

Additional comments from Liberal Senators

1.1 Liberal Senators agree with the majority report's consideration of the evidence, and largely support the majority report's conclusions and recommendation. Liberal Senators understand the benefits and importance of establishing a simplified, national personal property securities (PPS) regime. Liberal Senators have made a significant contribution to the three previous inquiries into the development of the PPS legislation. As noted in our comments to the previous report, we do not intend to obstruct this worthwhile reform, but merely wish to ensure that the Government 'gets it right'.¹

Engagement with small business

1.2 Liberal Senators note the comments of the majority in relation to the role of the Attorney-General's Department (the Department), and also acknowledge the Department's role in the development of the PPS Act and in assisting the committee and many stakeholders – particularly those in the finance, legal, banking and credit management industries – to better understand and contribute to the intended operation of the new PPS regime. Liberal Senators recognise that the Department continues to engage with relevant stakeholders over the development and implementation of the PPS Register.

1.3 Notwithstanding this acknowledgement of the Department's efforts, Liberal Senators remain concerned that to date there has been insufficient engagement with the many small businesses which will be affected when the PPS Act finally commences in May 2011. Some figures would suggest that there are approximately 2½ million small businesses in Australia, with 700,000 of these being incorporated businesses. It is imperative that this critical element of Australia's productive sector is fully engaged with, and informed about, the new PPS regime. Liberal Senators are not convinced that small business has had and will have the necessary education, support and assistance to negotiate what is a wide-reaching reform to Australia's current financial and legal settings in this area.

1.4 Liberal Senators note that they have previously expressed concerns in relation to the extent and timing of the consultations on the new PPS regime. Notably, a minority report and additional comments to the past two inquiries (on the provisions of the Bill and related consequential amendments respectively) both raised concerns in relation to the inadequate amount of time allowed for the conduct of those inquiries. Although the time allowed for the current inquiry was apparently sufficient – given the relatively minor number and nature of issues that were raised in submissions – Liberal Senators believe that the previous inquiries failed to sufficiently engage with the small business sector. It is likely that many

1 *Inquiry into the Personal Property Securities Bill 2009 [Provisions]*, August 2009, p. 36.

small-business people remain uninformed about the pending changes, and are ill-prepared to successfully negotiate the new regime on its commencement.

1.5 In light of these conclusions, Liberal Senators consider that, in the lead up to the commencement of the PPS Act in May 2011, it is vital that the Department pursues a comprehensive implementation agenda which recognises the importance and particular needs of the small business community, particularly in relation to education about preparing for the changes and negotiating the new system on its commencement. Equally, provision should be made for small businesses to receive ongoing information and assistance in relation to the PPS Act system. Accordingly, the Department should be required to publish an implementation plan covering the period of approximately 12 months up to the commencement of the PPS Act in May 2011. This plan should clearly set out a comprehensive strategy for engaging with and educating all stakeholders, and particularly small businesses, about preparing for the new PPS regime and negotiating the new system on its commencement.

1.6 In addition, Liberal Senators consider that, in the three-month period prior to the commencement of the PPS Act, the Minister should report to Parliament on the Department's preparations for the commencement of the new scheme, and in particular the extent to which it has met the benchmarks contained in its implementation plan with regard to engagement with, and education of, the small business sector.

1.7 Finally, Liberal Senators note with concern the issue, raised by the Senate Standing Committee (the scrutiny committee) for the Scrutiny of Bills, in relation to the reliance of certain provisions of the Bill on the element of constructive knowledge. Liberal Senators support the scrutiny committee's calls for the Department to provide a full explanation for each instance of a provision relying on the element of constructive knowledge in the Bill. Any legislative approach that, prima facie, might unduly impact on the rights and freedoms of individuals, must be accompanied by sufficient justification for such an approach.

Recommendation 1

1.8 That the Department immediately publish an implementation plan for the approximately 12-month period leading up to the commencement of the PPS Act; the plan should detail a comprehensive agenda for engagement with and education of all key stakeholders, including the small business sector, about the operation and potential impacts of the new PPS regime.

Recommendation 2

1.9 That, in the three-month period prior to the commencement of the PPS Act, the Minister report to Parliament on the preparations for the commencement of the new scheme; the Minister's report should address the extent to which key stakeholders, and specifically the small business sector,

have been assisted with and are prepared for the commencement of the new PPS Act regime.

Senator Guy Barnett

Senator Stephen Parry

Deputy Chair