

PERSONAL PROPERTY SECURITIES (COMMONWEALTH LAWS) BILL 2011

First Reading

Bill read a first time, on motion by **Mr R.F. Johnson (Leader of the House)**.

Explanatory memorandum presented by the Leader of the House.

Second Reading

MR T.R. BUSWELL (Vasse — Minister for Transport) [10.16 am]: I move —

That the bill be now read a second time.

The Personal Property Securities (Commonwealth Laws) Bill 2011 seeks to adopt the commonwealth Personal Property Securities Act 2009 and refer to the commonwealth Parliament the power to amend that law pursuant to section 51(xxxvii) of the commonwealth Constitution. This bill is one of two bills being introduced to implement the Council of Australian Governments' personal property securities reforms in Western Australia. The second bill is the Personal Property Securities (Consequential Repeals and Amendments) Bill 2011, which I will refer to separately. These bills will give effect to the intergovernmental agreement endorsed by the Council of Australian Governments on 2 October 2008 to establish a single national legislative scheme for the regulation and registration of security interests in personal property.

More than 70 commonwealth, state and territory acts regulate interests in personal property. Considerable overlap between jurisdictions places a burden on businesses and other users who deal with multiple systems, each with different rules and requirements. The personal property securities reforms have seen the introduction of a national law, the commonwealth Personal Property Securities Act 2009, which will create a uniform and functional approach to personal property securities. The introduction of the new personal property securities regulatory regime will provide greater certainty for both lenders and borrowers. It will lower the risk for lenders, improve the efficiency of financing against personal property and increase competition among providers of finance. It is expected that the reforms will increase the availability and lower the cost of finance for people and businesses wanting to use personal property as security, in particular, small and medium-sized businesses.

In 2005, the Standing Committee of Attorneys-General agreed to establish an officers' working group to examine personal property securities reforms. The working group examined existing personal property securities schemes in overseas jurisdictions and undertook extensive stakeholder consultation. In March 2008, COAG agreed to a broad regulatory reform agenda, which included personal property securities reform. An intergovernmental agreement for the national personal property securities reforms was signed at the COAG meeting in October 2008. The new personal property securities regime is expected to commence on 31 October 2011.

The commonwealth Personal Property Securities Act 2009, which was passed in November 2009, establishes the personal properties securities register and sets out a system that will apply to the registration, priority and enforcement of security interests in personal property when the national register commences operation. Personal property is any form of property other than land. It includes tangible goods such as cars, machinery, crops and artwork, and intangible property such as statutory licences and intellectual property rights. A personal property security is created when a financier takes an interest in personal property as security for a loan or other obligation.

The commonwealth act will not apply to land or land titles. At the insistence of the states, fixtures on land and water rights have also been excluded from the scope of the commonwealth act—at least for the time being. The terms of the intergovernmental agreement provide that the commonwealth act will not be applied to fixtures or water rights in any state or territory without the agreement of that state or territory. Although the proposed act contains clauses that refer power to the commonwealth government in respect of fixtures and water rights, these clauses will not commence until a day fixed by proclamation. There is currently no intention to commence these referral clauses. Both fixtures and water rights have a strong connection to land titles, which have traditionally been the prerogative of the states. The states and territories have recognised that there may be benefits to the inclusion of fixtures and water rights within the commonwealth personal property securities scheme; however, it has been recognised that before this occurs, a detailed analysis of the potential legal and practical implications of the treatment of fixtures and water rights as personal property would need to be undertaken. As a result of concerns raised by the Standing Committee on Uniform Legislation and Statutes Review, an amendment was passed in the Legislative Council that will require both houses of Parliament to approve a draft proclamation before the clauses referring power in respect of fixtures and water rights can commence.

The commonwealth Constitution enables the commonwealth Parliament to exercise a legislative power referred to it by a state Parliament. The Constitution also allows a state Parliament to adopt commonwealth legislation that has been enacted by relying on a power referred by another state Parliament. In both cases, referral and

adoption, the law that ultimately applies in the state is commonwealth law. The commonwealth Parliament does not have sufficient legislative authority under the commonwealth Constitution to completely regulate the creation and enforcement of personal property securities. New South Wales enacted referral legislation when it passed the Personal Property Securities (Commonwealth Powers) Bill 2009 in June 2009. This referral of power enabled the commonwealth to enact the Personal Property Securities Act 2009. Referral legislation was subsequently enacted by Queensland, Victoria and South Australia prior to the passage of the commonwealth bill. As Western Australia and Tasmania did not refer power before the commonwealth bill was passed, some doubt was raised as to whether a referral was still possible. It was subsequently agreed by Western Australia, Tasmania and the commonwealth that instead of referring power, a legally cautious approach would be to adopt the text of the commonwealth act. The Western Australian government has previously used the adoption method of referral when enacting the Credit (Commonwealth Powers) Act 2010. The proposed act provides for the adoption of the Commonwealth Personal Property Securities Act 2009 and the referral of power to the commonwealth to amend that act. The referred power is narrow and limited. The proposed act also creates a mechanism to terminate the adoption and referral of power should that prove warranted.

The proposed act, together with the Personal Property Securities (Consequential Repeals and Amendments) Bill 2011, was introduced into the Legislative Council on 16 February 2011. The bills were referred to the Standing Committee on Uniform Legislation and Statutes Review, and the resulting report made several remarks in relation to parliamentary sovereignty. The minister dealt with the standing committee's concerns by moving amendments in the Legislative Council to delete several clauses that had been identified as Henry VIII clauses. Additionally, as I touched upon earlier, amendments were moved to require draft proclamations to be approved by both houses of Parliament in relation to the commencement of the referral of power over fixtures and water rights, and also with respect to the termination of this state's adoption of the commonwealth act. The requirement to obtain positive endorsement from both houses will ensure this Parliament is afforded the opportunity to consider the implications of these proclamations.

Finally, in response to a suggestion of the standing committee, the Minister for Commerce also tabled the Commonwealth Personal Property Securities Act 2009 in the Legislative Council to provide members with the opportunity to review the legislation that the proposed act will adopt. Today I will also table a copy of the commonwealth legislation for the benefit of members. The bills were passed by the Legislative Council on 18 August 2011. The enactment of these bills will facilitate the introduction of new arrangements that will apply throughout Australia and make it easier for businesses to operate across state and territory borders. The personal property securities reforms will lead to more competition within the finance industry while also ensuring that consumers throughout Australia have the same rights and benefits when dealing with personal property that are subject to finance.

For the information of members, I table a copy of the commonwealth Personal Property Securities Act 2009.

[See paper 3807.]

Debate adjourned, on motion by **Mr D.A. Templeman**.