



Government of Western Australia
Department of Commerce

EXPLANATORY MEMORANDUM

Personal Property Securities (Consequential Repeals and Amendments) Bill 2011

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Overview of the Bill

This Bill, together with the *Personal Property Securities (Commonwealth Laws) Bill 2011* (WA), will implement the personal property securities (PPS) reforms in Western Australia. The PPS reforms will see the implementation of the Personal Property Securities Register, a single national register for personal property securities, and a nationally uniform set of rules for the registration and enforcement of security interests in personal property.

The *Personal Property Securities (Commonwealth Laws) Bill 2011* will adopt the *Personal Property Securities Act 2009* (Commonwealth), as amended by the *Personal Property Securities (Consequential Amendments) Act 2009* (Commonwealth), the *Personal Property Securities (Corporations and Other Amendments) Bill 2010* (Commonwealth) and the *Personal Property Securities (Corporations and Other Amendments) Act 2011* (Commonwealth), and refer to the Commonwealth Parliament the power to amend the adopted Act.

The object of this Bill is to make consequential amendments to Western Australian legislation that are required as a result of the referral of power to the Commonwealth Parliament. The proposed Act will also exclude certain aspects of State law from the new Commonwealth regime, such as the exclusion of a number of statutory licences from the definition of personal property in the *Personal Property Securities Act 2009* (Commonwealth). Additionally, the proposed Act contains transitional provisions to allow for the smooth transfer to the new personal property securities regulatory regime.

The Department of Commerce has conducted extensive consultation with State Government agencies in the development of the proposed Act. All Government Departments were notified of the PPS reforms at the commencement of the project, and the Department of Commerce has maintained regular, ongoing contact with those agencies that administer legislation which falls within the scope of the *Personal Property Securities Act 2009* (Commonwealth).

In particular, Government agencies that administer legislation which provides for the grant of statutory licences have been required to determine whether those licences fall within the definition of personal property, as found in section 10 of the *Personal Property Securities Act 2009* (Commonwealth) –

Personal property means property (including a licence) other than:

- (a) land; or
- (b) a right, entitlement or authority that is:
 - (i) granted by or under a law of the Commonwealth, a State or a Territory; and
 - (ii) declared by that law not to be personal property for the purposes of this Act.

Licence is also defined in section 10 of the *Personal Property Securities Act 2009* (Commonwealth) –

Licence means either of the following, if it is transferable by the licensee (whether or not the right, entitlement, authority or licence is exclusive, and whether or not a transfer is restricted or requires consent):

- (a) a right, entitlement or authority to do one or more of the following:
 - (i) to manufacture, produce, sell, transport or otherwise deal with personal property;
 - (ii) to provide services;
 - (iii) to explore for, exploit or use a resource;
- (b) an intellectual property licence;

but does not include a right, entitlement or authority that is:

- (c) granted by or under a law of the Commonwealth, a State or a Territory; and
- (d) declared by that law not to be personal property for the purposes of this Act.

The concept of transferability in the definition of licence is broad and encompasses situations where the legislation states that the licence cannot be transferred without the consent of a Minister, or can only be transferred in restricted circumstances or to a restricted class of persons. As a result, a large number of statutory licences in Western Australia fell within this definition.

Where statutory licences fell within the definition of personal property in section 10 of the *Personal Property Securities Act 2009* (Commonwealth), agencies were required to determine whether they should remain within the scope of the Commonwealth Act, or whether there was any reason for them to be excluded. In the event that a licence was to be excluded, this was achieved by the drafting of a clause in the proposed Act which provides that the licence is not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth).

There are two main reasons for the exclusion of statutory licences from the scope of the *Personal Property Securities Act 2009* (Commonwealth). First, a large number of the licences identified are closely linked to the use of land. Land, fixtures and water rights have been excluded from the operation of the *Personal Property Securities Act 2009* (Commonwealth) in order to preserve the traditional State legislative powers over land titles.

Second, a number of agencies have advised that it was never intended for some statutory licences to be able to be used as collateral. In some instances, this is evidenced in the legislation itself. An exclusion from the *Personal Property Securities Act 2009* (Commonwealth) will make it clear that these licences cannot be used as security.

Commencement

The clauses in the proposed Act that relate to transitional matters will commence on the day after the day on which the Act receives Royal Assent. This will ensure that the State Government can take the appropriate steps to prepare for the transition to the PPS regulatory regime. These transitional provisions relate to three registers that will be closed upon the commencement of the Personal Property Securities Register –

- the Bills of Sale Register, as established by the *Bills of Sale Act 1899* (WA);
- the Register of Encumbered Vehicles (REVS), as established by the *Chattel Securities Act 1987* (WA); and
- the Register of Co-operative Charges, as established by the *Co-operatives Act 2009* (WA).

The transitional provisions in the proposed Act will ensure that the Department of Commerce, which maintains the three registers listed above, has the ability to exercise registration functions in a manner that will allow for a smooth transition to the Personal Property Securities Register.

The remainder of the proposed Act will commence immediately before registration commencement time, as defined in section 306(2) of the *Personal Property Securities Act 2009* (Commonwealth). Registration commencement time is the time at which the Personal Property Securities Register commences operation and it is expected that this will occur on 31 October 2011.

Part 1 – Preliminary

Clause 1 Provides that the short title of the Bill (when enacted) is to be the *Personal Property Securities (Consequential Repeals and Amendments) Act 2011*.

Clause 2 Provides for the commencement of the Bill.

Paragraph (a) provides that sections 1 and 2 will commence on the day the Act receives Royal Assent.

Paragraph (b) provides that sections 29, 30, 32, 33 and 43 will commence on the day after the day on which the Act receives Royal Assent.

Paragraph (c) provides that the rest of the Bill will commence immediately before registration commencement time, as defined in section 306(2) of the *Personal Property Securities Act 2009* (Commonwealth).

Registration commencement time will be the day on which the Personal Property Securities Register commences operation.

Part 2 – Agriculture and Food

Division 1 – *Bulk Handling Act 1967* amended

Clause 3 Provides that this Division amends the *Bulk Handling Act 1967* (WA).

Clause 4 Inserts the proposed section 34D(4) into the *Bulk Handling Act 1967* (WA), which declares that section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) applies to a charge created under section 34D(2)(b) of the *Bulk Handling Act 1967* (WA).

Where a State law creates an interest in personal property (a statutory interest), provision can be made in that State legislation to declare that section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) applies to the statutory interests. The effect of such a declaration will be that the State law, as opposed to the *Personal Property Securities Act 2009* (Commonwealth), will determine the priorities between statutory interests and security interests which arise under the Commonwealth Act.

Declarations made in accordance with section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) will ensure the continued efficacy of State legislation that makes provision for the priority of interests in collateral.

Section 34D(2)(b) of the *Bulk Handling Act 1967* (WA) provides that, where Co-operative Bulk Handling Limited has paid a contribution due under the *Plant Pests and Diseases (Eradication Funds) Act 1974* or the *Biosecurity and Agriculture Management Act 2007* on behalf of a third party, the amount of the contribution is a debt due to Co-operative Bulk Handling Limited and has priority over all claims to money that is payable to the third party in respect of grain and seed.

This clause will ensure that, in the event of a priority dispute, priority is determined in accordance with section 34D(2)(b) of the *Bulk Handling Act 1967* (WA).

Clause 5 Inserts the proposed section 35(2A) into the *Bulk Handling Act 1967* (WA), which declares that section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) applies to a lien created under section 35(1) of the *Bulk Handling Act 1967* (WA).

Where a State law creates an interest in personal property (a statutory interest), provision can be made in that State legislation to declare that section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) applies to the statutory interests. The effect of such a declaration will be that the State law, as opposed to the *Personal Property Securities Act 2009* (Commonwealth), will determine the priorities between statutory interests and security interests which arise under the Commonwealth Act.

Declarations made in accordance with section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) will ensure the continued efficacy of State legislation that makes provision for the priority of interests in collateral.

Section 35(1) of the *Bulk Handling Act 1967* (WA) provides that Co-operative Bulk Handling Limited has a lien over any grain received by it in respect of the charges payable for that grain, and the lien has priority to all other claims.

This clause will ensure that, in the event of a priority dispute, priority is determined in accordance with section 35(1) of the *Bulk Handling Act 1967* (WA).

Clause 6 Inserts the proposed section 51(3) into the *Bulk Handling Act 1967* (WA), which declares that section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) applies to a charge created under section 51(1)(a) or (aa) of the *Bulk Handling Act 1967* (WA).

Where a State law creates an interest in personal property (a statutory interest), provision can be made in that State legislation to declare that section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) applies to the statutory interests. The effect of such a declaration will be that the State law, as opposed to the *Personal Property Securities*

Act 2009 (Commonwealth), will determine the priorities between statutory interests and security interests which arise under the Commonwealth Act.

Declarations made in accordance with section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) will ensure the continued efficacy of State legislation that makes provision for the priority of interests in collateral.

Section 51(1)(a) of the *Bulk Handling Act 1967* (WA) provides that, where a law provides for the compulsory marketing of any grain handled by Co-operative Bulk Handling Limited, charges referred to in section 34A of the *Bulk Handling Act 1967* (WA) will have priority to all other claims on money payable under the relevant compulsory marketing law.

Section 51(1)(aa) of the *Bulk Handling Act 1967* (WA) provides that, where a law provides for the compulsory marketing of any grain handled by Co-operative Bulk Handling Limited, a contribution paid in accordance with section 34D(1) of the *Bulk Handling Act 1967* (WA) will have priority to all other claims on money payable under the relevant compulsory marketing law (other than a charge created under section 34A).

This clause will ensure that, in the event of a priority dispute, priority is determined in accordance with 51(1)(a) and (aa) of the *Bulk Handling Act 1967* (WA).

Division 2 – *Marketing of Potatoes Act 1946* amended

Clause 7 Provides that this Division amends the *Marketing of Potatoes Act 1946* (WA).

Clause 8 Amends section 31 of the *Marketing of Potatoes Act 1946* (WA) to provide that it is subject to the provisions of the *Personal Property Securities Act 2009* (Commonwealth).

Section 31 *Marketing of Potatoes Act 1946* (WA) currently provides that, if notice of an encumbrance over potatoes has been received, the Potato Marketing Corporation of Western Australia may refuse or withhold payment in respect of those potatoes until all parties who claim to have an interest in the potatoes advise the Corporation of the manner in which payment should be made. In the case of a dispute, the State Administrative Tribunal has the power to determine competing claims over the potatoes.

The proposed amendment will ensure that the provisions of the *Personal Property Securities Act 2009* (Commonwealth) determine the order of priority in the case of competing claims over potatoes.

Part 3 – Attorney General

Division 1 – *Criminal Property Confiscation Act 2000* amended

Clause 9 Provides that this Division amends the *Criminal Property Confiscation Act 2000* (WA).

Clause 10 Amends section 31(2) of the *Criminal Property Confiscation Act 2000* (WA) to include a reference to the *Personal Property Securities Act 2009* (Commonwealth).

Section 31(2) of the *Criminal Property Confiscation Act 2000* (WA) provides that, where a court has declared that property is confiscated and that property is registrable under any enactment except the *Transfer of Land Act 1893* (WA), the Director of Public Prosecutions must notify the registrar of the confiscation.

In accordance with the definitions in section 5 of the *Interpretation Act 1984* (WA), the term ‘enactment’ refers to an Act that has been passed by the Parliament of Western Australia. The *Personal Property Securities Act 2009* (Commonwealth) is therefore outside of this definition and, in its current form, section 31(2) of the *Criminal Property Confiscation Act 2000* (WA) will not require the Director of Public Prosecutions to notify the Personal Property Securities Registrar where a court has declared that personal property is confiscated.

It is in the public interest that notice of the confiscation be provided to the Personal Property Securities Registrar. This will ensure that lenders and prospective buyers of the personal property who search the Personal Property Securities Register are informed that the property has been confiscated.

The inclusion of a reference to the *Personal Property Securities Act 2009* (Commonwealth) in section 31(2) of the *Criminal Property Confiscation Act 2000* (WA) will require the Director of Public Prosecutions to provide notice to the Personal Property Securities Registrar in the event that personal property is confiscated under 31(2) of the *Criminal Property Confiscation Act 2000* (WA).

Clause 11 Amends section 36(3) of the *Criminal Property Confiscation Act 2000* (WA) to include a reference to the *Personal Property Securities Act 2009* (Commonwealth).

Section 36(3) of the *Criminal Property Confiscation Act 2000* (WA) provides that, where a freezing notice has been issued in respect of crime-used or crime-derived property and the property covered by the notice is registrable under any enactment except the *Transfer of Land Act 1893* (WA), the applicant for the notice must notify the register that the notice has been issued.

In accordance with the definitions in section 5 of the *Interpretation Act 1984* (WA), the term 'enactment' refers to an Act that has been passed by the Parliament of Western Australia. The *Personal Property Securities Act 2009* (Commonwealth) is therefore outside of this definition and, in its current form, section 36(3) of the *Criminal Property Confiscation Act 2000* (WA) will not require the applicant for the freezing notice to notify the Personal Property Securities Registrar that a notice has been issued in respect of personal property.

It is in the public interest that notice of a freezing order over personal property be provided to the Personal Property Securities Registrar. This will ensure that lenders and prospective buyers of the personal property who search the Personal Property Securities Register are informed that the property is subject to a freezing notice.

The inclusion of a reference to the *Personal Property Securities Act 2009* (Commonwealth) in section 36(3) of the *Criminal Property Confiscation Act 2000* (WA) will require the applicant for a freezing notice to notify the Personal Property Securities Registrar in the event a freezing notice is issued in respect of crime-used or crime-derived personal property.

Clause 12 Amends section 39(5) of the *Criminal Property Confiscation Act 2000* (WA) to include a reference to the *Personal Property Securities Act 2009* (Commonwealth).

Section 39(5) of the *Criminal Property Confiscation Act 2000* (WA) provides that, where a freezing notice in respect of crime-used or crime-derived personal property stops being in force and that property is registrable under an enactment, the applicant for the notice must notify the registrar to that effect

In accordance with the definitions in section 5 of the *Interpretation Act 1984* (WA), the term 'enactment' refers to an Act that has been passed by the Parliament of Western Australia. The *Personal Property Securities Act 2009* (Commonwealth) is therefore outside of this definition and, in its current form, section 39(5) of the *Criminal Property Confiscation Act 2000* (WA) will not require the applicant for the freezing notice to notify the Personal Property Securities Registrar that a notice in respect of personal property has ceased to be in force.

It is in the public interest that notice of this nature be provided to the Personal Property Securities Registrar. This will ensure that lenders and prospective buyers of the personal property who search the Personal Property Securities Register are provided with accurate information about the status of the personal property.

The inclusion of a reference to the *Personal Property Securities Act 2009* (Commonwealth) in section 39(5) of the *Criminal Property Confiscation Act 2000* (WA) will require the applicant for a freezing notice to notify the Personal Property Securities Registrar in the event a freezing notice in respect of crime-used or crime-derived personal property ceases to be in force.

Clause 13 Amends section 46(3) of the *Criminal Property Confiscation Act 2000* (WA) to include a reference to the *Personal Property Securities Act 2009* (Commonwealth).

Section 46(3) of the *Criminal Property Confiscation Act 2000* (WA) provides that, where a freezing notice has been issued in respect of confiscable property and the property covered by the notice is registrable under any enactment except the *Transfer of Land Act 1893* (WA), the applicant for the notice must notify the register of the making of the notice.

In accordance with the definitions in section 5 of the *Interpretation Act 1984* (WA), the term 'enactment' refers to an Act that has been passed by the Parliament of Western Australia. The *Personal Property Securities Act 2009* (Commonwealth) is therefore outside of this definition and, in its current form, section 46(3) of the *Criminal Property Confiscation Act 2000* (WA) will not require the applicant for the freezing notice to notify the Personal Property Securities Registrar that a notice has been issued in respect of personal property.

It is in the public interest that notice of a freezing order over personal property be provided to the Personal Property Securities Registrar. This will ensure that lenders and prospective buyers of the personal property who search the Personal Property Securities Register are informed that the property is subject to a freezing notice.

The inclusion of a reference to the *Personal Property Securities Act 2009* (Commonwealth) in section 46(3) of the *Criminal Property Confiscation Act 2000* (WA) will require the applicant for a freezing notice to notify the Personal Property Securities Registrar in the event a freezing notice is issued in respect of confiscable personal property.

Clause 14 Subclause (2) inserts the proposed section 125(2) into the *Criminal Property Confiscation Act 2000* (WA), which declares that section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) applies to a charge created on property under section 123(1) of the *Criminal Property Confiscation Act 2000* (WA).

Where a State law creates an interest in personal property (a statutory interest), provision can be made in that State legislation to declare that section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) applies to the

statutory interests. The effect of such a declaration will be that the State law, as opposed to the *Personal Property Securities Act 2009* (Commonwealth), will determine the priorities between statutory interests and security interests which arise under the Commonwealth Act.

Declarations made in accordance with section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) will ensure the continued efficacy of State legislation that makes provision for the priority of interests in collateral.

Section 123(1) of the *Criminal Property Confiscation Act 2000* (WA) provides that a charge is created on property that is frozen under a registered interstate freezing order if –

- the order was made in connection with a confiscation offence committed interstate by the owner of the property;
- an interstate criminal benefits declaration is made against the person in connection with the confiscation offence; and
- the interstate criminal benefits declaration is registered in a State court under the *Service and Execution of Process Act 1992* (Commonwealth).

Section 125 of the *Criminal Property Confiscation Act 2000* (WA) deals with the priority of charges created under section 123(1) and provides that such charges are subject to encumbrances on the property that -

- came into existence before the charge; and
- have priority over the charge.

Charges created under section 123(1) will have priority over all other encumbrances.

This clause will ensure that, in the event of a priority dispute, priority is determined in accordance with section 125 of the *Criminal Property Confiscation Act 2000* (WA).

Clause 15 Subclause (1) amends section 127(1) of the *Criminal Property Confiscation Act 2000* (WA) to include a reference to the *Personal Property Securities Act 2009* (Commonwealth).

Section 127(1) of the *Criminal Property Confiscation Act 2000* (WA) relates to charges on property that is frozen under a registered interstate freezing order and provides that the Director of Public Prosecutions or the Public Trustee may register a charge on property that is not land under any enactment that provides for the registration of interests in property of that kind.

In accordance with the definitions in section 5 of the *Interpretation Act 1984* (WA), the term ‘enactment’ refers to an Act that has been passed by the Parliament of Western Australia. The *Personal Property Securities Act 2009* (Commonwealth) is therefore outside of this definition and, in its current form, section 127(1) of the *Criminal Property*

Confiscation Act 2000 (WA) will not allow the Director of Public Prosecutions or the Public Trustee to register charges on property that is frozen under a registered interstate freezing order on the Personal Property Securities Register.

It is important that the Director of Public Prosecutions and the Public Trustee have the ability to register charges of this nature on the Personal Property Securities Register, as unregistered charges will usually receive a lesser priority to charges that have been registered.

The inclusion of a reference to the *Personal Property Securities Act 2009* (Commonwealth) in section 127(1) of the *Criminal Property Confiscation Act 2000* (WA) will ensure that the Director of Public Prosecutions and the Public Trustee are able to register charges on property that has been frozen under a registered interstate freezing order on the Personal Property Securities Register.

Subclause (2) amends section 127(3) of the *Criminal Property Confiscation Act 2000* (WA) to include a reference to the *Personal Property Securities Act 2009* (Commonwealth).

Section 127(3) of the *Criminal Property Confiscation Act 2000* (WA) also relates to charges on property that is frozen under a registered interstate freezing order and provides that, if a charge in relation to property has been registered under section 127(1) and the charge subsequently ceases to have effect, the Director of Public Prosecutions or the Public Trustee may cancel the registration of the charge.

The inclusion of a reference to the *Personal Property Securities Act 2009* (Commonwealth) in section 127(3) of the *Criminal Property Confiscation Act 2000* (WA) will ensure that the Director of Public Prosecutions and the Public Trustee are able to cancel a registration on the Personal Property Securities Register of a charge on property that has been frozen under a registered interstate freezing order.

Division 2 – *Fines, Penalties and Infringement Notices Enforcement Act 1994* amended

Clause 16 Provides that this Division amends the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA).

Clause 17 Amends section 96(3)(c) of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA) to remove references to the *Bills of Sale Act 1899* (WA) and the *Chattel Securities Act 1987* (WA), and insert a reference to the *Personal Property Securities Act 2009* (Commonwealth).

Section 96 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA) provides for the distribution of money from the sale of property that has been seized by the

Sheriff. Section 96(2) requires proceeds to be used for the payment of expenses incidental to the sale of the property in the first instance. After these proceeds have been applied, section 96(3)(c) provides that the remaining proceeds are to be used for the payment of enforcement fees, subject to the rights or entitlements of a person (other than the offender) that has an interest in the property sold, if that interest was registered under the *Bills of Sale Act 1899* (WA), the *Chattel Securities Act 1987* (WA), the *Transfer of Land Act 1893* (WA), the *Registration of Deeds Act 1856* (WA), or the *Corporations Act 2001* (Commonwealth).

Clause 31 of the proposed Act provides for the repeal of the *Bills of Sale Act 1899* (WA). This clause and clause 31 will both commence immediately before the Personal Property Securities Register commences operation.

Clause 33 of the proposed Act provides that the *Chattel Securities Act 1987* (WA) will cease to have effect, except as provided for in clause 33, from the day after the day on which the proposed Act receives Royal Assent.

It is therefore necessary that references to the *Bills of Sale Act 1899* (WA) and the *Chattel Securities Act 1987* (WA) be deleted from section 96(3)(c) of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA).

Property which was registered under the *Bills of Sale Act 1899* (WA) and the *Chattel Securities Act 1987* (WA) will be able to be registered on the Personal Property Securities Register, as established by the *Personal Property Securities Act 2009* (Commonwealth), from its commencement. A reference to the *Personal Property Securities Act 2009* (Commonwealth) will be inserted into section 96(3)(c) of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA) to ensure that persons with an interest in property that is registered on the Personal Property Securities Register receive money in priority to the payment of enforcement fees if that property is sold by the Sheriff.

Clause 18 Amends section 99 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA) to remove references to the *Bills of Sale Act 1899* (WA) and the *Chattel Securities Act 1987* (WA).

Section 99 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA) provides that the Sheriff is exempt from paying fees under the *Bills of Sale Act 1899* (WA), the *Chattel Securities Act 1987* (WA), the *Transfer of Land Act 1893* (WA), or the *Registration of Deeds Act 1856* (WA) in connection with any matter arising out of the performance of his or her functions under a warrant.

Clause 31 of the proposed Act provides for the repeal of the *Bills of Sale Act 1899* (WA). This clause and clause 31 will both

commence immediately before the Personal Property Securities Register commences operation.

Clause 33 of the proposed Act provides that the *Chattel Securities Act 1987* (WA) will cease to have effect, except as provided for in clause 33, from the day after the day on which the proposed Act receives Royal Assent.

It is therefore necessary that references to the *Bills of Sale Act 1899* (WA) and the *Chattel Securities Act 1987* (WA) be deleted from section 99 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA).

Division 3 – *Property Law Act 1969* amended

Clause 19 Provides that this Division amends the *Property Law Act 1969* (WA).

Clause 20 Amends section 6 of the *Property Law Act 1969* (WA) to remove a reference to the *Bills of Sale Act 1899* (WA).

Section 6 of the *Property Law Act 1969* (WA) provides that, except as expressly provided in the Act, the Act –

- (a) so far as inconsistent with the *Transfer of Land Act 1893* (WA), or the *Strata Titles Act 1966* (WA), does not apply to land that is under the provisions of either of those Acts; and
- (b) so far as inconsistent with the *Bills of Sale Act 1899* (WA), does not apply to bills of sale that are registered under the provisions of that Act.

Clause 31 of the proposed Act provides for the repeal of the *Bills of Sale Act 1899* (WA). This clause and clause 31 will both commence immediately before the Personal Property Securities Register commences operation.

It is therefore necessary that references to the *Bills of Sale Act 1899* (WA) be deleted from section 6 of the *Property Law Act 1969* (WA).

Division 4 – *Public Trustee Act 1941* amended

Clause 21 Provides that this Division amends the *Public Trustee Act 1941* (WA).

Clause 22 Subclause (1) amends section 63 of the *Public Trustee Act 1941* (WA) to create a priority in favour of all other claims in respect of the lien created when the Public Trustee pays any premiums in respect of any policy of insurance. Section 63 did not previously make provision in relation to the priority of the lien.

Subclause (2) inserts the proposed section 63(2) into the *Public Trustee Act 1941* (WA), which declares that section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) applies to a lien created under section 63(1) of the *Public Trustee Act 1941* (WA).

Where a State law creates an interest in personal property (a statutory interest), provision can be made in that State legislation to declare that section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) applies to the statutory interests. The effect of such a declaration will be that the State law, as opposed to the *Personal Property Securities Act 2009* (Commonwealth), will determine the priorities between statutory interests and security interests which arise under the Commonwealth Act.

Declarations made in accordance with section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) will ensure the continued efficacy of State legislation that makes provision for the priority of interests in collateral.

Section 63(1) of the *Public Trustee Act 1941* (WA) (as amended by this clause) provides that, where the Public Trustee pays any premiums for an insurance policy, he shall have a lien on the money paid which will have priority over all other claims to that money.

This clause will ensure that, in the event of a priority dispute, priority is determined in accordance with section 63(1) of the *Public Trustee Act 1941* (WA).

Division 5 – *Trustees Act 1962* amended

Clause 23 Provides that this Division amends the *Trustees Act 1962* (WA).

Clause 24 Deletes section 72(3) of the *Trustees Act 1962* (WA).

Section 72(3) of the *Trustees Act 1962* (WA) provides that, where chattels are bequeathed to a person under the provisions of a will and an inventory of the chattels is made by a trustee, the inventory is deemed to be a bill of sale within the meaning of the *Bills of Sale Act 1899* (WA) and must be registered on the Bills of Sale Register.

Clause 31 of the proposed Act provides for the repeal of the *Bills of Sale Act 1899* (WA). This clause and clause 31 will both commence immediately before the Personal Property Securities Register commences operation.

It is therefore necessary that section 73(2) be deleted from the *Trustees Act 1962* (WA).

Division 6 – *Warehousemen’s Liens Act 1952* amended

Clause 25 Provides that this Division amends the *Warehousemen’s Liens Act 1952* (WA).

Clause 26 This clause amends section 4 of the *Warehousemen’s Liens Act 1952* (WA) to create a priority in favour of all other claims in respect to the lien created when goods are deposited with a warehousemen for storage. Section 4 did not previously make provision in relation to the priority of the lien.

This clause also inserts the proposed section 4(2) into the *Warehousemen’s Liens Act 1952* (WA), which declares that section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) applies to a lien arising under section 4(1) of the *Warehousemen’s Liens Act 1952* (WA).

Where a State law creates an interest in personal property (a statutory interest), provision can be made in that State legislation to declare that section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) applies to the statutory interests. The effect of such a declaration will be that the State law, as opposed to the *Personal Property Securities Act 2009* (Commonwealth), will determine the priorities between statutory interests and security interests which arise under the Commonwealth Act.

Declarations made in accordance with section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) will ensure the continued efficacy of State legislation that makes provision for the priority of interests in collateral.

Section 4(1) of the *Warehousemen’s Liens Act 1952* (WA) (as amended by this clause) provides that, subject to the provisions of section 6 of the *Warehousemen’s Liens Act 1952* (WA), a warehousemen has a lien on goods deposited with him for storage that will have priority over all other claims on those goods.

This clause will ensure that, in the event of a priority dispute, priority is determined in accordance with section 4(1) of the *Warehousemen’s Liens Act 1952* (WA).

Clause 27 Replaces section 6(1) of the *Warehousemen’s Liens Act 1952* (WA).

In its current form, section 6(1) of the *Warehousemen’s Liens Act 1952* (WA) provides that, where a warehouseman has a lien over stored goods, he or she must give notice of the lien –

(a) to a person who has given notice to the warehouseman of their claim to be the owner of the goods or to have an interest in the goods; and

(b) to the grantee of a bill of sale

- which relates to the goods; and
- which was granted by the person depositing the goods with the warehousemen or by a person of whose interest in the goods the warehousemen has knowledge; and
- which was registered in accordance with the *Bills of Sale Act 1899* (WA) prior to the date of the goods being deposited with the warehouseman; and
- which has not become null and void or for which a satisfaction has not been registered; and

(c) to any other person of whose interest in the goods the warehouseman has knowledge.

Clause 31 of the proposed Act provides for the repeal of the *Bills of Sale Act 1899* (WA). This clause and clause 31 will both commence immediately before the Personal Property Securities Register commences operation.

From this time, it will not be possible for bills of sale to be registered in accordance with the *Bills of Sale Act 1899* (WA). All records from the Bills of Sale Register, as established by the *Bills of Sale Act 1899* (WA), that are current at the time the Personal Property Securities Register commences operation will be migrated to the new register.

The proposed section 6(1) of the *Warehousemen's Liens Act 1952* (WA) therefore creates a requirement for a warehouseman to give notice of his or her lien over stored goods to a person who has an interest in the goods that is registered on the Personal Property Securities Register.

The proposed section 6(1) of the *Warehousemen's Liens Act 1952* (WA) will also require a warehousemen to give notice to his or her lien over stored goods to a person if –

- the goods are a greater value than the value prescribed under section 33(1)(a) the *Criminal and Found Property Disposal Act 2006* (WA) (currently \$300); or
- the warehouseman is aware that the person has an interest in the goods.

Clause 28 Deletes section 7(2)(c) from the *Warehousemen's Liens Act 1952* (WA).

Section 7(2)(c) of the *Warehousemen's Liens Act 1952* (WA) provides that, where a warehousemen intends to sell stored goods in accordance with section 7(1), he or she must give written notice of this intention to the grantee of a bill of sale mentioned in section 6(1)(b) of the *Warehousemen's Liens Act 1952* (WA).

The reference to the grantee of a bill of sale in section 6(1)(b) of the *Warehousemen's Liens Act 1952* (WA) is being deleted by clause 27 of the proposed Act. It is therefore necessary that section 7(2)(c) of the *Warehousemen's Liens Act 1952* (WA) be deleted.

Part 4 – Commerce

Division 1 – *Bills of Sale Act 1899* amended and repealed

Clause 29 Provides that this Division amends the *Bills of Sale Act 1899* (WA).

Clause 30 Inserts the proposed Part IIA into the *Bills of Sale Act 1899* (WA).

The proposed section 6A of the *Bills of Sale Act 1899* (WA) provides for the cessation of registration functions by the Registrar, as appointed under the *Bills of Sale Act 1899* (WA).

The proposed section 6A(1) of the *Bills of Sale Act 1899* (WA) defines the following terms –

migration time has the meaning given in section 306(1) of the *Personal Property Securities Act 2009* (Commonwealth).

Migration time will occur at least 28 before the Personal Property Securities Register commences operation.

pre-PPS transition period means the period –

- (a) commencing at the migration time or such earlier time as may be prescribed by the regulations; and
- (b) ending at the registration commencement time.

registration commencement time has the meaning given in section 306(2) of the *Personal Property Securities Act 2009* (Commonwealth).

Registration commencement time will be the day on which the Personal Property Securities Register commences operation.

registration function means any function conferred or imposed on the Registrar under the *Bills of Sale Act 1899* (WA) relating to the registration of a Bill of Sale.

The proposed section 6A(2) of the *Bills of Sale Act 1899* (WA) provides that the Registrar may refuse to exercise a registration function during the pre-PPS transitional period.

The proposed section 6A(3) of the *Bills of Sale Act 1899* (WA) provides that, without limiting subsection (2), the Registrar may refuse to exercise a registration function during the pre-PPS transitional period in relation to a matter that was not

concluded immediately before the pre-PPS transitional period commenced.

As part of the personal property securities reforms, where a State or Territory has determined that a register will be shut down, the information contained on that register will be migrated to the new Personal Property Securities Register. This will ensure that all security interests previously registered on a State or Territory register do not lose the protection they may have by reason of registration. It will also help to ensure that the Personal Property Securities Register is as accurate as possible from commencement.

Registrations that are contained on the Bills of Sale Register, as established by the *Bills of Sale Act 1899* (WA), will be migrated to the Personal Property Securities Register. Due to the volume of registrations that will be migrated to the new register, migration will occur over a number of weeks, with a final migration occurring immediately before the new register commences.

To meet the requirements of migration, it may be necessary for the Registrar to cease accepting new registrations and carrying out other registration functions several days before the Personal Property Securities Register commences operation. It is intended that this will not be done until as close to the commencement of the new register as is possible. The proposed section 6A of the *Bills of Sale Act 1899* (WA) will give the Department of Commerce maximum flexibility in determining the appropriate time for the cessation of registration functions.

The proposed Part IIA of the *Bills of Sale Act 1899* (WA) will commence on the day after the day on which the proposed Act receives Royal Assent.

Clause 31 Provides for the repeal of the *Bills of Sale Act 1899* (WA) and the following Regulations –

- the *Bills of Sale (Fees) Regulations 1983* (WA); and
- the *Bills of Sale Regulations 2001* (WA).

The repeal of the *Bills of Sale Act 1899* (WA) and the *Bills of Sale Regulations 2001* (WA) will support a seamless transition to the Personal Property Securities Register by closing the register created under that legislation and transferring the data to the new register.

This clause will commence immediately before registration commencement time as defined in section 306(2) of the *Personal Property Securities Act 2009* (Commonwealth).

Registration commencement time will be the day on which the Personal Property Securities Register commences operation.

Division 2 – *Chattel Securities Act 1987* amended

Clause 32 Provides that this Division amends the *Chattel Securities Act 1987* (WA).

Clause 33 Inserts the proposed Part IIA into the *Chattel Securities Act 1987* (WA), which provides for the cessation of registration functions by the Commissioner for Consumer Protection.

The proposed section 3B of the *Chattel Securities Act 1987* (WA) defines the terms used in Part IIA –

migration time has the meaning given in section 306(1) of the *Personal Property Securities Act 2009* (Commonwealth).

Migration time will occur at least 28 before the Personal Property Securities Register commences operation.

pre-PPS transition period means the period –

- (a) commencing at the migration time or such earlier time as may be prescribed by the regulations; and
- (b) ending at the registration commencement time.

Registrar has the meaning given in section 10 of the *Personal Property Securities Act 2009* (Commonwealth).

Section 10 of the *Personal Property Securities Act 2009* (Commonwealth) defines Registrar as the Registrar of Personal Property Securities.

registration commencement time has the meaning given in section 306(2) of the *Personal Property Securities Act 2009* (Commonwealth).

Registration commencement time will be the day on which the Personal Property Securities Register commences operation.

registration function means any function conferred or imposed on the Commissioner under Part III.

The Commissioner is the Commissioner for Consumer Protection.

The proposed section 3C(1) of the *Chattel Securities Act 1987* (WA) provides that, subject to the proposed section 3D, the *Chattel Securities Act 1987* (WA) has no effect at and after the registration commencement time, except for the following provisions –

- section 3A, which provides for the designation of a Commissioner for the purposes of the *Chattel Securities Act 1987* (WA);

- section 22, which sets out the procedure by which a registration on the register established under the *Chattel Securities Act 1987 (WA)* may be cancelled;
- section 23, which sets out the procedure by which a person may apply for an extract from the register established under the *Chattel Securities Act 1987 (WA)*;
- section 24, which sets out the procedure by which a person may apply for compensation in the event that the extinguishment of a security interest causes loss or damage;
- section 25, which sets out the procedure by which a person may apply for compensation where a security interest is not shown on an extract from the register established under *Chattel Securities Act 1987 (WA)* and this causes loss or damage;
- section 26, which provides that a person aggrieved by a decision made under sections 24 or 25 may apply to the State Administrative Tribunal to have the decision reviewed;
- section 29, which provides that moneys payable under an Order of the Commissioner or as a result of a review by the State Administrative Tribunal shall be paid into the Consolidated Account;
- section 30A, which provides that the Commissioner may delegate a power or duty conferred upon them under the *Chattel Securities Act 1987 (WA)* to a person employed at the Department of Commerce;
- section 30B, which provides that information obtained in the course of administering the *Chattel Securities Act 1987 (WA)* is confidential;
- section 30C, which provides that a person is not liable for actions taken in regard to the performance of a function under the *Chattel Securities Act 1987 (WA)*, where that action is undertaken in good faith;
- section 30D, which provides that section 61 and Part 6 of the *Fair Trading Act 2010 (WA)* apply in relation to the functions of the Commissioner under the *Chattel Securities Act 1987 (WA)* and matters affected by the exercise of those functions;
- section 31, which provides that regulations may be made with respect to prescribing any matter or thing which is authorised or required to be prescribed to give effect to Part IV of the *Chattel Securities Act 1987 (WA)*;

- any other provision of the *Chattel Securities Act 1987* (WA) that is referred to in any of the provisions listed above (primary provisions), to the extent necessary for the purposes of the continued operation of the primary provision; and
- any power to make regulations in respect of a matter that is conferred by a primary provision.

The proposed section 3C(2) of the *Chattel Securities Act 1987* (WA) provides that section 23 of the *Chattel Securities Act 1987* (WA) will cease to have effect seven years after registration commencement time.

It is important that the public can continue to access records contained on the register established under the *Chattel Securities Act 1987* (WA) after it is closed. The Personal Property Securities Register will not contain any historical information so, in the event of a dispute over the existence of a registration of a security interest over a vehicle or questions surrounding the priority of creditors, the only source of this information will be the register established under the *Chattel Securities Act 1987* (WA).

The proposed section 3C(1) of the *Chattel Securities Act 1987* (WA) will allow persons seeking information of this nature to apply to the Commissioner for Consumer Protection for an extract from the register, showing records for a vehicle as at a particular date.

In accordance with the proposed section 3C(2) of the *Chattel Securities Act 1987* (WA), the ability to request historical information will cease after seven years. Due to limitation periods, it is unlikely that information of this nature would be required for a legal dispute. Additionally, the State is not required to keep records of the type for longer than seven years.

The proposed section 3D of the *Chattel Securities Act 1987* (WA) provides that, subject to the proposed section 3E, the Commissioner may refuse to exercise a registration function during the pre-PPS transitional period. This includes the ability for the Commissioner to refuse to exercise a registration function in relation to a matter that was not concluded immediately before the commencement of the pre-PPS transitional period.

At the conclusion of the pre-PPS transitional period, the Commissioner may not exercise a registration function under the following sections –

- section 15, which provides that the Commissioner shall register security interests and other particulars on the register established under the *Chattel Securities Act*

1987 (WA);

- section 19, which provides that, if an application is made under section 17 or 18, the Commissioner shall cancel a registration on the register established under the *Chattel Securities Act 1987* (WA);
- section 20, which sets out the procedure by which the Commissioner shall vary particulars recorded on the register established under the *Chattel Securities Act 1987* (WA);
- section 21, which provides that, if a prescribed change occurs in the particulars entered in the register established under the *Chattel Securities Act 1987* (WA), the Commissioner shall vary the particulars; and
- section 22, which provides that the Commissioner may require a person to show cause that a registration should not be cancelled and sets out the procedure by which the Commissioner may cancel a registration on the register established under the *Chattel Securities Act 1987* (WA), in the event that the person fails to show cause.

As part of the personal property securities reforms, where a State or Territory has determined that a register will be shut down, the information contained on that register will be migrated to the new Personal Property Securities Register. This will ensure that all security interests previously registered on a State or Territory register do not lose the protection they may have by reason of registration. It will also help to ensure that the Personal Property Securities Register is as accurate as possible from commencement.

Registrations that are contained on the register established under the *Chattel Securities Act 1987* (WA) will be migrated to the Personal Property Securities Register. Due to the volume of registrations that will be migrated to the new register, migration will occur over a number of weeks, with a final migration occurring immediately before the new register commences.

To meet the requirements of migration, it may be necessary for the Registrar to cease accepting new registrations and carrying out other registration functions several days before the Personal Property Securities Register commences operation. It is intended that this will not be done until as close to the commencement of the new register as is possible. The proposed section 3D of the *Chattel Securities Act 1987* (WA) will give the Department of Commerce maximum flexibility in determining the appropriate time for the cessation of registration functions.

The proposed section 3E of the *Chattel Securities Act 1987* (WA) provides that, if the Commissioner –

- has given a person a notice under section 22(1) of the *Chattel Securities Act 1987* (WA) which is in force immediately before registration commencement time; and
- would have cancelled the registration of that person under section 22(2) of the *Chattel Securities Act 1987* (WA), had the Commissioner been able to exercise that registration function after the end of the pre-PPS transition period

the Commissioner may provide the Registrar of the Personal Property Securities Register with a written notice stating the registration of the person would have been so cancelled.

Section 22(1) of the *Chattel Securities Act 1987* (WA) provides that if a person is registered as the holder of a security interest and it appears to the Commissioner that –

- when the application for registration on the register established under the *Chattel Securities Act 1987* (WA) was made, the person was not the holder of the security interest; or
- the security interest has been extinguished and the person has failed to notify the Commissioner,

the Commissioner may issue a show cause notice, which will require the person to show cause as to why the registration should not be cancelled.

Section 22(2) of the *Chattel Securities Act 1987* (WA) provides that if a person fails to show cause as required in section 22(1), the Commissioner may cancel the registration.

It is possible that a show cause notice will be issued by the Commissioner in the 14 days before registration commencement time. However, after registration commencement time, the register established under the *Chattel Securities Act 1987* (WA) will be closed and it will not be possible for the Commissioner to cancel a registration.

The proposed section 3E of the *Chattel Securities Act 1987* (WA) will therefore provide the Commissioner with the authority to notify the Registrar of the Personal Property Securities Register that a registration which –

- was migrated from the register established under the *Chattel Securities Act 1987* (WA) to the Personal Property Securities Register; and

- would have been cancelled, had the Commissioner been able to exercise the registration function under section 22(2) of the *Chattel Securities Act 1987* (WA) after the end of the pre-PPS transition period,

should be cancelled.

The proposed section 3F of the *Chattel Securities Act 1987* (WA) provides that, at and after registration commencement time, the Commission may provide an extract from the register established under the *Chattel Securities Act 1987* (WA) instead of a certificate, where an application is made under section 23 of the *Chattel Securities Act 1987* (WA).

Section 23 of the *Chattel Securities Act 1987* (WA) provides that a person may apply to the Commissioner for a certificate containing –

- the particulars of an entry or entries in respect of particular goods in the register established under the *Chattel Securities Act 1987* (WA); or
- a statement that there are no entries in respect of particular goods.

From the date on which the Personal Property Securities Register commences operation, the register established under the *Chattel Securities Act 1987* (WA) will be closed, and a number of related register functions will be disabled. It will be possible to obtain historical information from the closed register in accordance with section 23 of the *Chattel Securities Act 1987* (WA), however, due to the closure of the register, it may no longer be possible for certificates to be issued. The proposed section 3F of the *Chattel Securities Act 1987* (WA) will therefore allow this historical information to be provided in the form of an extract.

The proposed section 3G of the *Chattel Securities Act 1987* (WA) provides that a notice may be published in the Government Gazette stating that –

- the Minister is satisfied that there is no reason for the *Chattel Securities Act 1987* (WA) to continue; and
- the *Chattel Securities Act 1987* (WA) will expire on the day on which the notice is published.

While the register established under the *Chattel Securities Act 1987* (WA) will be closed when the Personal Property Securities Register commences operation, there will be residual functions that must be carried out by the Commissioner after this time. It is anticipated that the *Chattel Securities Act 1987* (WA) will continue in force for at least seven years to ensure that historical search requests made in accordance with section 23 of the *Chattel Securities Act 1987*

(WA) can be fulfilled. After this time, the Minister may publish a notice in accordance with the proposed section 3G of the *Chattel Securities Act 1987* (WA).

Division 3 – *Companies (Co-operative) Act 1943* amended

Clause 34 Provides that this Division amends the *Companies (Co-operative) Act 1943* (WA).

Clause 35 Amends the definition of ‘charge’ in section 3 of the *Companies (Co-operative) Act 1943* (WA).

Paragraph (c) in the definition of ‘charge’ in section 3 of the *Companies (Co-operative) Act 1943* (WA) currently states that a charge means a mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration or would be registrable as a bill of sale.

Clause 31 of the proposed Act provides for the repeal of the *Bills of Sale Act 1899* (WA). This clause and clause 31 will both commence immediately before the Personal Property Securities Register commences operation.

From this time, it will not be possible for bills of sale to be registered in accordance with the *Bills of Sale Act 1899* (WA).

The proposed clause will remove the words ‘or would be registrable as a bill of sale’ from paragraph (c) of the definition in charge in section 3 of the *Companies (Co-operative) Act 1943* (WA).

Division 4 – *Co-operatives Act 2009* amended

Clause 36 Provides that this Division amends the *Co-operatives Act 2009* (WA).

Clause 37 Deletes section 44(2) of the *Co-operatives Act 2009* (WA).

Section 44(1) of the *Co-operatives Act 2009* (WA) provides that a person is not considered to have knowledge of a co-operative’s rules, a document, the contents of a document or any particulars merely because –

- the rules, the document or the particulars have been lodged with the Registrar of Co-operatives; or
- the rules, the document or the particulars are referred to in another document that has been lodged with the Registrar of Co-operatives.

Section 44(2) of the *Co-operatives Act 2009* (WA) provides that section 44(1) does not apply in relation to a document that has been lodged under Part 10, Division 3 of the

Co-operatives Act 2009 (WA).

Part 10, Division 3 of the *Co-operatives Act 2009 (WA)* relates to the registration of charges and consists of section 267, which gives effect to Schedule 3 of the *Co-operatives Act 2009 (WA)*. Schedule 3 of the *Co-operatives Act 2009 (WA)* makes provision in regard to the registration of charges over property owned by co-operatives.

However, clause 43 of the proposed Act will provide that Schedule 3 ceases to have effect, except as otherwise provided.

This will mean that, once the Personal Property Securities Register commences operation, co-operatives will no longer be required to register charges with the Registrar of Co-operatives and documents will no longer be lodged under Part 10, Division 3 of the *Co-operatives Act 2009 (WA)*. As a result, section 44(2) of the *Co-operatives Act 2009 (WA)* will cease to be relevant and is therefore deleted by this clause.

Clause 38 Deletes section 230(1)(f) of the *Co-operatives Act 2009 (WA)*.

Section 230(1)(f) of the *Co-operatives Act 2009 (WA)* provides that a co-operative must keep a register of charges in accordance with clause 41 of Schedule 3 of the *Co-operatives Act 2009 (WA)*. Clause 41 of Schedule 3 sets out specific requirements for the register of charges maintained by a co-operative.

Schedule 3 of the *Co-operatives Act 2009 (WA)* will be amended by clause 43 of the proposed Act, which provides that Schedule 3 ceases to have effect except as otherwise provided. Clause 41 of Schedule 3 of the *Co-operatives Act 2009 (WA)* will therefore cease to have effect.

Clause 41 of Schedule 3 of the *Co-operatives Act 2009 (WA)* provides that a co-operative register of charges must be open for inspection. This allows creditors and other members of the public to determine what charges exist over a co-operative's property.

It will be possible to register charges over a co-operative's property on the new Personal Property Securities Register, which will commence at the same time as this clause comes into effect. The Personal Property Securities Register will be accessible by phone and over the internet throughout Australia, and a search of the Register will determine whether any charges over a co-operative's property have been registered.

As a result, it is no longer necessary for co-operatives to maintain their own register of charges. The requirement for co-operatives to keep such a register in section 230(1)(f) of the *Co-operatives Act 2009 (WA)* will therefore be deleted.

Clause 39 Deletes section 267(c) of the *Co-operatives Act 2009* (WA).

Section 267(c) of the *Co-operatives Act 2009* (WA) provides that Schedule 3 of the *Co-operatives Act 2009* (WA) does not apply to a mortgage, charge or encumbrance registered under the *Bills of Sale Act 1899* (WA).

Clause 31 of the proposed Act provides for the repeal of the *Bills of Sale Act 1899* (WA). This clause and clause 31 will both commence immediately before the Personal Property Securities Register commences operation. From this time, it will not be possible for bills of sale to be registered in accordance with the *Bills of Sale Act 1899* (WA).

It is therefore necessary to delete section 267(c) of the *Co-operatives Act 2009* (WA).

Clause 40 Inserts section 337(2) into the *Co-operatives Act 2009* (WA).

Section 314 of the *Co-operatives Act 2009* (WA) sets out the procedure by which the Registrar of Co-operatives may issue a certificate for the winding up for a co-operative.

The proposed section 337(2) into the *Co-operatives Act 2009* (WA) provides that, where a certificate has been issued under section 314 of the *Co-operatives Act 2009* (WA), the co-operative is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* (WA) in relation to sections 588FL and 588FM of the *Corporations Act 2001* (Commonwealth), subject to the following modifications –

- the sections of the *Corporations Act 2001* (Commonwealth) are to be read as if the co-operative was a company; and
- any other modifications as are prescribed.

The act of declaring a co-operative to be an applied Corporations legislation matter will mean that the provisions of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* (WA) will apply to the co-operative. Part 3 of the *Corporations (Ancillary Provisions) Act 2001* (WA) deals with the application of the Commonwealth Corporations legislation to State matters.

The proposed section 337(2) into the *Co-operatives Act 2009* (WA) will ensure that sections 588FL and 588FM of the *Corporations Act 2001* (Commonwealth) apply to co-operatives registered under the *Co-operatives Act 2009* (WA) where the Registrar of Co-operatives has issued a certificate for winding up.

Clause 41 Inserts section 454(3) into the *Co-operatives Act 2009* (WA).

The proposed section 454(3) of the *Co-operatives Act 2009* (WA) provides that the obligation for the Registrar of Co-operatives to keep the Register of Co-operative Charges, as established under Schedule 3 of the *Co-operatives Act 2009* (WA), will cease seven years after registration commencement time.

Registration commencement time, which is defined in the proposed clause 4A of Schedule 3 of the *Co-operatives Act 2009* (WA), will be the day on which the Personal Property Securities Register commences operation.

It is important that the public can continue to access records contained on the Register of Co-operative Charges after it is closed. The Personal Property Securities Register will not contain any historical information so, in the event of a dispute over the existence of a registration of a co-operative charge or questions surrounding the priority of creditors, the only source of this information will be the Register of Co-operative Charges.

In accordance with the proposed section 454(3) of the *Co-operatives Act 2009* (WA), the ability to request historical information will cease after seven years. Due to limitation periods, it is unlikely that information of this nature would be required for a legal dispute. Additionally, the State is not required to keep records of the type for longer than seven years.

Clause 42 Inserts section 457(4) into the *Co-operatives Act 2009* (WA).

Section 457 of the *Co-operatives Act 2009* (WA) provides for the inspection of registers maintained by the Registrar of Co-operatives.

Clause 41 of the proposed Act provides that the Register of Co-operative Charges, as established under Schedule 3 of the *Co-operatives Act 2009* (WA), is not required to be kept from seven years after registration commencement time. Registration commencement time will be the day on which the Personal Property Securities Register commences operation.

It is important that the public can continue to access records contained on the Register of Co-operative Charges after it is closed. The Personal Property Securities Register will not contain any historical information so, in the event of a dispute over the existence of a registration of a co-operative charge or questions surrounding the priority of creditors, the only source of this information will be the Register of Co-operative Charges.

In accordance with the proposed section 454(3) of the *Co-operatives Act 2009* (WA), the ability to request historical information will cease after seven years. Due to limitation periods, it is unlikely that information of this nature would be

required for a legal dispute. Additionally, the State is not required to keep records of the type for longer than seven years.

The proposed section 457(4) of the *Co-operatives Act 2009* (WA) provides that section 457 will not have any effect in relation to the Register of Co-operative Charges on the day that is seven years after registration commencement time. It will therefore no longer be possible to inspect the Register of Co-operative Charges after this time.

Clause 43 Inserts the proposed Division 2A of Schedule 3 into the *Co-operatives Act 2009* (WA), which provides for the cessation of registration functions by the Registrar of Co-operatives.

The proposed clause 4A of Schedule 3 of the *Co-operatives Act 2009* (WA) defines the terms used in Division 2A of Schedule 3 –

migration time has the meaning given in section 306(1) of the *Personal Property Securities Act 2009* (Commonwealth).

Migration time will occur at least 28 before the Personal Property Securities Register commences operation.

pre-PPS transition period means the period –

- (a) commencing at the migration time or such earlier time as may be prescribed by the regulations; and
- (b) ending at the registration commencement time.

registrable charge means a charge created before the registration commencement time that was a registrable charge as defined in clause 1 when it was created.

registration commencement time has the meaning given in section 306(2) of the *Personal Property Securities Act 2009* (Commonwealth).

Registration commencement time will be the day on which the Personal Property Securities Register commences operation.

registration function means any function conferred or imposed on the Registrar under Schedule 3 of the *Co-operatives Act 2009* (WA).

The proposed clause 4B(1) of Schedule 3 of the *Co-operatives Act 2009* (WA) provides that, subject to subclause (2) and clause 4D, Schedule 3 has no effect after registration commencement time.

The proposed clause 4B(2) of Schedule 3 of the *Co-operatives Act 2009* (WA) provides that, if a registrable charge is void immediately before registration commencement time, or becomes void after registration commencement time, the

Supreme Court may declare the charge not to be, and never to have been, void if –

- an application has been made under clause 29 of Schedule 3 of the *Co-operatives Act 2009* (WA); and
- the Supreme Court is satisfied as to the matters referred to in clause 29(a) or (b) of Schedule 3 of the *Co-operatives Act 2009* (WA).

Clause 29 of Schedule 3 of the *Co-operatives Act 2009* (WA) provides that, if the Supreme Court is satisfied that

- (a) the failure to lodge notice of a charge or a variation of a charge with the Registrar of Co-operative Charges was accidental or due to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders; or
- (b) on other grounds it is just and equitable to grant relief,

the Court may extend the period in which the notice must be lodged.

The proposed clause 4B(2) of Schedule 3 of the *Co-operatives Act 2009* (WA) will ensure that the procedure set out in clause 29 of Schedule 3 of the *Co-operatives Act 2009* (WA) continues to be available in situations where a charge has become void due to late lodgement of notice with the Registrar of Co-operatives.

The proposed clause 4C of Schedule 3 of the *Co-operatives Act 2009* (WA) provides that the Registrar of Co-operatives may refuse to exercise a registration function during the pre-PPS transitional period. This includes the ability for the Registrar to refuse to exercise a registration function in relation to a matter that was not concluded immediately before the commencement of the pre-PPS transitional period. After the pre-PPS transitional period, the Registrar will no longer be able to exercise a registration function.

As part of the personal property securities reforms, where a State or Territory has determined that a register will be shut down, the information contained on that register will be migrated to the new Personal Property Securities Register. This will ensure that all security interests previously registered on a State or Territory register do not lose the protection they may have by reason of registration. It will also help to ensure that the Personal Property Securities Register is as accurate as possible from commencement.

Registrations that are contained on the Register of Co-operative Charges, as established under Schedule 3 of the *Co-operatives Act 2009* (WA), will be migrated to the Personal Property Securities Register. Due to the volume of registrations

that will be migrated to the new register, migration will occur over a number of weeks, with a final migration occurring immediately before the new register commences.

To meet the requirements of migration, it may be necessary for the Registrar to cease accepting new registrations and carrying out other registration functions several days before the Personal Property Securities Register commences operation. It is intended that this will not be done until as close to the commencement of the new register as is possible. The proposed clause 4C of Schedule 3 of the *Co-operatives Act 2009* (WA) will give the Department of Commerce maximum flexibility in determining the appropriate time for the cessation of registration functions.

The proposed clause 4D of Schedule 3 of the *Co-operatives Act 2009* (WA) provides that, subject to Chapter 9 of the *Personal Property Securities Act 2009* (Commonwealth), registrable charges have the priority between themselves that they would have had under the *Co-operatives Act 2009* (WA) as in effect immediately before registration commencement time.

It is possible that charges registered on the Register of Co-operative Charges will relate to property that does not fall within the scope of the *Personal Property Securities Act 2009* (Commonwealth). Clause 4D will ensure that the priorities over such charges continue to be dealt with by the provisions in the *Co-operatives Act 2009* (WA).

Clause 4D is subject to Chapter 9 of the *Personal Property Securities Act 2009* (Commonwealth), which contains transitional provisions, to ensure that priorities over registrable charges that fall within the scope of the *Personal Property Securities Act 2009* (Commonwealth) are dealt with according to the transitional provisions in Chapter 9 of that Act.

Division 5 – *Growers Charge Act 1940* amended

Clause 44 Provides that this Division amends the *Growers Charge Act 1940* (WA).

Clause 45 Amends the long title of the *Growers Charge Act 1940* (WA).

The long title currently provides that the *Growers Charge Act 1940* (WA) is an Act to reserve to the grower of certain crops which are subject to a bill of sale or other security an interest in such crops by creating a charge in his favour, and for other purposes.

Clause 31 of the proposed Act provides for the repeal of the *Bills of Sale Act 1899* (WA). This clause and clause 31 will both commence immediately before the Personal Property

Securities Register commences operation.

From this time, it will not be possible for bills of sale to be registered in accordance with the *Bills of Sale Act 1899* (WA). However, this will not affect the validity of bills of sale that are in effect at this time.

This clause will amend the long title of the *Growers Charge Act 1940* (WA) to provide that, as opposed to applying to the grower of crops that are subject to a bill of sale or other security, the Act applies to the grower of certain crops that are subject to a security agreement.

The term security agreement is consistent with the language of the *Personal Property Securities Act 2009* (Commonwealth) and is broad enough to include bills of sale. This will ensure that the *Growers Charge Act 1940* (WA) continues to apply to any bills of sale still in effect at the time the Personal Property Securities Register commences operation.

Clause 46 Clause (1) deletes the definition of **bill of sale** in section 2 of the *Growers Charge Act 1940* (WA).

Bill of sale is defined in section 2 of the *Growers Charge Act 1940* (WA) to mean a bill of sale within the meaning of the *Bills of Sale Act 1899* (WA).

Clause 31 of the proposed Act provides for the repeal of the *Bills of Sale Act 1899* (WA). This clause and clause 31 will both commence immediately before the Personal Property Securities Register commences operation.

It is therefore necessary that the definition of bill of sale in section 2 of the *Growers Charge Act 1940* (WA) be deleted.

Clause (2) inserts definitions of **secured party** and **security agreement** into section 2 of the *Growers Charge Act 1940* (WA).

secured party has the meaning given in section 10 of the *Personal Property Securities Act 2009* (Commonwealth).

Section 10 of the *Personal Property Securities Act 2009* (Commonwealth) provides that secured party –

- means a person who holds a security interest for the person's own benefit or for the benefit of another person (or both); and
- if the holders of the obligations issued, guaranteed or provided for under a security agreement are represented by a trustee as the holder of the security interest – includes the trustee; and

- in relation to a registration with respect to a security interest – includes a person registered as a secured party in the registration.

security agreement has the meaning given in section 10 of the *Personal Property Securities Act 2009* (Commonwealth).

Section 10 of the *Personal Property Securities Act 2009* (Commonwealth) provides that security agreement means –

- an agreement or act by which a security interest is created, arises or is provided for; or
- writing evidencing such an agreement or act.

Clause 47 Subclause (1) deletes the term **bill of sale** from section 3 of the *Growers Charge Act 1940* (WA) and replaces it with the term **security agreement**.

The definition of **bill of sale** in section 2 of the *Growers Charge Act 1940* (WA) is being deleted by clause 46 of the proposed Act, due to the proposed repeal of the *Bills of Sale Act 1899* (WA).

A definition of **security agreement** will be inserted into section 2 of the *Growers Charge Act 1940* (WA) by clause 46 of the proposed Act. The term security agreement is consistent with the language of the *Personal Property Securities Act 2009* (Commonwealth) and is broad enough to include bills of sale. This will ensure that the *Growers Charge Act 1940* (WA) continues to apply to any bills of sale still in effect at the time the Personal Property Securities Register commences operation.

Subclause (2) inserts the proposed section 3(2) into the *Growers Charge Act 1940* (WA), which declares that section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) applies to a charge created under section 3(1) of the *Growers Charge Act 1940* (WA).

Where a State law creates an interest in personal property (a statutory interest), provision can be made in that State legislation to declare that section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) applies to the statutory interests. The effect of such a declaration will be that the State law, as opposed to the *Personal Property Securities Act 2009* (Commonwealth), will determine the priorities between statutory interests and security interests which arise under the Commonwealth Act.

Declarations made in accordance with section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) will ensure the continued efficacy of State legislation that makes provision for the priority of interests in collateral.

Section 3(1) of the *Growers Charge Act 1940* (WA) provides that, where crops are subject to a security agreement, a charge is created over the crops in favour of the grower. The priority of the charge is as follows –

- it will rank immediately after any other statutory charge and any advance towards the cost of growing, harvesting and carting the crops; and
- it will be paid in priority to all other moneys secured by a security agreement.

This clause will ensure that, in the event of a priority dispute, priority is determined in accordance with section 3(1) of the *Growers Charge Act 1940* (WA).

Clause 48 This clause deletes the word grantee and the term grantee of a bill of sale from section 6(b) of the *Growers Charge Act 1940* (WA) and replaces it with the term **secured party**.

A definition of **secured party** will be inserted into section 2 of the *Growers Charge Act 1940* (WA) by clause 46 of the proposed Act. The term secured party is consistent with the language of the *Personal Property Securities Act 2009* (Commonwealth).

The effect of section 6(b) of the *Growers Charge Act 1940* (WA) will not be altered by this clause and persons who would have fallen within the category of grantee before this clause is enacted will come within the category of secured party.

Clause 49 This clause deletes the term holders of a bill of sale from section 7(d) of the *Growers Charge Act 1940* (WA) and replaces it with the term **secured party**.

The definition of **bill of sale** in section 2 of the *Growers Charge Act 1940* (WA) is being deleted by clause 46 of the proposed Act, due to the proposed repeal of the *Bills of Sale Act 1899* (WA).

A definition of **secured party** will be inserted into section 2 of the *Growers Charge Act 1940* (WA) by clause 46 of the proposed Act. The term secured party is consistent with the language of the *Personal Property Securities Act 2009* (Commonwealth).

The effect of section 7(d) of the *Growers Charge Act 1940* (WA) will not be altered by this clause and persons who would have fallen within the category of holders of a bill of sale before this clause is enacted will come within the category of secured party.

Division 6 – *Hire-Purchase Act 1959* amended

Clause 50 Provides that this Division amends the *Hire-Purchase Act 1959* (WA).

Clause 51 Deletes section 3(2)(e)(vii) of the *Hire-Purchase Act 1959* (WA).

Section 3(2) of the *Hire-Purchase Act 1959* (WA) sets out the requirements for a valid hire-purchase agreement. Section 3(2)(e)(vii) of the *Hire-Purchase Act 1959* (WA) provides that the agreement must state any amount included in the total amount payable to cover the fees to be paid under the *Bills of Sale Act 1899* (WA) for registration of the agreement (to be described as agreement registration fees in the *Hire-Purchase Act 1959* (WA)).

Clause 31 of the proposed Act provides for the repeal of the *Bills of Sale Act 1899* (WA). This clause and clause 31 will both commence immediately before the Personal Property Securities Register commences operation.

It is therefore necessary to delete section 3(2)(e)(vii) of the *Hire-Purchase Act 1959* (WA).

Clause 52 Deletes the words ‘and if required by the owner also the reasonable costs incurred by the owner in registering the same under the *Bills of Sale Act 1899*’ from section 9(4)(b) of the *Hire-Purchase Act 1959* (WA).

Section 9(4)(b) of the *Hire-Purchase Act 1959* (WA) provides that a hirer or assignee may be required to pay the cost of registering an assignment agreement and, if required by the owner, the cost of registering the agreement under the *Bills of Sale Act 1899* (WA).

Clause 31 of the proposed Act provides for the repeal of the *Bills of Sale Act 1899* (WA). This clause and clause 31 will both commence immediately before the Personal Property Securities Register commences operation.

From this time, it will not be possible for bills of sale to be registered in accordance with the *Bills of Sale Act 1899* (WA).

It is therefore necessary to delete the reference to the registration of an agreement under the *Bills of Sale Act 1899* (WA) from section 9(4)(b) of the *Hire-Purchase Act 1959* (WA).

Clause 53 Deletes the words ‘and agreement registration fees’ from section 36A(2a)(b) of the *Hire-Purchase Act 1959* (WA).

Section 3(2)(e)(vii) of the *Hire-Purchase Act 1959* (WA) provides that agreement registration fees are any fees to be paid under the *Bills of Sale Act 1899* (WA) for registration of a hire-purchase agreement.

Section 3(2)(e)(vii) of the *Hire-Purchase Act 1959* (WA) will be deleted by clause 51 of the proposed Act. It is therefore necessary that the words 'agreement registration fees' be deleted from section 36A(2a)(b) of the *Hire-Purchase Act 1959* (WA).

Clause 54 Deletes the words 'agreement registration fees' from Part 1 of the First Schedule of the *Hire-Purchase Act 1959* (WA).

Section 3(2)(e)(vii) of the *Hire-Purchase Act 1959* (WA) provides that agreement registration fees are any fees to be paid under the *Bills of Sale Act 1899* (WA) for registration of a hire-purchase agreement.

Section 3(2)(e)(vii) of the *Hire-Purchase Act 1959* (WA) will be deleted by clause 51 of the proposed Act. It is therefore necessary that the words 'agreement registration fees' be deleted from Part 1 of the First Schedule of the *Hire-Purchase Act 1959* (WA).

Division 7 – *Motor Vehicle Dealers Act 1973* amended

Clause 55 Provides that this Division amends the *Motor Vehicle Dealers Act 1973* (WA).

Clause 56 Replaces the definition of security interest in section 32A of the *Motor Vehicle Dealers Act 1973* (WA).

Section 32A of the *Motor Vehicle Dealers Act 1973* (WA) currently provides that security interest has the same meaning as it has in the *Chattel Securities Act 1987* (WA).

Section 3 of the *Chattel Securities Act 1987* (WA) provides that security interest means an interest in or a power over goods (whether arising by or pursuant to an instrument or transaction) which secures payment of a debt or other pecuniary obligation or the performance of any other obligation and includes any interest in or power over goods of a lessor, owner or other supplier of goods, but does not include a possessory lien or pledge.

However, clause 33 of the proposed Act provides that section 3 of the *Chattel Securities Act 1987* (WA) will cease to have effect at the time the Personal Property Securities Register commences operation.

This clause will amend the definition of security interest in section 32A of the *Motor Vehicle Dealers Act 1973* (WA) to provide that it has the meaning given in section 10 of the *Personal Property Securities Act 2009* (Commonwealth).

The *Personal Property Securities Act 2009* (Commonwealth) defines security interest as an interest in relation to personal property provided for by a transaction that, in substance secures payment or performance of an obligation (without

regard to the form of the transaction or the identity of the person who has title to the property).

The new definition will capture the same types of interests and provide for consistency in language between the *Motor Vehicle Dealers Act 1973* (WA) and the *Personal Property Securities Act 2009* (Commonwealth).

Division 8 – *Settlement Agents Act 1981* amended

Clause 57 Provides that this Division amends the *Settlement Agents Act 1981* (WA).

Clause 58 Deletes clause 2(fa) of Schedule 2 of the *Settlement Agents Act 1981* (WA).

Clause 2 of Schedule 2 of the *Settlement Agents Act 1981* (WA) lists the functions that a business settlement agent licensee may perform. Clause 2(fa) provides that the licensee may prepare any such documents that are to be registered under the *Bills of Sale Act 1899* (WA) as are prescribed.

Clause 31 of the proposed Act provides for the repeal of the *Bills of Sale Act 1899* (WA). This clause and clause 31 will both commence immediately before the Personal Property Securities Register commences operation.

From this time, it will not be possible for bills of sale to be registered in accordance with the *Bills of Sale Act 1899* (WA).

It is therefore necessary that clause 2(fa) of Schedule 2 of the *Settlement Agents Act 1981* (WA) be deleted.

Part 5 – Energy

Division 1 – *Electricity Industry Act 2004* amended

Clause 59 Provides that this Division amends the *Electricity Industry Act 2004* (WA).

Clause 60 Inserts the proposed section 131A into the *Electricity Industry Act 2004* (WA), which declares that a licence granted under the *Electricity Industry Act 2004* (WA) is not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth), if such a licence is transferable by the licensee.

Licences are granted under the *Electricity Industry Act 2004* (WA) for the purposes of supplying electricity.

Statutory licences fall within the definition of licence in section 10 of the *Personal Property Securities Act 2009* (Commonwealth), whether or not the licence is exclusive and

whether or not a transfer of the licence is restricted or requires consent. Licences are included within the definition of personal property in the Commonwealth Act.

The *Personal Property Securities Act 2009* (Commonwealth) provides that a licence is considered to be transferable by the licensee even if legislation states that the licence cannot be transferred without the consent of a Minister, or can only be transferred in restricted circumstances or to a restricted class of persons. For the purposes of the Commonwealth Act, where a Minister is required to consent to the transfer of a licence, the licensee is still taken to have transferred the licence. Ministerial consent is merely another requirement to validly transfer the property, in addition to other requirements such as a valid contract between the transferor and transferee.

It is possible for statutory licences to be excluded from the operation of the *Personal Property Securities Act 2009* (Commonwealth) by making a declaration which provides that those licences are not personal property for the purposes of the Commonwealth Act.

This clause excludes transferable licences granted under the *Electricity Industry Act 2004* (WA) from the definition of personal property in the *Personal Property Securities Act 2009* (Commonwealth), thereby ensuring that these licences do not fall within the scope of the Commonwealth Act and the new personal property securities regulatory regime.

Division 2 – *Energy Coordination Act 1994* amended

- Clause 61 Provides that this Division amends the *Energy Coordination Act 1994* (WA).
- Clause 62 Inserts the proposed section 26A into the *Energy Coordination Act 1994* (WA), which declares that a licence granted under the *Energy Coordination Act 1994* (WA) is not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth), if such a licence is transferable by the licensee.

Licences are granted under the *Energy Coordination Act 1994* (WA) for the purposes of supplying gas.

Statutory licences fall within the definition of licence in section 10 of the *Personal Property Securities Act 2009* (Commonwealth), whether or not the licence is exclusive and whether or not a transfer of the licence is restricted or requires consent. Licences are included within the definition of personal property in the Commonwealth Act.

The *Personal Property Securities Act 2009* (Commonwealth) provides that a licence is considered to be transferable by the licensee even if legislation states that the licence cannot be

transferred without the consent of a Minister, or can only be transferred in restricted circumstances or to a restricted class of persons. For the purposes of the Commonwealth Act, where a Minister is required to consent to the transfer of a licence, the licensee is still taken to have transferred the licence. Ministerial consent is merely another requirement to validly transfer the property, in addition to other requirements such as a valid contract between the transferor and transferee.

It is possible for statutory licences to be excluded from the operation of the *Personal Property Securities Act 2009* (Commonwealth) by making a declaration which provides that those licences are not personal property for the purposes of the Commonwealth Act.

This clause excludes transferable licences granted under the *Energy Coordination Act 1994* (WA) from the definition of personal property in the *Personal Property Securities Act 2009* (Commonwealth), thereby ensuring that these licences do not fall within the scope of the Commonwealth Act and the new personal property securities regulatory regime.

Part 6 – Environment

Division 1 – *Conservation and Land Management Act 1984* amended

Clause 63 Provides that this Division amends the *Conservation and Land Management Act 1984* (WA).

Clause 64 Inserts the proposed section 88(3) into the *Conservation and Land Management Act 1984* (WA), which declares that a permit or licence granted under section 88(1) of the *Conservation and Land Management Act 1984* (WA) is not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth), if such a licence is transferable by the licensee or permit holder.

Permits and licences are granted under section 88(1) of the *Conservation and Land Management Act 1984* (WA) for the purposes of taking forest produce on or from Crown land.

Statutory licences fall within the definition of licence in section 10 of the *Personal Property Securities Act 2009* (Commonwealth), whether or not the licence is exclusive and whether or not a transfer of the licence is restricted or requires consent. Licences are included within the definition of personal property in the Commonwealth Act.

The *Personal Property Securities Act 2009* (Commonwealth) provides that a licence is considered to be transferable by the licensee even if legislation states that the licence cannot be transferred without the consent of a Minister, or can only be transferred in restricted circumstances or to a restricted class of persons. For the purposes of the Commonwealth Act, where

a Minister is required to consent to the transfer of a licence, the licensee is still taken to have transferred the licence. Ministerial consent is merely another requirement to validly transfer the property, in addition to other requirements such as a valid contract between the transferor and transferee.

It is possible for statutory licences to be excluded from the operation of the *Personal Property Securities Act 2009* (Commonwealth) by making a declaration which provides that those licences are not personal property for the purposes of the Commonwealth Act.

This clause excludes transferable licences and permits granted under section 88(1) of the *Conservation and Land Management Act 1984* (WA) from the definition of personal property in the *Personal Property Securities Act 2009* (Commonwealth), thereby ensuring that these licences and permits do not fall within the scope of the Commonwealth Act and the new personal property securities regulatory regime.

Clause 65 Inserts the proposed section 97A(11) into the *Conservation and Land Management Act 1984* (WA), which declares that a licence granted under section 97A(1) or a permit granted under section 97A(3) of the *Conservation and Land Management Act 1984* (WA) is not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth), if such a licence is transferable by the licensee or permit holder.

Licences are granted under section 97A(1) of the *Conservation and Land Management Act 1984* (WA) for the purposes of entering and using State forests, timber reserves and other Crown land to which Division 1, Part VIII of the *Conservation and Land Management Act 1984* (WA) applies.

Permits are granted under section 97A(3) of the *Conservation and Land Management Act 1984* (WA) for the purposes of carrying out an activity that has been approved by the Minister in State forests, timber reserves and other Crown land to which Division 1, Part VIII of the *Conservation and Land Management Act 1984* (WA) applies.

Statutory licences fall within the definition of licence in section 10 of the *Personal Property Securities Act 2009* (Commonwealth), whether or not the licence is exclusive and whether or not a transfer of the licence is restricted or requires consent. Licences are included within the definition of personal property in the Commonwealth Act.

The *Personal Property Securities Act 2009* (Commonwealth) provides that a licence is considered to be transferable by the licensee even if legislation states that the licence cannot be transferred without the consent of a Minister, or can only be transferred in restricted circumstances or to a restricted class of persons. For the purposes of the Commonwealth Act, where a Minister is required to consent to the transfer of a licence, the

licensee is still taken to have transferred the licence. Ministerial consent is merely another requirement to validly transfer the property, in addition to other requirements such as a valid contract between the transferor and transferee.

It is possible for statutory licences to be excluded from the operation of the *Personal Property Securities Act 2009* (Commonwealth) by making a declaration which provides that those licences are not personal property for the purposes of the Commonwealth Act.

This clause excludes transferable licences granted under section 97A(1) and transferable permits granted under section 97A(3) of the *Conservation and Land Management Act 1984* (WA) from the definition of personal property in the *Personal Property Securities Act 2009* (Commonwealth), thereby ensuring that these licences and permits do not fall within the scope of the Commonwealth Act and the new personal property securities regulatory regime.

Clause 66 Inserts the proposed section 99A(7) into the *Conservation and Land Management Act 1984* (WA), which declares that a licence granted under section 99A(1) of the *Conservation and Land Management Act 1984* (WA) is not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth), if such a licence is transferable by the licensee.

Licences are granted under section 99A(1) of the *Conservation and Land Management Act 1984* (WA) for the purposes of –

- taking or removing exotic trees, honey, bees-wax or pollen from land which is vested in the Conservation Commission;
- taking forest produce from land which is vested in the Conservation Commission for use for therapeutic, scientific or horticultural purposes; or
- taking or removing forest produce from land which is vested in the Conservation Commission as part of essential works that are required to be carried out.

Statutory licences fall within the definition of licence in section 10 of the *Personal Property Securities Act 2009* (Commonwealth), whether or not the licence is exclusive and whether or not a transfer of the licence is restricted or requires consent. Licences are included within the definition of personal property in the Commonwealth Act.

The *Personal Property Securities Act 2009* (Commonwealth) provides that a licence is considered to be transferable by the licensee even if legislation states that the licence cannot be transferred without the consent of a Minister, or can only be transferred in restricted circumstances or to a restricted class of persons. For the purposes of the Commonwealth Act, where a Minister is required to consent to the transfer of a licence, the

licensee is still taken to have transferred the licence. Ministerial consent is merely another requirement to validly transfer the property, in addition to other requirements such as a valid contract between the transferor and transferee.

It is possible for statutory licences to be excluded from the operation of the *Personal Property Securities Act 2009* (Commonwealth) by making a declaration which provides that those licences are not personal property for the purposes of the Commonwealth Act.

This clause excludes transferable licences granted under section 99A(1) of the *Conservation and Land Management Act 1984* (WA) from the definition of personal property in the *Personal Property Securities Act 2009* (Commonwealth), thereby ensuring that these licences do not fall within the scope of the Commonwealth Act and the new personal property securities regulatory regime.

Clause 67 Inserts the proposed section 101(6) into the *Conservation and Land Management Act 1984* (WA), which declares that a licence granted under section 101(1) of the *Conservation and Land Management Act 1984* (WA) is not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth), if such a licence is transferable by the licensee.

Licences are granted under section 101(1) of the *Conservation and Land Management Act 1984* (WA) for the purposes of entering and using any land to which Division 2, Part VIII of the *Conservation and Land Management Act 1984* (WA) applies.

Statutory licences fall within the definition of licence in section 10 of the *Personal Property Securities Act 2009* (Commonwealth), whether or not the licence is exclusive and whether or not a transfer of the licence is restricted or requires consent. Licences are included within the definition of personal property in the Commonwealth Act.

The *Personal Property Securities Act 2009* (Commonwealth) provides that a licence is considered to be transferable by the licensee even if legislation states that the licence cannot be transferred without the consent of a Minister, or can only be transferred in restricted circumstances or to a restricted class of persons. For the purposes of the Commonwealth Act, where a Minister is required to consent to the transfer of a licence, the licensee is still taken to have transferred the licence. Ministerial consent is merely another requirement to validly transfer the property, in addition to other requirements such as a valid contract between the transferor and transferee.

It is possible for statutory licences to be excluded from the operation of the *Personal Property Securities Act 2009* (Commonwealth) by making a declaration which provides that those licences are not personal property for the purposes of

the Commonwealth Act.

This clause excludes transferable licences granted under section 101(1) of the *Conservation and Land Management Act 1984* (WA) from the definition of personal property in the *Personal Property Securities Act 2009* (Commonwealth), thereby ensuring that these licences do not fall within the scope of the Commonwealth Act and the new personal property securities regulatory regime.

Division 2 – *Swan and Canning Rivers Management Act 2006* amended

Clause 68 Provides that this Division amends the *Swan and Canning Rivers Management Act 2006* (WA).

Clause 69 Inserts the proposed section 32(8) into the *Swan and Canning Rivers Management Act 2006* (WA), which declares that a licence granted under section 32(1) of the *Swan and Canning Rivers Management Act 2006* (WA) is not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth), if such a licence is transferable by the licensee.

Licences are granted under section 32(1) of the *Swan and Canning Rivers Management Act 2006* (WA) in respect of the River reserve.

Statutory licences fall within the definition of licence in section 10 of the *Personal Property Securities Act 2009* (Commonwealth), whether or not the licence is exclusive and whether or not a transfer of the licence is restricted or requires consent. Licences are included within the definition of personal property in the Commonwealth Act.

The *Personal Property Securities Act 2009* (Commonwealth) provides that a licence is considered to be transferable by the licensee even if legislation states that the licence cannot be transferred without the consent of a Minister, or can only be transferred in restricted circumstances or to a restricted class of persons. For the purposes of the Commonwealth Act, where a Minister is required to consent to the transfer of a licence, the licensee is still taken to have transferred the licence. Ministerial consent is merely another requirement to validly transfer the property, in addition to other requirements such as a valid contract between the transferor and transferee.

It is possible for statutory licences to be excluded from the operation of the *Personal Property Securities Act 2009* (Commonwealth) by making a declaration which provides that those licences are not personal property for the purposes of the Commonwealth Act.

This clause excludes transferable licences granted under section 32(1) of the *Swan and Canning Rivers Management Act 2006* (WA) from the definition of personal property in the *Personal Property Securities Act 2009* (Commonwealth), thereby ensuring that these licences do not fall within the scope of the Commonwealth Act and the new personal property securities regulatory regime.

Division 3 – *Wildlife Conservation Act 1950* amended

Clause 70 Provides that this Division amends the *Wildlife Conservation Act 1950* (WA).

Clause 71 Inserts the proposed section 15(6) into the *Wildlife Conservation Act 1950* (WA), which declares that the licences prescribed under section 15(1) of the *Wildlife Conservation Act 1950* (WA) are not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth), if such licences are transferable by the licensee.

The following licences are prescribed under section 15(1) of the *Wildlife Conservation Act 1950* (WA) –

- licences which authorise the licensee to take and deal with dangerous fauna (regulation 4 of the *Wildlife Conservation Regulations 1970*);
- damage licences (regulation 5 of the *Wildlife Conservation Regulations 1970*);
- professional shooters' licences (regulation 6 of the *Wildlife Conservation Regulations 1970*);
- licences which authorise the licensee to process the carcasses of kangaroos or other fauna (regulation 7 of the *Wildlife Conservation Regulations 1970*);
- direct dealer's licences (regulation 8 of the *Wildlife Conservation Regulations 1970*);
- transport licences (regulation 9 of the *Wildlife Conservation Regulations 1970*);
- skin dealer's licences (regulation 10 of the *Wildlife Conservation Regulations 1970*);
- trapper's licences (regulation 11 of the *Wildlife Conservation Regulations 1970*);
- avicultural licences and advanced avicultural licences (regulation 12 of the *Wildlife Conservation Regulations 1970*);

- wildlife licences (regulation 12A of the *Wildlife Conservation Regulations 1970*);
- oological licences (regulation 12B of the *Wildlife Conservation Regulations 1970*);
- bird dealers' licences (regulation 13 of the *Wildlife Conservation Regulations 1970*);
- fauna farm licences (regulation 14 of the *Wildlife Conservation Regulations 1970*);
- licences which authorise the licensee to take fauna for educational or other approved public purposes (regulation 15 of the *Wildlife Conservation Regulations 1970*);
- licences which authorise the licensee to keep fauna in captivity or confinement for educational or public purposes (regulation 16 of the *Wildlife Conservation Regulations 1970*);
- licences which authorise the licensee to take fauna for scientific purposes (regulation 17 of the *Wildlife Conservation Regulations 1970*);
- licences which authorise the licensee to export fauna from the State (regulation 18 of the *Wildlife Conservation Regulations 1970*);
- licences which authorise the importation of fauna into the State (regulation 19 of the *Wildlife Conservation Regulations 1970*);
- licences which authorise the importation of live exotic birds and other animals (regulation 20 of the *Wildlife Conservation Regulations 1970*);
- licences which authorise the taking or marking of fauna for research purposes (regulation 23 of the *Wildlife Conservation Regulations 1970*);
- licences which authorise the taking of emu eggs (regulation 40A of the *Wildlife Conservation Regulations 1970*);
- herpetofauna keeper's licences (regulation 5(1) of the *Wildlife Conservation (Reptiles and Amphibians) Regulations 2002*);
- herpetofauna dealer's licences (regulation 5(1) of the *Wildlife Conservation (Reptiles and Amphibians) Regulations 2002*);

- herpetofauna taker's licences (regulation 5(1) of the *Wildlife Conservation (Reptiles and Amphibians) Regulations 2002*);
- herpetofauna farmer's licences (regulation 5(1) of the *Wildlife Conservation (Reptiles and Amphibians) Regulations 2002*);
- herpetofauna importer's licences (regulation 5(1) of the *Wildlife Conservation (Reptiles and Amphibians) Regulations 2002*); and
- herpetofauna exporter's licences (regulation 5(1) of the *Wildlife Conservation (Reptiles and Amphibians) Regulations 2002*).

Further licences may be prescribed under section 15(1) in the future.

Statutory licences fall within the definition of licence in section 10 of the *Personal Property Securities Act 2009* (Commonwealth), whether or not the licence is exclusive and whether or not a transfer of the licence is restricted or requires consent. Licences are included within the definition of personal property in the Commonwealth Act.

The *Personal Property Securities Act 2009* (Commonwealth) provides that a licence is considered to be transferable by the licensee even if legislation states that the licence cannot be transferred without the consent of a Minister, or can only be transferred in restricted circumstances or to a restricted class of persons. For the purposes of the Commonwealth Act, where a Minister is required to consent to the transfer of a licence, the licensee is still taken to have transferred the licence. Ministerial consent is merely another requirement to validly transfer the property, in addition to other requirements such as a valid contract between the transferor and transferee.

It is possible for statutory licences to be excluded from the operation of the *Personal Property Securities Act 2009* (Commonwealth) by making a declaration which provides that those licences are not personal property for the purposes of the Commonwealth Act.

This clause excludes transferable licences prescribed under section 15(1) of the *Wildlife Conservation Act 1950* (WA) from the definition of personal property in the *Personal Property Securities Act 2009* (Commonwealth), thereby ensuring that these licences do not fall within the scope of the Commonwealth Act and the new personal property securities regulatory regime.

Part 7 – Fisheries

Division 1 – *Fish Resources Management Act 1994* amended

Clause 72 Provides that this Division amends the *Fish Resources Management Act 1994* (WA).

Clause 73 Inserts the proposed section 66(5) into the *Fish Resources Management Act 1994* (WA), which declares that an authorisation granted under section 66(1) of the *Fish Resources Management Act 1994* (WA) is not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth).

Authorisations are granted under section 66(1) of the *Fish Resources Management Act 1994* (WA) for the purposes of authorising a person, or persons acting on that person's behalf, to engage in fishing or any fishing activity of a specified class in a managed fishery or an interim managed fishery.

Statutory licences fall within the definition of licence in section 10 of the *Personal Property Securities Act 2009* (Commonwealth), whether or not the licence is exclusive and whether or not a transfer of the licence is restricted or requires consent. Licences are included within the definition of personal property in the Commonwealth Act.

The *Personal Property Securities Act 2009* (Commonwealth) provides that a licence is considered to be transferable by the licensee even if legislation states that the licence cannot be transferred without the consent of a Minister, or can only be transferred in restricted circumstances or to a restricted class of persons. For the purposes of the Commonwealth Act, where a Minister is required to consent to the transfer of a licence, the licensee is still taken to have transferred the licence. Ministerial consent is merely another requirement to validly transfer the property, in addition to other requirements such as a valid contract between the transferor and transferee.

It is possible for statutory licences to be excluded from the operation of the *Personal Property Securities Act 2009* (Commonwealth) by making a declaration which provides that those licences are not personal property for the purposes of the Commonwealth Act.

This clause excludes authorisations granted under section 66(1) of the *Fish Resources Management Act 1994* (WA) from the definition of personal property in the *Personal Property Securities Act 2009* (Commonwealth), thereby ensuring that these authorisations do not fall within the scope of the Commonwealth Act and the new personal property securities regulatory regime.

Clause 74 Inserts the proposed section 83(4) into the *Fish Resources Management Act 1994* (WA), which declares that a fish processor's licence granted under section 83(1) of the *Fish Resources Management Act 1994* (WA) is not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth).

Fish processor's licences are granted under section 83(1) of the *Fish Resources Management Act 1994* (WA) for the purposes of authorising a person, or persons acting on that person's behalf, to process fish for a commercial purpose.

Statutory licences fall within the definition of licence in section 10 of the *Personal Property Securities Act 2009* (Commonwealth), whether or not the licence is exclusive and whether or not a transfer of the licence is restricted or requires consent. Licences are included within the definition of personal property in the Commonwealth Act.

The *Personal Property Securities Act 2009* (Commonwealth) provides that a licence is considered to be transferable by the licensee even if legislation states that the licence cannot be transferred without the consent of a Minister, or can only be transferred in restricted circumstances or to a restricted class of persons. For the purposes of the Commonwealth Act, where a Minister is required to consent to the transfer of a licence, the licensee is still taken to have transferred the licence. Ministerial consent is merely another requirement to validly transfer the property, in addition to other requirements such as a valid contract between the transferor and transferee.

It is possible for statutory licences to be excluded from the operation of the *Personal Property Securities Act 2009* (Commonwealth) by making a declaration which provides that those licences are not personal property for the purposes of the Commonwealth Act.

This clause excludes fish processor's licences granted under section 83(1) of the *Fish Resources Management Act 1994* (WA) from the definition of personal property in the *Personal Property Securities Act 2009* (Commonwealth), thereby ensuring that these licences do not fall within the scope of the Commonwealth Act and the new personal property securities regulatory regime.

Clause 75 Inserts the proposed section 92(7) into the *Fish Resources Management Act 1994* (WA), which declares that an aquaculture licence granted under section 92(1) of the *Fish Resources Management Act 1994* (WA) is not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth).

Aquaculture licences are granted under section 92(1) of the *Fish Resources Management Act 1994* (WA) for the purposes of authorising a person, or persons acting on that person's

behalf, to engage in aquaculture.

Statutory licences fall within the definition of licence in section 10 of the *Personal Property Securities Act 2009* (Commonwealth), whether or not the licence is exclusive and whether or not a transfer of the licence is restricted or requires consent. Licences are included within the definition of personal property in the Commonwealth Act.

The *Personal Property Securities Act 2009* (Commonwealth) provides that a licence is considered to be transferable by the licensee even if legislation states that the licence cannot be transferred without the consent of a Minister, or can only be transferred in restricted circumstances or to a restricted class of persons. For the purposes of the Commonwealth Act, where a Minister is required to consent to the transfer of a licence, the licensee is still taken to have transferred the licence. Ministerial consent is merely another requirement to validly transfer the property, in addition to other requirements such as a valid contract between the transferor and transferee.

It is possible for statutory licences to be excluded from the operation of the *Personal Property Securities Act 2009* (Commonwealth) by making a declaration which provides that those licences are not personal property for the purposes of the Commonwealth Act.

This clause excludes aquaculture licences granted under section 92(1) of the *Fish Resources Management Act 1994* (WA) from the definition of personal property in the *Personal Property Securities Act 2009* (Commonwealth), thereby ensuring that these licences do not fall within the scope of the Commonwealth Act and the new personal property securities regulatory regime.

Division 2 – *Pearling Act 1990* amended

Clause 76 Provides that this Division amends the *Pearling Act 1990* (WA).

Clause 77 Inserts the proposed section 23(2A) into the *Pearling Act 1990* (WA), which declares that the following rights, entitlements or authorities are not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth) –

- a pearl oyster farm lease issued under section 23(1)(a) of the *Pearling Act 1990* (WA);
- a pearling licence issued under section 23(1)(b) of the *Pearling Act 1990* (WA);
- a pearl oyster hatchery licence issued under section 23(1)(c) of the *Pearling Act 1990* (WA);

- a peeling permit issued under section 23(1)(g) of the *Pearling Act 1990* (WA); and
- a pearl oyster hatchery permit issued under section 23(1)(h) of the *Pearling Act 1990* (WA);

Statutory licences fall within the definition of licence in section 10 of the *Personal Property Securities Act 2009* (Commonwealth), whether or not the licence is exclusive and whether or not a transfer of the licence is restricted or requires consent. Licences are included within the definition of personal property in the Commonwealth Act.

The *Personal Property Securities Act 2009* (Commonwealth) provides that a licence is considered to be transferable by the licensee even if legislation states that the licence cannot be transferred without the consent of a Minister, or can only be transferred in restricted circumstances or to a restricted class of persons. For the purposes of the Commonwealth Act, where a Minister is required to consent to the transfer of a licence, the licensee is still taken to have transferred the licence. Ministerial consent is merely another requirement to validly transfer the property, in addition to other requirements such as a valid contract between the transferor and transferee.

It is possible for statutory licences to be excluded from the operation of the *Personal Property Securities Act 2009* (Commonwealth) by making a declaration which provides that those licences are not personal property for the purposes of the Commonwealth Act.

This clause excludes the rights, entitlements and authorities listed above from the definition of personal property in the *Personal Property Securities Act 2009* (Commonwealth), thereby ensuring that these rights, entitlements and authorities do not fall within the scope of the Commonwealth Act and the new personal property securities regulatory regime.

Part 8 – Lands

Division 1 – *Land Administration Act 1997* amended

Clause 78 Provides that this Division amends the *Land Administration Act 1997* (WA).

Clause 79 Inserts the proposed section 48(3) into the *Land Administration Act 1997* (WA), which declares that a licence granted under section 48(1) of the *Land Administration Act 1997* (WA) is not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth), if such a licence is transferable by the licensee.

Licences are granted under section 48(1) of the *Land Administration Act 1997* (WA) in respect of Crown land in an unmanaged reserve for a purpose which is different from those of the unmanaged reserve but which is compatible with the current use or intended future use of that Crown land for the purposes of the unmanaged reserve.

Statutory licences fall within the definition of licence in section 10 of the *Personal Property Securities Act 2009* (Commonwealth), whether or not the licence is exclusive and whether or not a transfer of the licence is restricted or requires consent. Licences are included within the definition of personal property in the Commonwealth Act.

The *Personal Property Securities Act 2009* (Commonwealth) provides that a licence is considered to be transferable by the licensee even if legislation states that the licence cannot be transferred without the consent of a Minister, or can only be transferred in restricted circumstances or to a restricted class of persons. For the purposes of the Commonwealth Act, where a Minister is required to consent to the transfer of a licence, the licensee is still taken to have transferred the licence. Ministerial consent is merely another requirement to validly transfer the property, in addition to other requirements such as a valid contract between the transferor and transferee.

It is possible for statutory licences to be excluded from the operation of the *Personal Property Securities Act 2009* (Commonwealth) by making a declaration which provides that those licences are not personal property for the purposes of the Commonwealth Act.

This clause excludes transferable licences granted under section 48(1) of the *Land Administration Act 1997* (WA) from the definition of personal property in the *Personal Property Securities Act 2009* (Commonwealth), thereby ensuring that these licences do not fall within the scope of the Commonwealth Act and the new personal property securities regulatory regime.

Clause 80 Inserts the proposed section 91(6) into the *Land Administration Act 1997* (WA), which declares that a licence granted under section 91(1) of the *Land Administration Act 1997* (WA) is not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth), if such a licence is transferable by the licensee.

Licences are granted under section 91(1) of the *Land Administration Act 1997* (WA) in respect of Crown land for any purpose.

Statutory licences fall within the definition of licence in section 10 of the *Personal Property Securities Act 2009* (Commonwealth), whether or not the licence is exclusive and whether or not a transfer of the licence is restricted or requires

consent. Licences are included within the definition of personal property in the Commonwealth Act.

The *Personal Property Securities Act 2009* (Commonwealth) provides that a licence is considered to be transferable by the licensee even if legislation states that the licence cannot be transferred without the consent of a Minister, or can only be transferred in restricted circumstances or to a restricted class of persons. For the purposes of the Commonwealth Act, where a Minister is required to consent to the transfer of a licence, the licensee is still taken to have transferred the licence. Ministerial consent is merely another requirement to validly transfer the property, in addition to other requirements such as a valid contract between the transferor and transferee.

It is possible for statutory licences to be excluded from the operation of the *Personal Property Securities Act 2009* (Commonwealth) by making a declaration which provides that those licences are not personal property for the purposes of the Commonwealth Act.

This clause excludes transferable licences granted under section 91(1) of the *Land Administration Act 1997* (WA) from the definition of personal property in the *Personal Property Securities Act 2009* (Commonwealth), thereby ensuring that these licences do not fall within the scope of the Commonwealth Act and the new personal property securities regulatory regime.

Part 9 – Mines and Petroleum

Division 1 – *Mining Act 1978* amended

- Clause 81 Provides that this Division amends the *Mining Act 1978* (WA).
- Clause 82 Inserts the proposed section 162A into the *Mining Act 1978* (WA), which declares that the following rights, entitlements or authorities are not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth) –
- a prospecting licence granted under section 40(1), 56A(6) or 70(6) of the *Mining Act 1978* (WA);
 - an exploration licence granted under section 57(1) of the *Mining Act 1978* (WA);
 - a retention licence granted under section 70B(1) of the *Mining Act 1978* (WA);
 - a mining lease granted under section 71 of the *Mining Act 1978* (WA);

- a general purpose lease granted under section 86(1) of the *Mining Act 1978* (WA); and
- a miscellaneous licence granted under section 91(1) of the *Mining Act 1978* (WA).

Statutory licences fall within the definition of licence in section 10 of the *Personal Property Securities Act 2009* (Commonwealth), whether or not the licence is exclusive and whether or not a transfer of the licence is restricted or requires consent. Licences are included within the definition of personal property in the Commonwealth Act.

The *Personal Property Securities Act 2009* (Commonwealth) provides that a licence is considered to be transferable by the licensee even if legislation states that the licence cannot be transferred without the consent of a Minister, or can only be transferred in restricted circumstances or to a restricted class of persons. For the purposes of the Commonwealth Act, where a Minister is required to consent to the transfer of a licence, the licensee is still taken to have transferred the licence. Ministerial consent is merely another requirement to validly transfer the property, in addition to other requirements such as a valid contract between the transferor and transferee.

It is possible for statutory licences to be excluded from the operation of the *Personal Property Securities Act 2009* (Commonwealth) by making a declaration which provides that those licences are not personal property for the purposes of the Commonwealth Act.

This clause excludes the rights, entitlements and authorities listed above from the definition of personal property in the *Personal Property Securities Act 2009* (Commonwealth), thereby ensuring that these rights, entitlements and authorities do not fall within the scope of the Commonwealth Act and the new personal property securities regulatory regime.

Division 2 – *Offshore Minerals Act 2003* amended

Clause 83 Provides that this Division amends the *Offshore Minerals Act 2003* (WA).

Clause 84 Inserts the proposed section 443A into the *Offshore Minerals Act 2003* (WA), which declares that the following rights, entitlements or authorities are not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth) –

- an exploration licence granted under section 63(a) or 81(1) of the *Offshore Minerals Act 2003* (WA);

- a retention licence granted under section 143(a) of the *Offshore Minerals Act 2003* (WA);
- a mining licence granted under section 206(a) or 225(1) of the *Offshore Minerals Act 2003* (WA); and
- a works licence granted under section 276(a) of the *Offshore Minerals Act 2003* (WA).

Statutory licences fall within the definition of licence in section 10 of the *Personal Property Securities Act 2009* (Commonwealth), whether or not the licence is exclusive and whether or not a transfer of the licence is restricted or requires consent. Licences are included within the definition of personal property in the Commonwealth Act.

The *Personal Property Securities Act 2009* (Commonwealth) provides that a licence is considered to be transferable by the licensee even if legislation states that the licence cannot be transferred without the consent of a Minister, or can only be transferred in restricted circumstances or to a restricted class of persons. For the purposes of the Commonwealth Act, where a Minister is required to consent to the transfer of a licence, the licensee is still taken to have transferred the licence. Ministerial consent is merely another requirement to validly transfer the property, in addition to other requirements such as a valid contract between the transferor and transferee.

It is possible for statutory licences to be excluded from the operation of the *Personal Property Securities Act 2009* (Commonwealth) by making a declaration which provides that those licences are not personal property for the purposes of the Commonwealth Act.

This clause excludes the rights, entitlements and authorities listed above from the definition of personal property in the *Personal Property Securities Act 2009* (Commonwealth), thereby ensuring that these rights, entitlements and authorities do not fall within the scope of the Commonwealth Act and the new personal property securities regulatory regime.

Division 3 – *Petroleum and Geothermal Energy Resources Act 1967* amended

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| Clause 85 | Provides that this Division amends the <i>Petroleum and Geothermal Energy Resources Act 1967</i> (WA). |
| Clause 86 | Inserts the proposed section 152 into the <i>Petroleum and Geothermal Energy Resources Act 1967</i> (WA), which declares that the following rights, entitlements or authorities are not personal property for the purposes of the <i>Personal Property Securities Act 2009</i> (Commonwealth) – |

- a petroleum exploration permit or a geothermal exploration permit granted under section 37 of the *Petroleum and Geothermal Energy Resources Act 1967* (WA);
- a drilling reservation granted under section 43C(4) of the *Petroleum and Geothermal Energy Resources Act 1967* (WA);
- a petroleum retention lease or geothermal retention lease granted under section 48B(5) of the *Petroleum and Geothermal Energy Resources Act 1967* (WA); and
- a petroleum production licence or geothermal production licence granted under section 61(4) of the *Petroleum and Geothermal Energy Resources Act 1967* (WA).

Statutory licences fall within the definition of licence in section 10 of the *Personal Property Securities Act 2009* (Commonwealth), whether or not the licence is exclusive and whether or not a transfer of the licence is restricted or requires consent. Licences are included within the definition of personal property in the Commonwealth Act.

The *Personal Property Securities Act 2009* (Commonwealth) provides that a licence is considered to be transferable by the licensee even if legislation states that the licence cannot be transferred without the consent of a Minister, or can only be transferred in restricted circumstances or to a restricted class of persons. For the purposes of the Commonwealth Act, where a Minister is required to consent to the transfer of a licence, the licensee is still taken to have transferred the licence. Ministerial consent is merely another requirement to validly transfer the property, in addition to other requirements such as a valid contract between the transferor and transferee.

It is possible for statutory licences to be excluded from the operation of the *Personal Property Securities Act 2009* (Commonwealth) by making a declaration which provides that those licences are not personal property for the purposes of the Commonwealth Act.

This clause excludes the rights, entitlements and authorities listed above from the definition of personal property in the *Personal Property Securities Act 2009* (Commonwealth), thereby ensuring that these rights, entitlements and authorities do not fall within the scope of the Commonwealth Act and the new personal property securities regulatory regime.

Division 4 – *Petroleum Pipelines Act 1969* amended

Clause 87 Provides that this Division amends the *Petroleum Pipelines Act 1969* (WA).

Clause 88 Inserts the proposed section 66E into the *Petroleum Pipelines Act 1969* (WA), which declares that a licence granted under section 10 of the *Petroleum Pipelines Act 1969* (WA) is not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth).

Licences are granted under section 10 of the *Petroleum Pipelines Act 1969* (WA) for the purposes of –

- commencing or continuing the construction of a pipeline;
or
- altering or reconstructing a pipeline.

Statutory licences fall within the definition of licence in section 10 of the *Personal Property Securities Act 2009* (Commonwealth), whether or not the licence is exclusive and whether or not a transfer of the licence is restricted or requires consent. Licences are included within the definition of personal property in the Commonwealth Act.

The *Personal Property Securities Act 2009* (Commonwealth) provides that a licence is considered to be transferable by the licensee even if legislation states that the licence cannot be transferred without the consent of a Minister, or can only be transferred in restricted circumstances or to a restricted class of persons. For the purposes of the Commonwealth Act, where a Minister is required to consent to the transfer of a licence, the licensee is still taken to have transferred the licence. Ministerial consent is merely another requirement to validly transfer the property, in addition to other requirements such as a valid contract between the transferor and transferee.

It is possible for statutory licences to be excluded from the operation of the *Personal Property Securities Act 2009* (Commonwealth) by making a declaration which provides that those licences are not personal property for the purposes of the Commonwealth Act.

This clause excludes licences granted under section 10 of the *Petroleum Pipelines Act 1969* (WA) from the definition of personal property in the *Personal Property Securities Act 2009* (Commonwealth), thereby ensuring that these licences do not fall within the scope of the Commonwealth Act and the new personal property securities regulatory regime.

Division 5 – *Petroleum (Submerged Lands) Act 1982* amended

Clause 89 Provides that this Division amends the *Petroleum (Submerged Lands) Act 1982* (WA).

Clause 90 Replaces the heading of Part 4 of the *Petroleum (Submerged Lands) Act 1982* (WA).

The current heading 'Part 4 – Regulations' will be replaced by the proposed heading 'Part 4 – General'.

Clause 91 Inserts the proposed section 152A into the *Petroleum (Submerged Lands) Act 1982* (WA), which declares that the following rights, entitlements or authorities are not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth) –

- an exploration permit for petroleum granted under section 27 of the *Petroleum (Submerged Lands) Act 1982* (WA);
- a retention lease granted under section 38B(5) of the *Petroleum (Submerged Lands) Act 1982* (WA);
- a production licence for petroleum granted under section 44(2) of the *Petroleum (Submerged Lands) Act 1982* (WA); and
- a licence to construct and operate a pipeline granted under section 65(10) of the *Petroleum (Submerged Lands) Act 1982* (WA).

Statutory licences fall within the definition of licence in section 10 of the *Personal Property Securities Act 2009* (Commonwealth), whether or not the licence is exclusive and whether or not a transfer of the licence is restricted or requires consent. Licences are included within the definition of personal property in the Commonwealth Act.

The *Personal Property Securities Act 2009* (Commonwealth) provides that a licence is considered to be transferable by the licensee even if legislation states that the licence cannot be transferred without the consent of a Minister, or can only be transferred in restricted circumstances or to a restricted class of persons. For the purposes of the Commonwealth Act, where a Minister is required to consent to the transfer of a licence, the licensee is still taken to have transferred the licence. Ministerial consent is merely another requirement to validly transfer the property, in addition to other requirements such as a valid contract between the transferor and transferee.

It is possible for statutory licences to be excluded from the operation of the *Personal Property Securities Act 2009* (Commonwealth) by making a declaration which provides that those licences are not personal property for the purposes of the Commonwealth Act.

This clause excludes the rights, entitlements and authorities listed above from the definition of personal property in the *Personal Property Securities Act 2009* (Commonwealth), thereby ensuring that these rights, entitlements and authorities do not fall within the scope of the Commonwealth Act and the

new personal property securities regulatory regime.

Part 10 – Premier

Division 1 – *Gold Corporation Act 1987* amended

Clause 92 Provides that this Division amends the *Gold Corporation Act 1987* (WA).

Clause 93 Inserts section 67(2) into the *Gold Corporation Act 1987* (WA).

Section 254 of the *Personal Property Securities Act 2009* (Commonwealth) provides that State law and the Commonwealth Act can operate concurrently, except in the case of a direct inconsistency. In particular, section 254(2)(g) allows for concurrent operation of the *Personal Property Securities Act 2009* (Commonwealth) and State law where State law has the effect of extinguishing security interests.

Section 254(3) provides that, in the event of a direct inconsistency between State law and the *Personal Property Securities Act 2009* (Commonwealth), the State law will be invalid to the extent of the inconsistency.

Section 259 of the *Personal Property Securities Act 2009* (Commonwealth) establishes a procedure by which States and Territories can declare matters to be excluded matters in relation to:

- the whole of the *Personal Property Securities Act 2009* (Commonwealth) (or an instrument made under the Act); or
- a specified provision of the *Personal Property Securities Act 2009* (Commonwealth) (or an instrument made under the Act); or
- the *Personal Property Securities Act 2009* (Commonwealth) (or an instrument made under the Act), other than a specified provision; or
- the *Personal Property Securities Act 2009* (Commonwealth) (or an instrument made under the Act), otherwise then to a specified extent.

A potential direct inconsistency has been identified between section 67 of the *Gold Corporation Act 1987* (WA) and section 32(1) of the *Personal Property Securities Act 2009* (Commonwealth).

Section 67 of the *Gold Corporation Act 1987* (WA) provides that, where gold is purchased in good faith by Gold Corporation, the Mint or GoldCorp, the gold will vest in the

buyer, free of any charge or other interest.

Section 32(1) of the *Personal Property Securities Act 2009* (Commonwealth) provides that, where collateral gives rise to proceeds, security interests that are attached to that property will not be extinguished. Collateral is personal property to which a security interest is attached.

It is therefore possible that gold sold to Gold Corporation, the Mint or GoldCorp is personal property to which a security interest is attached. In accordance with section 67 of the *Gold Corporation Act 1987* (WA), the buyer would get good title to the gold, free of any security interest. However, in accordance with section 32(1) of the *Personal Property Securities Act 2009* (Commonwealth), when the sale of the gold gives rise to proceeds, security interests that are attached to the gold will not be extinguished.

Section 32(1) is subject to the other provisions of the *Personal Property Securities Act 2009* (Commonwealth), including section 254(2)(g). It is therefore possible that, due to the effect of section 254(2)(g) of the *Personal Property Securities Act 2009* (Commonwealth), there is no direct inconsistency. However, it is also possible to interpret section 32(1) of the *Personal Property Securities Act 2009* (Commonwealth) as an exhaustive statement of the consequences that arise if personal property gives rise to proceeds.

To avoid the possibility of a direct inconsistency, which would result in the invalidity of the State provision, the proposed section 67(2) of the *Gold Corporation Act 1987* (WA) provides that, for the purposes of section 259 of the *Personal Property Securities Act 2009* (Commonwealth), gold that is collateral purchased by Gold Corporation, the Mint or GoldCorp under section 67(1) is declared to be an excluded matter in relation to section 32 of the *Personal Property Securities Act 2009* (Commonwealth). The excluded matter does not extend to the proceeds of the sale of the gold, which will continue to be subject to the provisions of the *Personal Property Securities Act 2009* (Commonwealth).

Section 259(3) of the Commonwealth PPS Act gives the Commonwealth Governor-General, acting on the advice of Commonwealth Ministers, the power to make regulations which, in effect, disallow a declaration made by a State or Territory in accordance with the procedure established in section 259. It is unlikely that the Commonwealth Parliament would take this course of action, unless a State had declared large portions of its legislation to be excluded matters, as it may be seen to be encroaching upon the State's legislative power.

Part 11 – Racing and Gaming

Division 1 – *Liquor Control Act 1988* amended

Clause 94 Provides that this Division amends the *Liquor Control Act 1988* (WA).

Clause 95 Inserts the proposed section 30A(3) into the *Liquor Control Act 1988* (WA), which declares that a licence granted under section 30A(1) of the *Liquor Control Act 1988* (WA) is not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth), if such a licence is transferable by the licensee.

Licences are granted under section 30A(1) of the *Liquor Control Act 1988* (WA) for the purposes of selling liquor.

Statutory licences fall within the definition of licence in section 10 of the *Personal Property Securities Act 2009* (Commonwealth), whether or not the licence is exclusive and whether or not a transfer of the licence is restricted or requires consent. Licences are included within the definition of personal property in the Commonwealth Act.

The *Personal Property Securities Act 2009* (Commonwealth) provides that a licence is considered to be transferable by the licensee even if legislation states that the licence cannot be transferred without the consent of a Minister, or can only be transferred in restricted circumstances or to a restricted class of persons. For the purposes of the Commonwealth Act, where a Minister is required to consent to the transfer of a licence, the licensee is still taken to have transferred the licence. Ministerial consent is merely another requirement to validly transfer the property, in addition to other requirements such as a valid contract between the transferor and transferee.

It is possible for statutory licences to be excluded from the operation of the *Personal Property Securities Act 2009* (Commonwealth) by making a declaration which provides that those licences are not personal property for the purposes of the Commonwealth Act.

This clause excludes transferable licences granted under section 30A(1) of the *Liquor Control Act 1988* (WA) from the definition of personal property in the *Personal Property Securities Act 2009* (Commonwealth), thereby ensuring that these licences do not fall within the scope of the Commonwealth Act and the new personal property securities regulatory regime.

Division 2 – *The Western Australian Turf Club Act 1892* amended

Clause 96 Provides that this Division amends *The Western Australian Turf Club Act 1892* (WA).

Clause 97 Amends section 30 of *The Western Australian Turf Club Act 1892* (WA) to provide that it is subject to the *Personal Property Securities Act 2009* (Commonwealth).

Section 30 of *The Western Australian Turf Club Act 1892* (WA) provides that, where the Chairman of the Western Australia Turf Club has borrowed money, mortgagees are entitled to be repaid the money borrowed and the date on which the mortgage was entered into will not give one mortgagee priority over another.

Section 28 of *The Western Australian Turf Club Act 1892* (WA) permits the Chairman to use assets or property of the Western Australia Turf Club as security for money borrowed.

The amendment to section 30 of *The Western Australian Turf Club Act 1892* (WA) will provide that, if personal property has been used as security for a mortgage entered into by the Chairman, the priorities will be determined in accordance with the *Personal Property Securities Act 2009* (Commonwealth).

Part 12 – Transport

Division 1 – *Jetties Act 1926* amended

Clause 98 Provides that this Division amends the *Jetties Act 1926* (WA).

Clause 99 Deletes section 8A(4) of the *Jetties Act 1926* (WA) and inserts sections 8A(4), (5A), (5B) and (5C).

The proposed section 8A(4) of the *Jetties Act 1926* (WA) provides that the cost of removing a private jetty under section 8A(3) of the *Jetties Act 1926* (WA) is a debt due to the Crown. This is a charge that will have priority in favour of all other claims on the materials comprising the private jetty.

The proposed section 8A(5A) of the *Jetties Act 1926* (WA) declares that section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) applies to a charge created under section 8A(4) of the *Jetties Act 1926* (WA).

Where a State law creates an interest in personal property (a statutory interest), provision can be made in that State legislation to declare that section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) applies to the statutory interests. The effect of such a declaration will be that the State law, as opposed to the *Personal Property Securities Act 2009* (Commonwealth), will determine the priorities between statutory interests and security interests which arise

under the Commonwealth Act.

Declarations made in accordance with section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) will ensure the continued efficacy of State legislation that makes provision for the priority of interests in collateral.

The proposed section 8A(5A) of the *Jetties Act 1926* (WA) will ensure that, in the event of a priority dispute, priority is determined in accordance with section 8A(4) of the *Jetties Act 1926* (WA).

The proposed section 8A(5B) of the *Jetties Act 1926* (WA) provides that the Minister for Transport may recover the cost of removing a private jetty under section 8A(3) through selling the materials comprising the private jetty.

The proposed section 8A(5C) of the *Jetties Act 1926* (WA) provides that, if materials are sold under section 8A(5B) in good faith and the buyer takes the material in good faith, the buyer will receive good title. The effect of this section will be that, upon the sale of the materials, any security interests that may have been attached to the private jetty will be extinguished.

Division 2 – *Perth Parking Management Act 1999* amended

Clause 100 Provides that this Division amends the *Perth Parking Management Act 1999* (WA).

Clause 101 Inserts the proposed section 9(6) into the *Perth Parking Management Act 1999* (WA), which declares that a licence granted under section 9(1) of the *Perth Parking Management Act 1999* (WA) is not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth), if such a licence is transferable by the licensee.

Licences granted under section 9(1) of the *Perth Parking Management Act 1999* (WA) authorise vehicles to be parked on the land or in or on the building specified in the licence application.

Statutory licences fall within the definition of licence in section 10 of the *Personal Property Securities Act 2009* (Commonwealth), whether or not the licence is exclusive and whether or not a transfer of the licence is restricted or requires consent. Licences are included within the definition of personal property in the Commonwealth Act.

The *Personal Property Securities Act 2009* (Commonwealth) provides that a licence is considered to be transferable by the licensee even if legislation states that the licence cannot be transferred without the consent of a Minister, or can only be transferred in restricted circumstances or to a restricted class

of persons. For the purposes of the Commonwealth Act, where a Minister is required to consent to the transfer of a licence, the licensee is still taken to have transferred the licence. Ministerial consent is merely another requirement to validly transfer the property, in addition to other requirements such as a valid contract between the transferor and transferee.

It is possible for statutory licences to be excluded from the operation of the *Personal Property Securities Act 2009* (Commonwealth) by making a declaration which provides that those licences are not personal property for the purposes of the Commonwealth Act.

This clause excludes transferable licences granted under section 9(1) of the *Perth Parking Management Act 1999* (WA) from the definition of personal property in the *Personal Property Securities Act 2009* (Commonwealth), thereby ensuring that these licences do not fall within the scope of the Commonwealth Act and the new personal property securities regulatory regime.

Division 3 – Road Traffic Act 1974 amended

Clause 102 Provides that this Division amends the *Road Traffic Act 1974* (WA).

Clause 103 Inserts section 15A into the *Road Traffic Act 1974* (WA), which provides that the Director General of the Department of Commerce may disclose the following information to the Registrar of the Personal Property Securities Register –

- information relating to vehicles that have been stolen or written off;
- information contained in the register of vehicle licences referred to in section 27(1) of the *Road Traffic Act 1974* (WA) that the Director General considers to be relevant to the operation of the Personal Property Securities Register.

It will be possible to register security interests in many types of property on the Personal Property Securities Register, provided the property falls within the definition of personal property in section 10 of the *Personal Property Securities Act 2009* (Commonwealth). Motor vehicles will be included within this definition.

It is expected that security interests in motor vehicles will make up a large number of the interests registered on the Personal Property Securities Register. As the Register will act as a notice board to inform potential purchasers and lenders that there may be an encumbrance over personal property, it is also proposed that the Register contain information about stolen and written off vehicles as this information will be vital to

potential purchasers and lenders.

The provisions of the *Road Traffic Act 1974* (WA) which relate to information disclosure are not broad enough to allow this information to be provided to the Registrar of the Personal Property Securities Register. The proposed section 15A of the *Road Traffic Act 1974* (WA) will provide the Director General of the Department of Transport with the authority to provide information relating to vehicles that have been stolen or written off to the Registrar.

Division 4 – *Shipping and Pilotage Act 1967* amended

- Clause 104 Provides that this Division amends the *Shipping and Pilotage Act 1967* (WA).
- Clause 105 Inserts section 5(4A) into the *Shipping and Pilotage Act 1967* (WA), which provides that, if wreckage is sold in accordance with section 3 of the *Shipping and Pilotage Act 1967* (WA) in good faith, and the buyer takes the property in good faith, the buyer will receive good title to the wreckage. The effect of this section will be that, upon the sale, any security interests that may have been attached to the wreckage will be extinguished.

Division 5 – *Taxi Act 1994* amended

- Clause 106 Provides that this Division amends the *Taxi Act 1994* (WA).
- Clause 107 Inserts the proposed section 16(10A) into the *Taxi Act 1994* (WA), which declares that a lease of taxi plates under section 16 of the *Taxi Act 1994* (WA) is not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth).

Statutory licences (which include leases of taxi plates) fall within the definition of licence in section 10 of the *Personal Property Securities Act 2009* (Commonwealth), whether or not the licence is exclusive and whether or not a transfer of the licence is restricted or requires consent. Licences are included within the definition of personal property in the Commonwealth Act.

The *Personal Property Securities Act 2009* (Commonwealth) provides that a licence is considered to be transferable by the licensee even if legislation states that the licence cannot be transferred without the consent of a Minister, or can only be transferred in restricted circumstances or to a restricted class of persons. For the purposes of the Commonwealth Act, where a Minister is required to consent to the transfer of a licence, the licensee is still taken to have transferred the licence. Ministerial consent is merely another requirement to validly transfer the property, in addition to other requirements such as a valid

contract between the transferor and transferee.

It is possible for statutory licences to be excluded from the operation of the *Personal Property Securities Act 2009* (Commonwealth) by making a declaration which provides that those licences are not personal property for the purposes of the Commonwealth Act.

This clause excludes leases of taxi plates under section 16 of the *Taxi Act 1994* (WA) from the definition of personal property in the *Personal Property Securities Act 2009* (Commonwealth), thereby ensuring that these authorisations do not fall within the scope of the Commonwealth Act and the new personal property securities regulatory regime.

Division 6 – *Transport Co-ordination Act 1966* amended

Clause 108 Provides that this Division amends the *Transport Co-ordination Act 1966* (WA).

Clause 109 Inserts the proposed section 20(5) into the *Transport Co-ordination Act 1966* (WA), which declares that a licence granted under Part 3 of the *Transport Co-ordination Act 1966* (WA) is not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth).

Part 3 of the *Transport Co-ordination Act 1966* (WA) deals with vehicle licensing.

Statutory licences fall within the definition of licence in section 10 of the *Personal Property Securities Act 2009* (Commonwealth), whether or not the licence is exclusive and whether or not a transfer of the licence is restricted or requires consent. Licences are included within the definition of personal property in the Commonwealth Act.

The *Personal Property Securities Act 2009* (Commonwealth) provides that a licence is considered to be transferable by the licensee even if legislation states that the licence cannot be transferred without the consent of a Minister, or can only be transferred in restricted circumstances or to a restricted class of persons. For the purposes of the Commonwealth Act, where a Minister is required to consent to the transfer of a licence, the licensee is still taken to have transferred the licence. Ministerial consent is merely another requirement to validly transfer the property, in addition to other requirements such as a valid contract between the transferor and transferee.

It is possible for statutory licences to be excluded from the operation of the *Personal Property Securities Act 2009* (Commonwealth) by making a declaration which provides that those licences are not personal property for the purposes of the Commonwealth Act.

This clause excludes licences granted under Part 3 of the *Transport Co-ordination Act 1966* (WA) from the definition of personal property in the *Personal Property Securities Act 2009* (Commonwealth), thereby ensuring that these authorisations do not fall within the scope of the Commonwealth Act and the new personal property securities regulatory regime.

Clause 110 Inserts the proposed section 47ZD(7) into the *Transport Co-ordination Act 1966* (WA), which declares that a licence granted under section 47ZD(1) of the *Transport Co-ordination Act 1966* (WA) is not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth), if such a licence is transferable by the licensee.

Licences are granted under section 47ZD(1) of the *Transport Co-ordination Act 1966* (WA) for the purpose of operating a taxi-car.

Statutory licences fall within the definition of licence in section 10 of the *Personal Property Securities Act 2009* (Commonwealth), whether or not the licence is exclusive and whether or not a transfer of the licence is restricted or requires consent. Licences are included within the definition of personal property in the Commonwealth Act.

The *Personal Property Securities Act 2009* (Commonwealth) provides that a licence is considered to be transferable by the licensee even if legislation states that the licence cannot be transferred without the consent of a Minister, or can only be transferred in restricted circumstances or to a restricted class of persons. For the purposes of the Commonwealth Act, where a Minister is required to consent to the transfer of a licence, the licensee is still taken to have transferred the licence. Ministerial consent is merely another requirement to validly transfer the property, in addition to other requirements such as a valid contract between the transferor and transferee.

It is possible for statutory licences to be excluded from the operation of the *Personal Property Securities Act 2009* (Commonwealth) by making a declaration which provides that those licences are not personal property for the purposes of the Commonwealth Act.

This clause excludes transferable licences granted under section 47ZD(1) of the *Transport Co-ordination Act 1966* (WA) from the definition of personal property in the *Personal Property Securities Act 2009* (Commonwealth), thereby ensuring that these licences do not fall within the scope of the Commonwealth Act and the new personal property securities regulatory regime.

Division 7 – *Western Australian Marine Act 1982* amended

Clause 111 Provides that this Division amends the *Western Australian Marine Act 1982* (WA).

Clause 112 Deletes section 71(3) of the *Western Australian Marine Act 1982* (WA) and inserts sections 71(3), (4A), (4B) and (4C).

The proposed section 71(3) of the *Western Australian Marine Act 1982* (WA) provides that the cost of removing a navigational hazard under section 71(2) of the *Western Australian Marine Act 1982* (WA) is a debt due to the Crown. This is a charge that will have priority in favour of all other claims on the navigation hazard.

The proposed section 71(4A) of the *Western Australian Marine Act 1982* (WA) declares that section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) applies to a charge created under section 71(3) of the *Western Australian Marine Act 1982* (WA).

Where a State law creates an interest in personal property (a statutory interest), provision can be made in that State legislation to declare that section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) applies to the statutory interests. The effect of such a declaration will be that the State law, as opposed to the *Personal Property Securities Act 2009* (Commonwealth), will determine the priorities between statutory interests and security interests which arise under the Commonwealth Act.

Declarations made in accordance with section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) will ensure the continued efficacy of State legislation that makes provision for the priority of interests in collateral.

The proposed section 71(4A) of the *Western Australian Marine Act 1982* (WA) will ensure that, in the event of a priority dispute, priority is determined in accordance with section 71(3) of the *Western Australian Marine Act 1982* (WA).

The proposed section 71(4B) of the *Western Australian Marine Act 1982* (WA) provides that the Chief Executive Officer of the Department of Transport may recover the cost of removing a navigational hazard under section 71(2) by –

- action in a court of competent jurisdiction against the owner of a navigational hazard; or
- selling the navigational hazard.

The proposed section 71(4C) of the *Western Australian Marine Act 1982* (WA) provides that, if a navigational hazard is sold under section 71(4B) in good faith, and the buyer takes the property in good faith, the buyer will receive good title to the

navigational hazard. The effect of this section will be that, upon the sale, any security interests that may have been attached to the navigational hazard will be extinguished.

Division 8 – *Western Australian Marine (Sea Dumping) Act 1981* amended

Clause 113 Provides that this Division amends the *Western Australian Marine (Sea Dumping) Act 1981* (WA).

Clause 114 Subclause (1) amends section 12(3) of the *Western Australian Marine (Sea Dumping) Act 1981* (WA) to create a priority in favour of all other claims in respect to the charge created when the owner of a vessel, aircraft or Western Australian platform is liable to pay an amount to the State as a result of a conviction for dumping. Section 12(3) did not previously make provision in relation to the priority of the charge.

Subclause (2) inserts the proposed section 12(4A) into the *Western Australian Marine (Sea Dumping) Act 1981* (WA), which declares that section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) applies to a charge created under section 12(3) of the *Western Australian Marine (Sea Dumping) Act 1981* (WA).

Where a State law creates an interest in personal property (a statutory interest), provision can be made in that State legislation to declare that section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) applies to the statutory interests. The effect of such a declaration will be that the State law, as opposed to the *Personal Property Securities Act 2009* (Commonwealth), will determine the priorities between statutory interests and security interests which arise under the Commonwealth Act.

Declarations made in accordance with section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) will ensure the continued efficacy of State legislation that makes provision for the priority of interests in collateral.

This clause will ensure that, in the event of a priority dispute, priority is determined in accordance with section 12(3) of the *Western Australian Marine (Sea Dumping) Act 1981* (WA).

Part 13 – Water

Division 1 – *Country Areas Water Supply Act 1947* amended

Clause 115 Provides that this Division amends the *Country Areas Water Supply Act 1947* (WA).

Clause 116 Inserts the proposed section 81(2) into the *Country Areas Water Supply Act 1947* (WA), which declares that section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth)

applies to a charge created under section 81(1) of the *Country Areas Water Supply Act 1947* (WA).

Where a State law creates an interest in personal property (a statutory interest), provision can be made in that State legislation to declare that section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) applies to the statutory interests. The effect of such a declaration will be that the State law, as opposed to the *Personal Property Securities Act 2009* (Commonwealth), will determine the priorities between statutory interests and security interests which arise under the Commonwealth Act.

Declarations made in accordance with section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) will ensure the continued efficacy of State legislation that makes provision for the priority of interests in collateral.

Section 81(1) of the *Country Areas Water Supply Act 1947* (WA) provides that an amount payable to the Water Corporation in respect of water supply charges, or interest due thereon, is recoverable in a court of competent jurisdiction. The amount payable to the Water Corporation, in addition to any costs, charges and expenses of proceedings, is a charge that has priority over all other securities and claims against the person who is liable to pay these costs.

This clause will ensure that, in the event of a priority dispute, priority is determined in accordance with section 81(1) of the *Country Areas Water Supply Act 1947* (WA).

Division 2 – *Country Towns Sewerage Act 1948* amended

Clause 117 Provides that this Division amends the *Country Towns Sewerage Act 1948* (WA).

Clause 118 Inserts the proposed section 79(2) into the *Country Towns Sewerage Act 1948* (WA), which declares that section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) applies to a charge created under section 79(1) of the *Country Towns Sewerage Act 1948* (WA).

Where a State law creates an interest in personal property (a statutory interest), provision can be made in that State legislation to declare that section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) applies to the statutory interests. The effect of such a declaration will be that the State law, as opposed to the *Personal Property Securities Act 2009* (Commonwealth), will determine the priorities between statutory interests and security interests which arise under the Commonwealth Act.

Declarations made in accordance with section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) will ensure the continued efficacy of State legislation that makes provision for the priority of interests in collateral.

Section 79(1) of the *Country Towns Sewerage Act 1948* (WA) provides that an amount payable to the Water Corporation in respect of sewerage charges, or interest due thereon, is recoverable in a court of competent jurisdiction. The amount payable to the Water Corporation, in addition to any costs, charges and expenses of proceedings, is a charge that has priority over all other securities and claims against the person who is liable to pay these costs.

This clause will ensure that, in the event of a priority dispute, priority is determined in accordance with section 79(1) of the *Country Towns Sewerage Act 1948* (WA).

Division 3 – *Metropolitan Water Supply, Sewerage, and Drainage Act 1909* amended

Clause 119 Provides that this Division amends the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909* (WA).

Clause 120 Inserts the proposed section 109(2) into the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909* (WA), which declares that section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) applies to a charge created under section 109(1) of the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909* (WA).

Where a State law creates an interest in personal property (a statutory interest), provision can be made in that State legislation to declare that section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) applies to the statutory interests. The effect of such a declaration will be that the State law, as opposed to the *Personal Property Securities Act 2009* (Commonwealth), will determine the priorities between statutory interests and security interests which arise under the Commonwealth Act.

Declarations made in accordance with section 73(2) of the *Personal Property Securities Act 2009* (Commonwealth) will ensure the continued efficacy of State legislation that makes provision for the priority of interests in collateral.

Section 109(1) of the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909* (WA) provides that an amount payable to the Water Corporation in respect of water charges, or interest due thereon, is recoverable in a court of competent jurisdiction. The amount payable to the Water Corporation, in addition to any costs, charges and expenses of proceedings, is a charge that has priority over all other securities and claims

against the person who is liable to pay these costs.

This clause will ensure that, in the event of a priority dispute, priority is determined in accordance with section 109(1) of the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909* (WA).

Division 4 – *Water Services Licensing Act 1995* amended

Clause 121 Provides that this Division amends the *Water Services Licensing Act 1995* (WA).

Clause 122 Inserts the proposed section 60C into the *Water Services Licensing Act 1995* (WA), which declares that an operating licence granted under section 18 of the *Water Services Licensing Act 1995* (WA) is not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth), if such a licence is transferable by the licensee.

Operating licences are granted under section 18 of the *Water Services Licensing Act 1995* (WA) for the purposes of providing water services, which includes water supply, sewerage, irrigation and drainage services.

Statutory licences fall within the definition of licence in section 10 of the *Personal Property Securities Act 2009* (Commonwealth), whether or not the licence is exclusive and whether or not a transfer of the licence is restricted or requires consent. Licences are included within the definition of personal property in the Commonwealth Act.

The *Personal Property Securities Act 2009* (Commonwealth) provides that a licence is considered to be transferable by the licensee even if legislation states that the licence cannot be transferred without the consent of a Minister, or can only be transferred in restricted circumstances or to a restricted class of persons. For the purposes of the Commonwealth Act, where a Minister is required to consent to the transfer of a licence, the licensee is still taken to have transferred the licence. Ministerial consent is merely another requirement to validly transfer the property, in addition to other requirements such as a valid contract between the transferor and transferee.

It is possible for statutory licences to be excluded from the operation of the *Personal Property Securities Act 2009* (Commonwealth) by making a declaration which provides that those licences are not personal property for the purposes of the Commonwealth Act.

This clause excludes transferable operating licences granted under section 18 of the *Water Services Licensing Act 1995* (WA) from the definition of personal property in the *Personal Property Securities Act 2009* (Commonwealth), thereby

ensuring that these licences do not fall within the scope of the Commonwealth Act and the new personal property securities regulatory regime.