



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: RIC/PLC:CBns171123

16 November 2023

Attorney-General's Department
3-5 National Circuit
CANBERRA ACT 2600

By email: PPSAreform@ag.gov.au

Dear Sir/ Madam,

Public consultation on the Government's response to the statutory review of the Personal Property Securities Act 2009

Thank you for the opportunity to comment on the Government's response to the statutory review of the *Personal Property Securities Act 2009* (Act). The Law Society's Rural Issues and Property Law Committees have contributed to this submission.

While we note the extensive nature of the review and the Government's proposed reforms, in this submission we have focussed on a limited number of issues of concern to our members, which predominantly relate to regional and rural matters.

Water rights – Recommendation 40

We note that the Department is seeking state-specific feedback in relation to Recommendation 40 of the Review, which proposes:

That Government explore with the States and Territories whether ss 8(1)(i) and 8(5) could be amended so that water rights are only excluded from the Act if they are able to be recorded under a statutory registration scheme that complies with the expectations set out in the 2005 Intergovernmental Agreement on a National Water Initiative.¹

In NSW, the relevant scheme is the Water Access Licences (WAL) Register, which we note complies with the Guidelines for Water Registries under Schedule F of the Intergovernmental Agreement on a National Water Initiative.² The WAL Register is maintained by NSW Land Registry Services under the *Water Management Act 2000* (NSW) and provides an online record of all WALs in NSW. Each WAL is identified by a unique folio, which contains information including:

- Share component (volume)

¹ Bruce Whittaker, *Review of the Personal Property Securities Act 2009*, (Final Report, 2015), Recommendation 40.

² Department of Climate Change, Energy, the Environment and Water, Intergovernmental Agreement on a National Water Initiative
<https://www.dcceew.gov.au/sites/default/files/sitecollectiondocuments/water/Intergovernmental-Agreement-on-a-national-water-initiative.pdf>

- Extraction component
- Water source
- Expiry date
- Conditions
- Current ownership details
- Mortgages, charges and related information, and
- A licence reference number.³

However, we note that the information recorded on the WAL Register is limited to WALs and does not include, for example, details regarding water entitlements held by irrigation corporations. Several irrigation corporations currently operate in NSW, including:

- Murrumbidgee Irrigation Limited
- Jemalong Wyldes Plains Irrigation Limited
- Lower Murray Irrigation Areas Limited
- Murray Irrigation Limited.

Some water entitlements held by these irrigation corporations are not registered on the WAL Register, (although the WALs held by the corporations are) and are instead registered with the corporations themselves.

Accordingly, in considering whether the current exclusions under ss 8(1)(i) and 8(5) of the Act should be maintained, it is important to consider the somewhat limited nature of the information currently recorded on the WAL Register, and the practicalities involved in effectively requiring parties to examine two separate registers.

In our view, there is a risk that requiring water rights to be registered on the Personal Property Securities Register (PPSR), but with certain information exempted insofar as it relates to WALs, could create an unnecessary layer of complexity for relevant interest holders, banks and other lenders, and may result in additional administrative fees, delays or potential errors.

While we see merit in having water rights registered on the PPSR,⁴ we suggest that further clarification is required regarding how certain water rights, such as entitlements held by irrigation corporations, should be registered if the exclusion is removed, noting the current limitations of the WAL Register. We would be pleased to be involved in further consultation on this proposal.

We also suggest that consideration should be given to including appropriate protections for irrigation corporations, such that they are not required to inspect the PPSR before authorising a trade. In our view, this onus should be on the parties to a dealing, and not on the irrigation corporation within which a relevant entitlement is held.

Priority of crops and livestock – Recommendation 254

We note that the Department is seeking further feedback in relation to Recommendation 254 of the Review, which proposes:

That Government afford agribusiness financiers and farming organisations a further opportunity to comment on whether ss 85 and 86 [of the Act] should be retained or deleted.⁵

³ NSW Land Registry Services, Water Access Licence Register
<https://www.nswlrs.com.au/Public-Register/WAL-Register>

⁴ In the experience of our members, some mortgagees already register on the PPSR their interests in water entitlements held by irrigation corporations.

⁵ Above n 1, Recommendation 254.

These sections effectively grant priority to security interests in resulting crops and livestock respectively, where the interest is given to enable the production and development of those crops or livestock.

While the Law Society does not purport to represent the interests of agribusiness financiers or farming organisations, we note that many of our solicitor members act for these types of clients in relevant property and security transactions as legal representatives.

We support retaining ss 85 and 86 of the Act, which, in our view, are necessary to encourage and secure financing for the production of crops and livestock both from banks and, in particular, from specialised, second tier lenders, noting that financial institutions usually have first security by way of general security agreements (All-PAAPs).

Such lenders represent a significant source of funding for farmers, noting the relatively high cost of certain agricultural inputs, and difficulty in obtaining seasonal funding from large banks, given the challenges of assessing risk and value in agricultural products, and banks' more stringent prudential requirements.

Classes of collateral

We note that the Government has accepted the majority of the Review's recommendations relating to the rules regulating dealings with collateral,⁶ which include changes to the classes of collateral under the Act. These changes are set out in Appendices A and B of the Consultation Paper.⁷ Under the proposed changes, 'Agriculture' will no longer be a standalone category, and instead will fall under the collateral class of 'Goods'.

We support maintaining 'Agriculture' as a separate class of personal property, distinct from the broad collateral class of 'Goods'. In our view, the current categorisation appropriately reflects the unique nature of agricultural goods, and class-specific considerations, such as where security interests are taken over crops or livestock that are not yet in existence. We do not support the proposed amendments to the classes of collateral as they relate to agricultural goods.

We hope this input is of assistance. Please contact Nathan Saad, Policy Lawyer, on (02) 9926 0174 or nathan.saad@lawsociety.com.au in the first instance if you have any queries.

Yours sincerely,



Cassandra Banks
President

⁶ Above n 1, Recommendations 168-273; Personal Property Securities Amendment (Framework Reform) Bill 2023, Schedule 3.

⁷ Attorney-General's Department, *Government Response to the Final Report of the Statutory Review of the Personal Property Securities Act 2009*, (Consultation Paper, 2023) 27-29.