

Revised Version

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Mr Peter Hallahan,
Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Mr Hallahan,

Re: Personal Property Security Bill (Exposure Draft)

This submission briefly raises the question of the interface between the proposed Personal Property Security Bill and the Cape Town Convention. This is because ratification of the Cape Town Convention appears to offer the opportunity of reduced aircraft and power plant (engine) financing costs at a time when the aviation industry needs some relief in this regard. Its purpose and that of the proposed Personal Property Security Bill are similar.

The Cape Town Convention was negotiated in 2001, with the intention of facilitating loans to purchasers of aircraft, satellites and railway equipment and leases of such items. At the same time an Aircraft Equipment Protocol was agreed. The result was arrangements for the establishment of an international register upon which aircraft and power plants and security interests therein could be registered, thus improving the security available to lenders and lessors and reducing their risk. The documents also provide a

framework for the enforcement of security interests, which can be varied by local law.

A sufficient number of countries have ratified the above agreements for them to come into effect. 23 countries have ratified the Convention and 21 have ratified the Aircraft Equipment Protocol. The register has been established and is operating under the auspices of the International Civil Aviation Organisation. As at June this year, according to Sir Roy Goode's Official Commentary on the Convention and Protocol (published by Unidroit) there were approximately 94,000 registrations in respect of 37,000 aircraft objects. There are indications that the use of these arrangements has provided sufficient security for lenders and lessors to enable financing costs to purchasers and lessees of aircraft and power plants to be reduced. Part of the appeal of the Cape Town Convention arrangements is that they extend to relatively small aircraft and could thus benefit some general aviation businesses and regional as well as interstate and international airlines. It would appear that Australian-based financiers are using the arrangements but Australian aircraft purchasers and lessees cannot obtain the benefits of the arrangements because Australia has not yet ratified the treaty. The availability of an international register for aircraft and power plants is particularly important for aircraft as they are bought, sold and leased in international markets. However, the availability of the register to purchasers and lessees depends upon their host country ratifying the Convention and enacting legislation that gives the Convention effect as local law.

As a treaty is involved, once it is ratified it, can be the subject of Commonwealth law as an 'external affair' pursuant to the Constitution.

The relative roles that the Cape Town Convention, on the one hand, and the proposed Personal Property Security Bill, on the other, might play in assisting the purchase and leasing of aircraft and engines was canvassed in a Consultation Paper issued by the Department of Infrastructure, Transport, Regional Development and Local Government earlier this year. The paper may be found at

http://www.infrastructure.gov.au/aviation/international/pdf/Cape_Town_consultation_paper.pdf .

This issue is discussed in the context of the Canadian equivalent to the proposed Personal Property Security Legislation as well as the proposed Australian bill in 'Interface between Convention in Mobile Equipment and Canadian Personal Property Acts and related legislation: Possible

implications for Australia' by Professor Ronald C Cuming (University of Saskatchewan) in (2008) 82 Australian Law Journal at p 680.

At this time, there has been no feedback as to the response to the Department of Infrastructure's Discussion Paper.

In light of the foregoing the Committee is asked to consider, for instance, the inclusion in the proposed bill of regulation-making powers that would allow the implementation of the Cape Town Convention if it was ratified by Australia.

I have canvassed the potential benefits of ratification of the Cape Town Convention in papers to aviation conventions and so forth and would be happy to provide them if that would assist. I attach a brief summary of my qualifications and experience.

Yours sincerely,

James Kimpton AM
10/12/08

James Kimpton

James Kimpton holds degrees in Arts and Law. Prior to entering the aviation industry in 1983 he worked in consumer products marketing, management consultancy and public administration. Between 1983 and 1999 he was responsible for Ansett's relationships with government. He served terms as Chair of the Board of Airline Representatives of Australia and the Australian Air Transport Association. Between 1996 and 1998, he chaired Reviews of the Civil Aviation Safety Authority for the Australian government. In 1999, he left Ansett to become Deputy Chair of the Board of CASA, a position he held until 2003.

He currently edits '*Aviation Briefs*' for the Aviation Law Association of Australia and New Zealand, provides regular commentary on Australasian aviation law and policy for the UK-based '*Journal of Airport Management*' and is a member of the Aviation Safety Forum, which provides advice to the CASA CEO.

In 2001 he was made Member of the Order of Australia for services to aviation.

6/11/08