



Speech by

Hon. Peter Lawlor

MEMBER FOR SOUTHPORT

Hansard Tuesday, 1 September 2009

PERSONAL PROPERTY SECURITIES (COMMONWEALTH POWERS) BILL

Hon. PJ LAWLOR (Southport—ALP) (Minister for Tourism and Fair Trading) (12.31 pm): I move—
That the bill be now read a second time.

The Personal Property Securities (Commonwealth Powers) Bill 2009, which I shall refer to as the referral bill, provides for the referral of power to the Commonwealth parliament to make laws for the regulation of personal property securities. This will enable the Commonwealth to establish a single national register of security interests in personal property and a single national law for the regulation of security interests in personal property.

A personal property security is created when a person or entity, generally a financier, takes an interest in property, other than land, as security for a loan or other obligation. Examples of this sort of secured finance are loans secured against motor vehicles, equipment or trading stock. It also includes liens on crops, lease arrangements and the factoring of book debts. The reason for taking a security interest over personal property is that the property can be seized or sold by the secured party if the owner of the property defaults on their loan or other obligation.

Australia, as a federation of Commonwealth, state and territory jurisdictions, has developed laws governing some areas that are duplicated across jurisdictions. Sometimes this duplication is not quite mirrored from state to state. There are currently more than 40 registers nationally that record secured interests in personal property and over 70 pieces of legislation regulating personal property securities nationally. In Queensland, we have the Register of Encumbered Vehicles, which is commonly known as REVS, the Bills of Sale Register and the Register of Cooperative Charges. Similar registers are held by other jurisdictions. The effect of the current complex system of laws is that the process for registration of security interests in personal property, the priority afforded to competing interests and the enforcement of those interests is dependent upon the type of property secured, the legal personality of the borrower, the jurisdiction in which the property is situated and the financial transaction entered into.

The existence of multiple registers and regulatory regimes results in higher transaction costs for financiers, which can be passed on to consumers seeking finance, including individuals and businesses. This is because a financier may have to search a number of different registers across jurisdictions to assess the suitability of the party seeking to secure finance and the existence of other secured interests over the property that would be subject to the financial transaction. Also, in some cases a security interest must be registered in more than one jurisdiction and on multiple registers to be fully effective. Financiers also incur costs involved in ensuring compliance with the various laws and different registration and enforcement regimes. Also, some registers operate on paper based systems and lack the capacity for electronic lodgement. This can leave the security interest vulnerable during the delay between execution of the finance transaction and registration, and impose higher administrative costs on the parties.

Reforms to the law of personal property securities, which I will refer to from now on as PPS, have been driven by the Council of Australian Governments, or COAG, as part of a package of business and

regulatory reforms aimed at delivering a seamless national economy. In April 2007, COAG gave the Standing Committee of Attorneys-General in-principle support for the establishment of a national PPS system. An intergovernmental agreement was subsequently signed by all states, territories and the Commonwealth to progress the reforms. The development of the reforms has involved examining the success of similar reforms overseas, such as in Canada, the United States and New Zealand. The legislation has been drafted to take advantage of the best of international laws and to account for unique Australian circumstances.

The Commonwealth Personal Property Securities Bill 2009, the Commonwealth PPS Bill, has been drafted in consultation with a consultative group comprised of nominees from the Standing Committee of Attorneys-General and the Ministerial Council on Consumer Affairs, the Law Council of Australia, the Australian Consumers Association, academics and industry representatives, including from the Australian Bankers Association and the Motor Trades Association of Australia. Equally, every Australian jurisdiction has had considerable input and scrutinised each draft of the Commonwealth PPS Bill as it was developed.

The draft Commonwealth PPS Bill was referred to the Senate Standing Committee on Legal and Constitutional Affairs for a public inquiry and the Commonwealth took steps to address concerns raised by the committee. The Australian government introduced the Commonwealth PPS Bill into the federal parliament on 24 June 2009, and it has been referred back to the Senate committee for further examination.

The Commonwealth PPS Bill will establish a single national law governing PPS and a single national electronic register for all personal property security interests—the Personal Property Securities Register or PPS Register. The PPS Register will be a real-time, online noticeboard of personal property over which there is a security interest. Interests will be able to be registered on the PPS Register over the internet using a web browser and via brokers. Users will be able to search the PPS Register via a web browser or alternatively via their mobile phone using SMS message connectivity.

The Commonwealth PPS Bill will provide for the rules and processes for registration of security interests and will provide for determining priority of competing interests and enforcement of those interests. The proposed national law will provide the same rules to all security interests in personal property, regardless of the type of property, the legal status of the grantor or the jurisdiction in which the financial transaction is entered into or where the parties are located. The PPS reforms should increase the availability of finance and reduce costs by providing for cheaper and less complicated arrangements for securing interests in personal property and by rationalising this area of law.

In a report to the Commonwealth government on the proposal to introduce a national system for the registration of personal property securities, Access Economics has found that the proposed national scheme should improve the ability to create and register a security interest and be a low-cost system with low costs for enforcing security interests. In relation to marketplace competition, the national personal property security system should open up finance options and lower finance costs for businesses that have assets that traditionally were unable to be used as collateral.

Access Economics also anticipates benefits for smaller financiers and new market entrants with lower barriers to entry. In fact, in its preliminary assessment, Access Economics was unable to identify any groups in the economy who would lose from the introduction of the scheme. The overwhelming opinion is that all stakeholder groups will recoup net gains.

I turn now to the referral bill being introduced here today. This referral bill is the first step in the reform process for Queensland. The provisions of this bill accord with the terms of an intergovernmental agreement signed by all jurisdictions. This referral bill is substantially in the same form as the model referral legislation developed by all of the Australian states and drafted by the Parliamentary Counsel's Committee. New South Wales introduced and passed its referral legislation on 17 June 2009 and Victoria introduced its on 11 August 2009. The remaining four states are now in the process of introducing referral legislation.

The referral bill provides for a two-stage approach to the referral of powers to the Commonwealth for PPS matters. The initial reference is a text based reference based on the text of the Commonwealth's PPS Bill as tabled in the Legislative Assembly of New South Wales, the first referring state. This text is the same as the text of the Commonwealth PPS Bill introduced into the federal parliament. I table a copy of the Commonwealth PPS Bill, which can be accessed electronically at the Commonwealth government website www.comlaw.gov.au.

Tabled paper: Document titled 'Tabled text for Personal Property Securities (Commonwealth Powers) Bill 2009', certifying that the attached proposed Commonwealth bill was tabled in the Legislative Assembly of New South Wales on 16 June 2009 [\[802\]](#).

There is also a limited amendment reference. The referral bill will enable the Commonwealth to make amendments to the proposed PPS law in relation to the recording of security interests on the PPS Register, the recording of other information with respect to personal property and the enforcement of personal property security interests. An amendment reference can be made in relation to personal property, other than fixtures and water rights. The referral bill provides separately for amendment references relating to fixtures and transferable water rights.

The amendment references are prescribed separately to enable each one to be commenced separately and at different times. It is not intended for references regarding fixtures and transferable water rights to be commenced at the same time as the other provisions of the referral bill nor the Commonwealth PPS Bill. Indeed, the PPS Bill specifically excludes fixtures and tradeable water rights from the operation of the scheme. This reflects the agreement reached between the states, territories and Commonwealth to exclude fixtures and water entitlements from the proposed Commonwealth PPS Act upon its commencement. However, the referral bill enables these matters to be included in the Commonwealth PPS Act in the future.

The agreement to not include fixtures within the application of the national PPS law was because of concerns about the interaction with land laws and the potential for the Commonwealth law to impact on the state based Torrens registers. However, some stakeholders have expressed a keen desire for fixtures to be included in the national PPS scheme. The Standing Committee of Attorneys-General has been charged with further considering these issues before any decision is made on referring power to treat fixtures as personal property for the purpose of the PPS law.

Water entitlements in Queensland are also recorded on a state based Torrens register, the Queensland Water Allocations Register. This register records a range of information concerning water licences, including volume of water, extraction details, the water source, the expiry date and conditions, as well as ownership details and security interests recorded against the licence. There was a concern that including water entitlements on the PPS Register would result in unnecessary duplication with the Queensland Water Allocations Register and its equivalent in other jurisdictions. Also, the issue of a nationally consistent water access licensing regime is being considered under a separate COAG process. However, the amendment reference in relation to water rights will enable the treatment of water rights as personal property for the purpose of the PPS law, should all jurisdictions agree to this in the future.

The referral bill will limit the power of the Commonwealth parliament to use an amendment reference to exclude or limit the power of the state to administer, vary and abrogate any state statutory rights, such as licences, that it creates from time to time. This reflects the terms of the intergovernmental agreement that states and territories should be able to continue to regulate any licence, right, entitlement or authority created pursuant to state and territory legislation. It is appropriate that Queensland should be able to continue to create and administer statutory licences, rights and entitlements that are required for the good governance and law and order of the state.

The referral bill will also ensure that the Commonwealth PPS law cannot be amended to regulate state based statutory licences, entitlements, rights or authorities that have been opted out of the scheme by state law. Again, this reflects the terms of the intergovernmental agreement. Work is being progressed across Queensland government agencies to identify statutory licences, rights, entitlements and authorities that should be opted out of the proposed national PPS scheme. The government is proposing to introduce an ancillary provisions bill later this year for the purpose of ceasing the relevant Queensland registers, provide for transitional arrangements and make other consequential amendments around PPS matters, including certain statutory licences to be opted out.

The referral bill will exclude from the referral any law that limits or excludes the operation of Queensland law to the extent that the state law prohibits or limits a person from dealing with personal property or a security interest in personal property. This aims to ensure the Commonwealth PPS law will not invalidate any state law that enables the state government's intervention or action with respect to personal property for the purpose of enforcing the law of the state. Key examples of such laws are the Criminal Proceeds Confiscation Act 2002 and the Police Powers and Responsibilities Act 2000, which enable the state to confiscate property obtained through the proceeds of crime and vehicles used for hooning and other prescribed offences and in certain prescribed circumstances to dispose of that property.

The referral bill also enables Queensland to terminate all references of power, or any of the amendment references, should it be decided on sound policy reasons that it was appropriate to do so. By making this referral of power, Queensland will be helping to deliver an historic national reform to improve the way personal property securities are used by traders and consumers. This will deliver cost savings for businesses and consumers alike in our community and have a significant positive impact on the economy and its growth.

I want to acknowledge the considerable efforts of the industry, legal and academic stakeholders, officers from the Commonwealth Attorney-General's Department and state and territory officers in progressing these important reforms to date. I commend the bill to the House.