



Personal Property Securities (Consequential Amendments) Bill 2009

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Law and Bills Digest Section

Contents

| | |
|---|---|
| Purpose | 2 |
| Background | 2 |
| Committee consideration. | 3 |
| Consideration of the Personal Property Securities Bill 2009 | 3 |
| Consideration of this Bill | 4 |
| Financial implications | 4 |
| Main provisions | 4 |
| Schedule 1 | 4 |
| Schedule 2 | 5 |
| Schedule 3 | 6 |
| Schedule 4 | 7 |
| Schedule 5 | 7 |

Personal Property Securities (Consequential Amendments) Bill 2009

Date introduced: 21 October 2009

House: House of Representatives

Portfolio: Attorney-General

Commencement: Various dates contained in the table in clause 2.¹

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The purpose of the Bill is to amend 25 Commonwealth Acts that deal with the creation, registration, priority, extinguishment or enforcement of interests in personal property.

Background

The Personal Property Securities Bill 2009 (the principal Bill) was introduced into the House of Representatives on 24 June 2009. The background to the principal Bill is set out in the relevant Bills Digest.² In essence it establishes a register of personal property securities in place of separate registers tracking whether there is any mortgage or loan or other financial encumbrance over assets. The principal Bill will apply to all transactions which create an interest in personal property that secures a loan or other obligation.

According to the Attorney-General the current Bill:

... represents the next stage in the Government's harmonisation of Australia's personal property laws.

Currently there are over 70 Commonwealth, State and Territory laws, as well as common law and rules of equity governing security interests in personal property.

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1. However, all Schedules are dependant on the Personal Property Securities Act commencing which the Government expects will occur in May 2011.
 2. P Pyburne and D Spooner, 'Personal Property Securities Bill 2009', *Bills Digest no. 36, 2009-10*, Parliamentary Library, Canberra, 15 October 2009, viewed 26 October 2009, <http://www.aph.gov.au/library/pubs/bd/2009-10/10bd036.pdf>

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These different laws vary in their application according to the form of the transaction, the nature of the debtor or the jurisdiction in which the property is located. This adds significantly to transaction costs.

Personal property securities reform is an important part of COAG's deregulation agenda.³

Committee consideration

Consideration of the Personal Property Securities Bill 2009

The principal Bill was referred to the Senate Legal and Constitutional Affairs Legislation Committee for inquiry and report. The report of the Committee was published on 20 August 2009.⁴ The Committee recommended that the principal Bill be passed subject to a commitment from the Government to, amongst other things:

include in a consequential amendments bill to be debated in the Senate cognately with this Bill and intended to take effect immediately after the commencement of the 2009 Bill all changes to the Bill identified as a result of concerns raised with this committee and subsequently directly with the department during the recommended further period of consultation until 30 September 2009.⁵

The Government response to that recommendation is the current Bill which contains, in Schedule 4, the changes to the principal Bill which were identified by the Committee.

In addition, the Liberal Senators in the Committee recommended that the Government develop and implement a comprehensive education campaign for small to medium business and others prior to the start-up date for the new personal property securities system.⁶ That recommendation was accepted by the Government which undertook to

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3. R McClelland, (Attorney-General), 'Second reading speech: Personal Property Securities (Consequential Amendments) Bill 2009, *House Hansard*, 21 October 2009, p. 12, viewed 26 October 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2009-10-21%2F0029%22>
 4. Legal and Constitutional Affairs Legislation Committee, *Personal Property Securities Bill 2009 [Provisions]*, Senate, Canberra, 20 August 2009, viewed 30 October 2009, http://www.aph.gov.au/Senate/committee/legcon_ctte/pps_2009/report/index.htm
 5. Legal and Constitutional Affairs Legislation Committee, *Personal Property Securities Bill 2009 [Provisions]*, op. cit., p. vii.
 6. Legal and Constitutional Affairs Legislation Committee, *Personal Property Securities Bill 2009 [Provisions]*, op. cit., recommendation 5, p. 37.

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develop and implement an education campaign prior to the commencement of the new personal property securities system.⁷

Consideration of this Bill

On 29 October 2009 the Senate referred this Bill to the Senate Legal and Constitutional Affairs Legislation Committee for inquiry and report by 16 November 2009.⁸ The closing date for submissions is 9 November 2009.⁹

Financial implications

According to the Explanatory Memorandum, the Bill will not have a financial impact on the operations of Government.¹⁰

Main provisions

The Bill contains five Schedules.

Schedule 1

Items 1–18 of Schedule 1 amend the *Fisheries Management Act 1991* (Fisheries Management Act) and the *Torres Strait Fisheries Act 1984* (TS Fisheries Act).

Item 1 inserts the term *PPSA security interest*¹¹ into the interpretations contained in existing subsection 4(1) of the Fisheries Management Act to differentiate between interests arising under the Fisheries Management Act and security interests to which the Personal Property Securities Act (when enacted) applies.

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7. Government response, ‘Senate Committee on Legal and Constitutional Affairs: Inquiry into the Personal Property Securities Bill 2009’ *Senate Hansard*, 26 October 2009, p. 68, viewed 30 October 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F2009-10-26%2F0136%22>
 8. Selection of Bills Committee, Report no. 16 of 2009, 29 October 2009.
 9. Details of the Senate inquiry are available at: http://www.aph.gov.au/Senate/committee/legcon_ctte/pps_consequential/index.htm
 10. Explanatory Memorandum, Personal Property Securities (Consequential Amendments) Bill 2009, p. 2.
 11. A *PPSA security interest* is short for Personal Property Securities Act security interest.

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Items 5, 10 and 17 recognise that from the Personal Property Securities Act *registration commencement time*, PPSA security interests will be registered on the PPS register.¹²

The Fisheries Management Act provides for the creation of statutory fishing rights options under existing section 31A. **Item 7** of Schedule 1 of the Bill inserts **proposed section 31FA** which sets out the priority between a PPSA security interest and a statutory fishing rights option. Similarly, **item 12** inserts **proposed section 46A** which sets out the priority between a PPSA security interest and an interest in a *fishing right*.¹³ In particular, interests under section 31F or 46 will have priority over unperfected PPSA security interests in the same property.¹⁴

Item 16 inserts **proposed section 108A** which provides that the seizure, detention or forfeiture of a boat or any other property under the Fisheries Management Act will have effect despite any action taken in relation to enforcement of a PPSA security interest in the boat or other property.

Items 19–20 of Schedule 1 amend the TS Fisheries Act. **Item 19** inserts the definition of *PPSA security interest* into existing subsection 3(1) of the TS Fisheries Act. **Item 20** inserts **proposed section 52J** to ensure that any the seizure, detention or forfeiture of a boat or any other property under the TS Fisheries Act will take precedence over any enforcement action taken in respect of the same personal property under the Personal Property Securities Act (when enacted).

Schedule 2

Schedule 2 contains various amendments to the following intellectual property statutes:

- *Designs Act 2003* (Designs Act)
- *Patents Act 1990* (Patents Act)
- *Plant Breeder's Rights Act 1994* (Plant Breeder's Rights Act) and
- *Trademarks Act 1995* (Trademarks Act).

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12. **Subclause 306(2)** of the Personal Property Securities Bill 2009 provides that the *'registration commencement time'* is from the start of the month that is 26 months after Royal Assent to that Bill or an earlier time determined by the Minister.
 13. A *fishing right* is defined in subsection 4(1) of the Fisheries Management Act as a statutory fishing right.
 14. **Clause 21** of the Personal Property Securities Bill 2009 details how a security interest is *'perfected'*. This will occur where a security interest is attached to collateral and one of the following applies: there is an effective registration in respect of the collateral, or the secured party has possession of the collateral, or for certain types of collateral such as investment entitlements or investment instruments, the secured party has control of the collateral.

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Items 1, 14, and 18 insert the definition of *PPSA security interest* into the Designs Act, Patents Act and Trademarks Act respectively. Under each of those Acts, a person who is the registered owner of a design, patent or trademark respectively may register their rights on a Register that has been created under the relevant Act. The effect of the amendments in Schedule 2 is to preserve those Registers and to allow the continuing registration of designs, patents and trademarks. However, if the interests registered satisfy the definition of PPSA security interest, they will **also** have to be registered on the Personal Property Securities Register in order to preserve priority.¹⁵

Items 16 and 17 insert reference to the Personal Property Securities Act into the Plant Breeder's Rights Act.

Schedule 3

Schedule 3 makes consequential amendments to the following maritime statutes:

- *Admiralty Act 1988* (Admiralty Act)
- *Marine Navigation Levy Collection Act 1989* (MN Levy Collection Act)
- *Marine Navigation (Regulatory Functions) Levy Collection Act 1991* (MN (Regulatory Functions) Levy Collection Act)
- *Navigation Act 1912* (Navigation Act)
- *Protections of the Sea (Civil Liability) Act 1981* (PotS (Civil Liability) Act)
- *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006* (PotS (Harmful Anti-fouling Systems) Act)
- *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (PotS (Prevention of Pollution from Ships) Act)
- *Protection of the Sea (Shipping Levy Collection) Act 1981*, and (PotS (Shipping Levy Collection) Act), and
- *Shipping Registration Act 1981* (Shipping Registration Act).

In the case of the MN Levy Collection Act,¹⁶ the MN (Regulatory Functions) Levy Collection Act,¹⁷ the PotS (Civil Liability) Act,¹⁸ the PotS (Harmful Anti-fouling Systems) Act,¹⁹ the PotS (Prevention of Pollution from Ships) Act²⁰ and the PotS (Shipping Levy

15. See **item 3** (for designs), **item 10** (for patents) and **item 20** (for trademarks).

16. **Item 3** of Schedule 3 of the Bill.

17. **Item 5** of Schedule 3 of the Bill.

18. **Item 11** of Schedule 3 of the Bill.

19. **Item 12** of Schedule 3 of the Bill.

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Collection) Act,²¹ the amendments will have the effect that enforcement action under those Acts will take precedence over any enforcement action in respect of the same goods under the Personal Property Securities Act (when enacted).

By contrast, **item 18** repeals existing sections 38–44A of the Shipping Registration Act which currently deal with the priority of mortgages over ships. **Item 25** inserts **proposed section 59A** which will require mortgages over ships and caveats to be registered on the Personal Property Securities Register—and that provisions of the Personal Property Securities Act (when enacted) will be used to determine priorities of securities interests in ships.

Schedule 4

Schedule 4 of the Bill amends the Personal Property Securities Act. Importantly, none of the provisions will come into force until immediately after the *Personal Property Securities Act 2009* commences. In addition **items 8** and **36** are dependent upon the enactment of the *National Consumer Credit Protections Act 2009*.

According to the Explanatory Memorandum:

Schedule 4 makes minor technical amendments in response to submissions made to the Senate Legal and Constitutional Affairs Committee’s inquiry into the provisions of the PPS Bill and subsequently to the Attorney-General’s Department. The PPS Bill is being amended through the Consequential Bill, rather than by way of parliamentary amendments, to avoid the need for States who have given a referral of power to give a further referral of power in respect of the amendments.²²

Many of the amendments have already been flagged in the Bills Digest for the principal Bill.

Schedule 5

Schedule 5 makes consequential amendments to the following Commonwealth statutes:

- *Air Services Act 1995*
- *Bankruptcy Act 1966* (Bankruptcy Act)
- *Commonwealth Inscribed Stock Act 1911*
- *Corporations (Aboriginal and Torres Strait Islander) Act 2006*
- *Health Insurance Act 1973*

20. **Item 13** of Schedule 3 of the Bill.

21. **Item 14** of Schedule 3 of the Bill.

22. Explanatory Memorandum, p. 24.

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- *Insurance Act 1973*
- *Privacy Act 1988* (Privacy Act)
- *Quarantine Act 1908*, and
- *Wool International Act 1993*.

Notably, **items 5–9** insert definitions into the Bankruptcy Act so that there will be consistency with the definitions in the Personal Property Securities Act (when enacted). In particular **item 9** substitutes a new definition of *secured creditor* which includes a PPSA secured party where the PPSA security interest arose as security for the debt, and is perfected.

In addition, **items 25–30** amend the Privacy Act. **Item 29** inserts **proposed section 28B** which empowers the Privacy Commissioner to investigate an act or practice that may be an interference with the privacy of an individual under the Personal Property Securities Act. **Item 26** adds a note at the end of existing section 13 to the effect that certain contraventions of the Personal Property Securities Act (when enacted) will be an interference with the privacy of an individual.

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