

Mr Peter Hallahan,
Committee Secretary,
Standing Committee on Constitutional and Legal Affairs.
The Senate
Parliament House
Canberra Act 2600

Dear Sir,

Inquiry into the Personal Property Securities Bill: Submission

This submission to the Committee follows the Invitation from you dated 8 July 2009.

That invitation presumably reflects the fact that I made a submission to the earlier inquiry into the exposure draft of the Bill. The impetus to make that submission was to reduce borrowing and leasing costs associated with aircraft for the aviation industry.

That submission sought to draw the Committee's attention to the Cape Town Convention and Aircraft Equipment Protocol which provide an international regime for the registration of security interests in aircraft and related materials (that regime has since been extended to railway rolling stock by a separate protocol). This was in the context of the necessity for such a regime to provide adequate security to lenders and thus curtail borrowing and leasing costs. There were no appropriate Australian arrangements. The intention of the submission was to encourage the Committee to recommend that the Bill's provisions leave the way open for Australia to ratify the Cape Town Convention given the internationally traded nature of many aircraft types. The significance of the Cape Town Convention and the Aircraft Equipment Protocol is that they cover not only large aircraft capable of operating on interstate and international routes but also smaller aircraft suitable for operations in regional and rural areas. Ratification made sense from the point of view of supporting the aviation industry in the broadest sense, given its importance to both the national and regional economies. I believe that it still does.

The suggestion was that the Bill leave open the possibility of ratification so that, if Government policy was to support it, the international register could

be used in conjunction with local laws (as occurs, for instance, in the United States: see the *Cape Town Treaty Implementation Act 2004*); the market for the financing and sale of for many aircraft is international or global. The international register, which is operated on behalf of the International Civil Aviation Organisation, has the expertise and the experience to accommodate the myriad types of aircraft that are eligible for financing pursuant to the Cape Town Convention and the Aircraft Equipment Protocol and is funded by user registration and search fees. Thus, to that extent, it would not be necessary to 'reinvent the wheel' in Australia.

The writer became aware, about 10 years ago, having chaired reviews of the Civil Aviation Safety Authority (CASA) and then becoming Deputy Chair of the CASA Board, of the Australian aviation industry's need for an effective regime for the registration of security interests in aircraft. This need became apparent when, as part of a program of reforming the rules applicable to aviation safety, it became clear that the rules for registration of aircraft could not accommodate the registration of security interests because of 'limitations of powers' issues.

Since my submission to the inquiry regarding the exposure draft was made there have been further ratifications of the Cape Town Convention, most notably by the European Union.

In the end, concern must be with ends not means. The Personal Property Securities Bill clearly makes substantial moves in the right direction. The Committee may be interested in the exposition to the Aviation Law Association of Australia and New Zealand's Annual Conference earlier this year by Sandra Henderson-Kelly, Senior Legal Officer, Attorney General's Department of the operation of the Personal Property Securities Bill in an aircraft financing context: 'Personal Property Securities Reform Secured Finance in the Aviation Industry'. The Bill must therefore be supported.

However, it is suggested that the way be left open for ratification of the Cape Town Convention and the Aircraft Equipment Protocol so that, if government policy should so permit, the use of the international register can be introduced, for the reasons given above, without difficulty. This would further strengthen the arrangements embodied in the Bill as applicable to aircraft and related equipment. As in the earlier submission, it is suggested that this could be done by the inclusion of an appropriate regulation-making power.

I trust that the foregoing is of assistance to the Committee.

While informed by the experiences described above, this submission expresses my personal views.

Yours sincerely,

(signed)

James Kimpton AM
16/07/09