



PUBLIC

**Minister for Finance; Commerce; Small Business
Hon Simon O'Brien MLC**

The Hon. Adele Farina MLC
Chair
Standing Committee on Uniform Legislation and Statutes Review
GPO Box A11
PERTH WA 6837



Dear Ms Farina

COMMITTEE REPORT 59 – PERSONAL PROPERTY SECURITIES LEGISLATION

I refer to Report 59 of the Standing Committee on Uniform Legislation and Statutes Review – *Personal Property Securities (Commonwealth Laws) Bill 2011* (the PPS Bill) and *Personal Property Securities (Consequential Repeals and Amendments) Bill 2011*, as tabled in the Legislative Council on 22 March 2011.

I note that, in this report, the Standing Committee identified several concerns regarding the way in which the PPS Bill may impinge upon Western Australia's sovereignty, namely:

1. the *Personal Property Securities Act 2009* (Cth) (the Cth PPS Act) is not annexed to the PPS Bill and the Western Australian Parliament is therefore not able to consider the implications of its adoption in this State;
2. the Commonwealth Parliament is provided with the power to amend the adopted Cth PPS Act without any input from or consideration by the Western Australian Parliament;
3. the referral of power to the Commonwealth Parliament to legislate in respect of personal property securities over fixtures and water rights will be by way of proclamation and will therefore not come before the Western Australian Parliament for consideration; and
4. the PPS Bill contains four Henry VIII clauses, which offend the doctrine of the separation of powers.

Please be advised that, in relation to the Standing Committee's first concern, I intend to table the Cth PPS Act in the Legislative Council. This will provide the Western Australian Parliament with an opportunity to review the Commonwealth legislation and consider the implications of its adoption in this State.

In response to the Standing Committee's second concern, the terms of the Personal Property Securities Intergovernmental Agreement require the Commonwealth Government to consult with all States and Territories prior to the introduction of amendments to the Cth PPS Act, which will provide the Western Australian Government with the opportunity to scrutinise the impact of the amendments and ensure they will not have negative implications in this State.

Requiring amendments to the Cth PPS Act to be passed through State Parliaments would jeopardise the uniformity of the PPS legislation, as modification of or refusal to pass proposed amendments would result in different versions of the Commonwealth legislation applying in different jurisdictions. This would negate one of the primary objectives of the PPS regime, which is to replace the different systems currently in place with a single national scheme.

Referral of power – personal property securities over fixtures and water rights

I note the Standing Committee's concern in relation to the commencement of the referral of power to the Commonwealth Parliament over personal property securities in fixtures and water rights.

Amendments to the PPS Bill are being prepared to require a positive endorsement by both Houses of Parliament before a proclamation can be made to commence the referral of power over fixtures or water rights. This will be achieved by requiring each House of Parliament to approve the draft proclamation.

Henry VIII clauses

In response to the Standing Committee's concerns in regard to Henry VIII clauses, amendments are being prepared to remove clauses 17(3)(a) and (b) and 20(2) from the PPS Bill. These clauses provided regulation making powers to allow the Western Australian Parliament to respond to potential inconsistencies between the Cth PPS Act and State legislation. Should inconsistencies be identified after the PPS scheme commences, these will be addressed through an amendment Bill.

In regard to clauses 7(1) and 9(1) of the PPS Bill, which allow the Western Australia Government to terminate, by proclamation, the adoption of the Cth PPS Act in this State and any or all of the amendment references in regard to PPS matters, I have received advice that the removal of such clauses from the PPS Bill may compromise a future Government's capacity to terminate the referral of power.

To address the Standing Committee's concerns, amendments are being prepared which will require a positive endorsement by both Houses of Parliament before a proclamation can be made to terminate the adoption of the Cth PPS Act or any or all of the amendment references. This will provide the Western Australian Parliament with the opportunity to consider the implications of any proposed termination.

I trust that the measures outlined above address the Standing Committee's concerns, as expressed in its report on the PPS Bill and the *Personal Property Securities (Consequential Repeals and Amendments) Bill 2011*. Should you require further information, please contact Gary Newcombe, Director Strategic Policy and Development at the Department of Commerce, on (08) 9282 0602.

Yours sincerely



Simon O'Brien MLC
MINISTER FOR COMMERCE

11 JUL 2011