



Speech by

**Andrew Powell**

**MEMBER FOR GLASS HOUSE**

Hansard Thursday, 7 October 2010

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## **PERSONAL PROPERTY SECURITIES (ANCILLARY PROVISIONS) BILL**

**Mr POWELL** (Glass House—LNP) (3.08 pm): I rise to speak to the Personal Property Securities (Ancillary Provisions) Bill. Currently there are over 70 acts Australia-wide which govern personal property securities and they are dealt with by 30 different ministerial departments in 40 different registers. This new Commonwealth regime will effectively harmonise, streamline or remove the inconsistencies about the ways securities are taken and provide a national registration regime. The consequence which would hopefully follow is that lenders would be more willing to provide credit, as risk is minimised and controlled. This new regime gives a commercial incentive to potential creditors to re-evaluate their positions on the cost of credit, reducing it in proportion to the decrease in the level of risk.

Professor Jim O'Donovan of the University of Western Australia law school has stated that the lowering of barriers such as risk will also attract entry into this area of secured finance and thus foster more competition, which would also contribute to lowering the cost of credit. Access Economics estimates that the PPSA will reduce interest rates for loans secured on personal property by three per cent to four per cent. However, Professor O'Donovan has stated that this will only be the case when the implementation of the regime has concluded. In the meantime, he expects that there will be significant costs incurred in compliance with the new regime in getting the secured parties' affairs in order. Therefore, the cost savings will not be immediate. In relation to debtors, especially those who are in business, this regime also provides a commercial incentive. As the cost of credit is predicted to decrease, then business will have greater access to credit, allowing them to better provide for and expand their businesses.

There is also the issue of why the government has not allowed fixtures to be an interest to which the Commonwealth PPSA immediately applies. Fixtures are a chattel or personal property other than crops adjoined to land that becomes part of the estate in land. A fixture is a legal concept that includes any physical property that is permanently attached or fixed to real property. If the property is not affixed to real property, it is considered chattel property. Fixtures are treated as part of a real property, particularly in the case of security interest. A classic example is a building which, in the absence of language to the contrary in a contract of sale, is considered to be part of the land itself and not a separate piece of property.

In his second reading speech to the Personal Property Securities (Commonwealth Powers) Bill 2009 the then Attorney-General stated that the reason for the exclusion of fixtures was due to concerns about the interaction with land laws and the potential for the Commonwealth law to impact on the state based Torrens registers, but he gave no particulars or examples of what kinds of problems he anticipates in relation to the Torrens register. Currently, the law regarding fixtures, which includes section 155 of the Property Law Act and the common law surrounding the annexation of land, is described by Professor O'Donovan as messy and that it would be beneficial if the government would refer the matter of fixtures to be treated as personal property to the Commonwealth. I conclude by noting that this bill could have sought to remedy the current fixtures regime by making it simpler and, therefore, easier and more efficient to apply.