluded or limited by the PPS 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 PPS Act in respect of these and other matters.

I will now turn to the amendments proposed by the bill in further detail.

#### LicencesLicences

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 Commonwealth PPS 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 Commonwealth PPS 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 PPS 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 also 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 also impacts 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 PPS Register, as financiers and industry stakeholders would still need to consult the New South Wales registers when undertaking transactions. Registration on the PPS 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 PPS regime.

#### Priorities for statutory interestsPriorities for statutory interests

Section 73 of the Commonwealth PPS 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

#### Warehousemen's Liens Act 1935.

Disposal of goods and the forfeiture of seized and confiscated property  
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 PPS security interest if that would be inconsistent with specified relevant State property laws.

#### Miscellaneous

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, which are both being repealed on the commencement of the PPS 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 PPS 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 PPS Act does not apply to workers compensation in New South Wales.

The proposed 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 (Commonwealth Powers) Amendment Bill 2010 implements the final amendments in a series of amendments designed to facilitate the implementation of the national PPS law and PPS 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 applying 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.