

**PERSONAL PROPERTY SECURITIES (CONSEQUENTIAL REPEALS AND AMENDMENTS) BILL
2011**

Introduction and First Reading

Bill introduced, on motion by **Hon Norman Moore (Leader of the House)**, on behalf of Hon Simon O'Brien (Minister for Commerce), and read a first time.

Second Reading

HON NORMAN MOORE (Mining and Pastoral — Leader of the House) [7.50 pm]: On behalf of the Minister for Commerce, I move —

That the bill be now read a second time.

The Personal Property Securities (Consequential Repeals and Amendments) Bill 2011, which I will refer to as the “consequential bill”, is being introduced together with the Personal Property Securities (Commonwealth Laws) Bill 2011 to implement the Council of Australian Governments’ personal property securities reforms in Western Australia. The consequential bill provides for matters consequent to the adoption of the commonwealth Personal Property Securities Act 2009 by the Western Australian Parliament, and also deals with matters of a transitional nature. In particular, it excludes certain statutory licences from the scope of the commonwealth act and preserves the operation of Western Australian legislation in instances when it has been determined that the legislation may not be able to operate concurrently with the commonwealth act.

Statutory licences: As mentioned when discussing the Personal Property Securities (Commonwealth Laws) Bill 2011, personal property includes statutory licences. The expression “licence” is defined in the commonwealth Personal Property Securities Act 2009 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. A significant number of statutory licences created by Western Australian legislation will fall within this definition, including mining and fishing licences.

It is possible to exclude statutory licences from the operation of the commonwealth act by declaring them not to be personal property for the purposes of that act. This provides jurisdictions with the ability to carve out certain licences from the personal property securities scheme when there are sound policy reasons for doing so. A number of statutory licences have been declared not to be personal property for the purposes of the commonwealth act in the consequential bill. There are two main reasons for these exclusions. First, a large number of the licences that will be excluded are closely linked to the use of land. Land, fixtures and water rights have been excluded from the operation of the commonwealth act in order to preserve the traditional state legislative powers over land titles, and the exclusion of these licences is in keeping with the exclusion of land, fixtures and water rights from the personal property securities scheme.

Second, licences have been declared not to be personal property for the purposes of the commonwealth act in instances when it was never intended that a licence would be able to be used as collateral. For some licences, such as liquor licences, this intention is evidenced in the legislation itself. An exclusion of these licences will make it clear that these licences should not be used as security. The exclusions in the consequential bill are largely consistent with the exclusions made in other jurisdictions.

Preservation of statutory priorities: In relation to priorities for interests in personal property that are created under state law, which I will refer to as statutory interests, the commonwealth act allows state law to determine the priority between security interests in personal property to which the commonwealth act applies and interests in the property created under a law of the state. A number of Western Australian acts contain provisions that determine the priorities between statutory interests and security interests. The consequential bill inserts declarations into these state laws to ensure that the priorities continue to have precedence over the priorities set out in the commonwealth act.

Inconsistency between state law and the commonwealth act: The commonwealth act contains provisions which allow for the concurrent operation of the commonwealth act with state and territory legislation, other than in the event of a direct inconsistency, in which case the commonwealth will prevail. This means that state laws will not be excluded or limited by the commonwealth act to the extent that they provide for matters such as the creation, transfer, disposal or forfeiture of statutory entitlement 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; and the transfer of property or interests in property by operation of state law.

Repeal of state legislation: Amendments to the Chattel Securities Act 1987 and the Co-operatives Act 2009, along with the repeal of the Bills of Sale Act 1899, will support a seamless transition to a single national

Personal Property Securities Register by closing the registers that are created under that legislation and transferring the data to the Personal Property Securities Register in time for the commencement in May 2011. The transfer of these registrations will ensure that they are treated as migrated security interests under the commonwealth act, which will ensure that they receive a higher priority than security interests registered after the register commences operation.

Together with the Personal Property Securities (Commonwealth Laws) Bill 2011, the consequential bill will facilitate the implementation of the personal property securities reforms in Western Australia, providing benefit to both business and consumers by delivering more certain, consistent, less complex and cheaper arrangements for securities over personal property.

For the information of members, I also table an explanatory memorandum.

Leave granted. [See paper 2962.]

Debate adjourned and bill referred to the Standing Committee on Uniform Legislation and Statutes Review, pursuant to standing orders.