
PERSONAL PROPERTY SECURITIES LAW REFORM

THE NEW ZEALAND PERSPECTIVE

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INTRODUCTION

Professor Duggan's summary of the policy issues which must be addressed in considering proposals for reform of personal property security law applies, with a few minor differences, to New Zealand. Equally, the processes which have been undertaken in Australia bear some similarities with those which we have undertaken in New Zealand.

In essence, the New Zealand proposals involve a simple solution to a complex problem. This would require the establishment of one national register of personal property securities, and a priority regime which basically says that the secured party that registered its security interest first will have priority over any other security interests.

HISTORY

My involvement in the process began in late 1987, when Jack Hodder, who was then a Commissioner of the New Zealand Law Commission and who is now one of my partners, approached me to assist the Commission with its company law reference. Jack's attention was, at that time, on the company charges regime. Eventually, the Law Commission asked Professor John Farrar, who was then Professor of Law at the University of Canterbury, and I to go to Canada and the US to investigate the Article 9 regimes in the US and their Canadian derivatives in some of the Canadian provinces. John and I went to North America in February 1988, and produced a discussion paper for the Law Commission suggesting that New Zealand look carefully at adopting an Article 9-based solution.¹

As a result of the recommendations made in PP6, the Law Commission appointed an advisory committee which consisted of John Farrar and myself, along with a number of prominent practitioners and academics. The Advisory Committee was asked to formulate detailed proposals for reform of the law in New Zealand. It was asked to report by the end of 1988 so that the proposed reform could be considered before the Government became committed to a specific reform in relation to motor vehicle securities which was, at that time, about to be introduced to Parliament.

¹ New Zealand Law Commission Preliminary Paper No 6, *Reform of Personal Property Security Law*, May 1988 (referred to below as "PP6").

The report of the Advisory Committee, which was submitted to the New Zealand Law Commission in draft in December 1988 and in final form in March 1989, was adopted by the Law Commission and published by it as a report.²

THE NEW ZEALAND APPROACH

As Professor Duggan says, the approach we took in New Zealand was to adopt the North American approach as our own, rather than trying to re-invent the wheel. This was principally because John Farrar and I had become quite familiar with the Canadian models, and were impressed by the reform processes which had been undertaken in Canada. In essence they had started from almost the same position as we had in New Zealand and had successfully adapted the US Article 9 solution to a British Commonwealth system. Another reason was the need for speed — to meet the Commission's deadline, we simply did not have time to go over all the ground again.

I think it is a great pity that the Australian Law Reform Commission did not also adopt the North American approach, for the reasons which Professor Duggan gives. Having said that, the final report of the Australian Law Reform Commission³ is an improvement on the proposal set out in its earlier discussion paper.⁴ While, as Professor Duggan says, the failure to adopt the North American concepts leaves doubt in respect of a number of issues which should have been avoided, I believe that the ALRC approach is no longer sufficiently dissimilar from that proposed in NZLC R8 for there to be any justification (based on the desire for harmonisation) for New Zealand to delay further the implementation of NZLC R8.

HARMONISATION

The harmonisation issue is a very important one on our side of the Tasman. After the NZLC published NZLC R8, the government announced that it would not be taking action on the report because of its concern that New Zealand was adopting a North American model and that this may not be in accordance with the agreement between New Zealand and Australia on the harmonisation of commercial laws. Effectively, those involved with the NZLC project were told to wait until the Australians caught up with us, at which point the matter could be considered again.

The Advisory Committee had taken a different view. The way we put it in our introduction to our report to the Commission was:

"The Committee believes that the introduction of a Personal Property Securities Act in New Zealand, based on the Canadian and United States models, and consistent with major reforms now being recommended in the United Kingdom by Professor Diamond, will mean that New Zealand will not only provide a lead in the adoption of standardised procedures between Australia and New Zealand but also play a significant role in harmonisation between Australasian jurisdictions and their major trading partners in Canada, the United States and the United Kingdom".

WHAT HAS HAPPENED SINCE?

Since the publication of NZLC R8, there have been a number of developments. In particular:

- ² New Zealand Law Commission Report No 8, *A Personal Property Securities Act for New Zealand*, April 1989 (referred to below as "NZLC R8").
- ³ The Law Reform Commission Report No 64 (Interim), *Personal Property Securities* (1993).
- ⁴ ALRC discussion paper 52/Law Reform Commission of New South Wales Discussion Paper 28, *Personal Property Securities*, August 1992.

Motor Vehicle Securities Act 1989

The *Motor Vehicle Securities Act*⁵ was passed in 1989, and came into force on 1 April 1990. Its main focus is consumer protection, ie protection of buyers of motor vehicles. It is similar to some of the state legislation in Australia. Some of the features of MVSA are:

- it defines a “security interest” very broadly, in a way which includes hire purchase agreements, finance leases and other title retention arrangements;⁶
- it establishes a national motor vehicle securities register.⁷ This is a computerised register which provides for notice filing.⁸ Most finance companies register their security interests on the MVSA Register by electronic mail. The only details which are publicly available from the register are a statement that a security interest exists and the registered particulars of that security interest;
- searches of the register can be undertaken by telephone. The free “Autocheck” service has been widely advertised and car buyers are warned to use the service before buying a car;
- the register is an asset-based register, ie it is not possible to search by reference to the name of the debtor. In fact, the name of the debtor is not publicly available, apparently for privacy reasons. Rather, the search must be by reference to the registration number and chassis number of the motor vehicle. This means that it is not possible to register one interest in respect of a large number of vehicles (for example, where a dealer in motor vehicles holds a large number of vehicles as inventory). Rather, individual registrations must be made;
- there are various consumer protection measures which ensure that motor vehicles bought from dealers are bought free from any security interests, even if there are registered security interests in place, whether they are granted by the dealer or any previous owner. Provision is then made for access to the motor vehicle dealers fidelity fund if parties suffer loss as a result of the extinguishment of their security interest. This has led to a number of claims by financial institutions on the fidelity fund. Previously, financial institutions were not entitled to claim on that fund;
- motor vehicles are now excluded from the *Chattels Transfer Act* 1924,⁹ but not from the registration of charges provisions in the *Companies Act* 1955. A charge given over a motor vehicle by a company is registrable under the *Companies Act* 1955.¹⁰ This

⁵ Referred to below as “MVSA”.

⁶ Section 2(1) of the MVSA.

⁷ Referred to below as the “MVSA Register”.

⁸ That is, filing of particulars, rather than of a copy of the instrument creating the security interest.

⁹ Paragraph (e) of the definition of “Chattels” in section 2 of the *Chattels Transfer Act* 1924.

¹⁰ Section 102(2)(cc) of the *Companies Act* 1955. A failure to register a charge over a motor vehicle given by a company probably does not affect its validity, however, as section 103 of the *Companies Act* 1955 does not avoid charges which are “registrable” under another Act — see section 103(1) and *Re Universal Management Limited* [1983] NZLR 462. While charges over motor vehicles are not required to be registered under MVSA they are “registrable”. However, a floating charge over a motor vehicle would be avoided by section 103 if it was not registered, because floating charges are not registrable under MVSA —

requirement does not, of course, apply to security interests in motor vehicles created by companies which do not constitute "charges" (for example, finance leases or hire purchase agreements).

Companies Act 1993

The *Companies Act 1993* has been passed. This is the culmination of a long reform process which commenced with the reference to the Law Commission shortly after it was established in 1986. However, the legislation passed by Parliament differed in a number of significant respects from that which was originally proposed by the Law Commission. Significantly, the *Companies Act 1993* does not deal with security interests or charges at all.

Companies (Registration of Charges) Act 1993

The *Companies (Registration Of Charges) Act 1993* was passed at the same time as the *Companies Act 1993*. It effectively extends the existing provisions for the registration of charges in the *Companies Act 1955* to companies which are registered under, or which re-register under, the *Companies Act 1993*. However, as the *Companies Act 1955* will be repealed as from 30 June 1997 by the *Companies Act Repeal Act 1993*, this temporary solution for registration of charges will have to be replaced by a more permanent solution by 30 June 1997.

Receiverships Act 1993

The *Receiverships Act 1993* was also passed at the same time as the *Companies Act 1993*. This sets out a comprehensive regime for the conduct of receiverships of the property of all forms of entities, replacing the provisions of the *Companies Act 1955* which applied only to companies.

PPSA Reform Proposals

In public statements made prior to the 1993 New Zealand Parliamentary election, both the Minister of Justice, Mr Graham, and the then Opposition Spokesman on Justice, Mr Caygill, said that enactment of a *Personal Property Securities Act* was considered to be an urgent priority. However, I understand from the Department of Justice that PPSA is not in the legislative programme for 1994. Even so, the commitment of both the Government and the Opposition to the idea of PPSA, and the natural time limit which results from the repeal of the *Companies Act 1955* and the consequent lapse of the *Companies (Registration of Charges) Act 1993* gives cause for hope that a PPSA reform will occur in the short term in New Zealand.

THE NEW ZEALAND PROPOSALS

The New Zealand proposals closely followed the Canadian models, with some specific exceptions. The draft Bill was based very closely on the then current draft of the *Personal Property Security Bill* of British Columbia, though there were a number of stylistic and drafting changes made by the Law Commission's drafting personnel after the Advisory Committee had completed its work. I do not intend to give a detailed outline of the New Zealand Bill, as this appears in NZLC R8. However, I highlight some of the important points about the New Zealand proposals. These are:

see paragraph (d) of the definition of "security interest" in section 2 of the MVSA which excludes floating charges.

Replacement of Existing Laws

The proposed PPSA would replace the MVSA, the *Chattels Transfer Act 1924* and the registration of charges provisions of the *Companies Act 1955* and the *Industrial and Provident Societies Act 1908*. The intention is that PPSA would be the only legislation dealing with security interests in personal property.

National Registry of Personal Property Securities

PPSA would establish a national registry, called the Register of Personal Property Securities.¹¹ The Register of Personal Property Securities would replace all existing registers relating to securities over personal property (with some minor exceptions such as the ships register). This would avoid the difficulties of linking separate registers as proposed in Australia. Security over land would be dealt with exclusively by the *Land Transfer Act 1952*.

Once it became clear that the MVSA would be passed, those involved with the PPSA initiative tried to ensure that the MVSA Register would be the basis for the PPSA Register. This would mean that security interests registered under the MVSA would continue in force under PPSA, and the current practicalities of registration of security interests in motor vehicles would be undisturbed by the change from MVSA to PPSA. When John Farrar and I made submissions to the Select Committee on the *Motor Vehicles Securities Bill*, the Chairman of the Committee obtained an assurance from the officials of the Department of Justice who were advising the Committee that the MVSA Register would be set up in a way which allowed for its conversion into a more comprehensive PPSA Register when PPSA was passed.

Register of Details of Debtor and Collateral

The PPSA Register would be a debtor-based register (ie indexed by reference to the name of the debtor granting the security interest). However, where the collateral was capable of being identified by reference to a serial number or similar identification number, registration of the serial number or other identifier of the collateral would also be required to allow for searching of the register by reference to the asset rather than the name of the debtor.¹²

That requirement in the draft PPSA as currently drafted relates only to goods held as equipment, and not to consumer goods. It would need to be expanded to include consumer goods if PPSA is to give consumers the protection provided by MVSA. In some of the Western Canadian models, the requirement to register details of the collateral also applies to aeroplanes, trailers and mobile homes.

Conflict of Laws

Because the Register of Personal Property Securities would be a national register, the problems of conflict of laws which apply in federal jurisdictions such as USA, Canada and Australia do not apply, except where property is brought into New Zealand from overseas. Accordingly, the conflict of laws provision is far simpler than that which applies in the Canadian models and in Article 9 itself.¹³

¹¹ Clause 39 of the draft Bill in NZLC R8 (referred to below as the "draft PPSA"). The proposed register is referred to below as the "PPSA Register".

¹² Clause 28(3) of the draft PPSA.

¹³ Clause 6 of the draft PPSA.

Comprehensive Concept of "Security Interest"

PPSA would apply to all forms of security interests, regardless of their form.¹⁴ The draft PPSA makes specific reference to reservation of title (Romalpa) clauses, charges, mortgages, conditional sale agreements, hire purchase agreements, and consignments (among others).¹⁵ In addition, the term "security interest" is extended by the draft PPSA¹⁶ to include:

- a transfer of an account receivable or chattel paper (eg a hire purchase agreement);
- a lease for a term of more than one year;¹⁷
- a commercial consignment (where goods are consigned to a dealer but the consignor retains title).

Interests which are not Security Interests

There are a number of exclusions in the draft PPSA from the concept of "security interest", mostly to cover non-consensual security interests and security interests where an alternative registry exists. Examples of the exceptions are:

- liens;
- transfers of interests in insurance policies;
- the creation or transfer of an interest in land;
- an assignment of accounts receivable made solely to facilitate collection;
- a transfer or assignment or mortgage or assignment of mortgage of a ship registered under the *Shipping and Seamen Act 1952*;¹⁸
- a sale of accounts receivable or chattel paper as part of the sale of a business, except where the vendor remains in apparent control of the business after the sale.¹⁹

¹⁴ Clause 4(1) of the draft PPSA defines a security interest as an interest "created or provided for by a transaction that in substance secures payment or performance of an obligation, without regard to the form of the transaction and without regard to the identity of the person who has title to the collateral".

¹⁵ Clause 4(2) and (3) of the draft PPSA.

¹⁶ Clause 4(4) of the draft PPSA.

¹⁷ The term "lease for a term of more than one year" is defined in clause 2(1) of the draft PPSA. There are a number of specific exclusions from the definition.

¹⁸ Now replaced by the *Ship Registration Act 1992*. New Zealand now also has a Torrens-style register for management rights and licences of radio frequencies — see the *Radiocommunications Act 1989*. Mortgages registrable under this Act would presumably be excluded from the PPSA regime.

¹⁹ Clause 4(5) of the draft PPSA. The draft PPSA does not attempt to deal with debt subordination agreements, set-off rights or loan participations. See Dugan, *Subordination Agreements, Deposit Account Financing, and Loan Participation under*

First to File Rule

Like Article 9, the draft PPSA has a fundamental rule that the security interest of the first secured party to file its security interest (ie register a financing statement complying with the PPSA requirements) will take priority over any other security interest.²⁰ While there are a number of specific rules to deal with proceeds,²¹ purchase money security interests (see below), accessions,²² crops,²³ fixtures,²⁴ repossessed goods,²⁵ and commingled goods,²⁶ the vast majority of priority disputes will be solved simply by ascertaining which security interest was registered first.

Attachment/Perfection

The draft PPSA provides to a secured party with a security interest in personal property the means of perfecting that security interest. Perfection occurs when the security interest has "attached" and the steps necessary for perfection have been completed, regardless of the order in which that occurs.²⁷

"Attachment" occurs when the debtor has rights in the collateral and gives the security interest, and the secured party gives value.²⁸ Perfection occurs when the secured party either registers a financing statement in the PPSA Register or takes possession of the collateral.

In most cases perfection will occur through registration, though perfection by possession will be common where the collateral is, for example, a negotiable instrument.

As indicated above, it will be possible for a secured party to register the security interest before giving value if the secured party wishes to ensure that it has the first-registered security interest before making an advance. In that case, attachment would occur after registration, and at that point the security interest would be perfected.

Notice Filing

The Register will be a computerised register, and will provide for notice filing. This means that only a financing statement giving certain details of the debtor, secured party and

the Draft Personal Property Securities Act in Dimensions in Business Finance Law (Prebble, ed), Butterworths 1992 at page 105.

²⁰ Clause 28 of the draft PPSA.

²¹ Clause 22 of the draft PPSA. See also Farrar and McLay, *The Interface of Floating Charges, Romalpa Clauses and Credit Factoring*, pages 89-91 in *Dimensions in Business Finance Law* (Prebble, ed.), Butterworths 1992 at page 67.

²² Clause 31 of the draft PPSA.

²³ Clause 30 of the draft PPSA.

²⁴ Clause 29 of the draft PPSA.

²⁵ Clause 23 of the draft PPSA.

²⁶ Clause 32 of the draft PPSA.

²⁷ Clause 14 of the draft PPSA.

²⁸ Clause 10(1) of the draft PPSA.

collateral will be filed, and the practice existing under the *Chattels Transfer Act 1924* and *Companies Act 1955* of registering copies of securities agreements will be discontinued.

Generic Registration

There would be no requirement to register each individual transaction if a general security interest was granted by the debtor. For example, if a supplier to a dealer supplies on terms where it retains title until payment (ie has a Romalpa clause), then the supplier would need only to register a security interest in the relevant inventory of the dealer, and this would perfect security interests in all inventory supplied by that secured party to that dealer in the future.

The proposed PPSA would allow for the secured obligation to include all future advances, and allow for collateral to include after-acquired property.²⁹ Priority is determined by the date of registration of the security interest — this extends to future advances even where the advances are made with the knowledge that other creditors have provided credit or acquired interests in the debtor's property.³⁰

Abolition of Floating Charge

The concept of a "floating charge" disappears under PPSA. However, PPSA allows for security over after-acquired property and for the security to secure future advances. This is a fixed security, and no event of crystallisation is required.³¹ The licence to trade in goods subject to a floating charge which is inherent in the concept of floating charge under current law still applies under PPSA, because buyers or lessees of goods sold or leased in the ordinary course of business take good title free of any perfected or unperfected security interest, unless they know that the sale or lease constitutes a breach of the security agreement.³² The abolition of the concept of a floating charge will require some change to statutory provisions providing for preferential claims on a winding up.³³

Purchase Money Security Interests

PPSA provides a "super priority" for purchase money security interests. For example, a Romalpa supplier will have priority over the interests of a bank financier if both have a security interest in inventory of a dealer which has been supplied by the Romalpa supplier. However, in order to obtain this super priority, the Romalpa supplier must give notice to the other secured party at the time it registered its financing statement.³⁴ Different rules apply

²⁹ Clause 9(1)(b) and clause 11 (after-acquired property) and clause 12 (future advances) of the draft PPSA.

³⁰ Clause 28(1) and clause 28(2)(c) of the draft PPSA. This contrasts with Article 9 — see section 9-307(3) and section 9-312(5) and page 87 of NZLC R8.

³¹ See the discussion above and see also clause 10(2) of the draft PPSA. The operation of securities over after-acquired property in respect of consumer goods and farm crops is limited to protect consumers and small farmers from over-collateralisation — see clause 11(b) and clause 30(4) of the draft PPSA.

³² Clause 24(2) of the draft PPSA. However, the security interest attaches the proceeds of sale and is continuously perfected so long as the financing statement describes the collateral in a way which includes proceeds — clause 22 of the draft PPSA.

³³ A suggested regime was set out in the notes to the second schedule of the draft PPSA. See also the commentary on pages 154-156 of NZLC R8.

³⁴ Clause 27(3) of the draft PPSA.

where the collateral is not inventory, but the general principle is that a purchase money security interest will normally have priority over any other security interest.

Adoption of American Terminology

The draft PPSA deliberately adopts the North American terminology of the Canadian models on which it is based. Thus, the North American concepts of "attachment" and "perfection" (which are explained above) are adopted in the legislation. Similarly, terminology such as "collateral" (property subject to a security interest), "accounts receivable" (book debts), "inventory" (stock in trade) and "chattel paper" (documents which evidence both a debt and a security interest or lease of goods) are all used in the draft PPSA. The reason for this is the desire of the Advisory Committee to ensure that the PPSA regime would be seen as a clear departure from the laws it replaced, intended to leave behind much of the baggage of the past. Using the North American terminology also made North American case law accessible to New Zealanders.

Consumer Goods

The proposed PPSA makes registration of a security interest in consumer goods largely futile, because a buyer or lessee of consumer goods (even from a party other than a dealer) takes title free of a perfected or unperfected security interest so long as the buyer gives value and does not have knowledge of the security interest. This applies only to low-value consumer goods.³⁵

DIFFERENCES BETWEEN THE NEW ZEALAND PROPOSALS AND THE CANADIAN MODELS

The New Zealand proposals differ from their Canadian models in a few significant respects. In particular:

Effect of Non-Perfection

A failure to perfect a security interest under the draft PPSA would not make it void against the Official Assignee or liquidator.³⁶ This is a departure not only from the Article 9 and Canadian models (which provide for subordination of an unperfected security interest to the interests of a judgment creditor as well as the equivalents of the Official Assignee and company liquidator) but also the *Companies Act 1955* and the *Chattels Transfer Act 1924*. However, it is consistent with MVSA, which also provides no adverse consequence for non-registration as against the Official Assignee or liquidator. The Advisory Committee was divided on this issue with the current proposals reflecting the views of a narrow majority.

No Consumer Protection Provisions

With one or two minor exceptions, there are no consumer protection provisions in the proposed PPSA. The Advisory Committee believed that consumer protection measures were better placed in consumer legislation which applied only to consumers, and not to transactions between business entities, and which applied to all such transactions, not just those involving personal property. However, it recognised that, if the MVSA were to be

³⁵ Clause 24(3) and (4) of the draft PPSA. Currently, there is no exception for low-value motor vehicles, as there is in some of the Canadian statutes — see, for example, section 30(3) of the *Saskatchewan Personal Property Security Act*. If PPSA replaces MVSA, then a similar exception will probably be needed in New Zealand.

³⁶ Clause 15 of the draft PPSA.

repealed by PPSA, the consumer protection provisions in the MVSA would need to be preserved, perhaps in the *Motor Vehicle Dealers Act 1975*.³⁷

No Standardised Remedies

The proposed PPSA does not provide for standardised remedies, as both Article 9 and all the Canadian models do. Again, the Advisory Committee was almost evenly divided on that aspect, and the majority's views were probably influenced to some extent by the very severe time constraints which were imposed on the Committee.

The majority thought that matters restricting the rights of secured parties and protecting debtors were probably better left for consumer protection legislation. However, that is a matter with which Canadian and American commentators would probably disagree with the New Zealand approach. The North Americans attach great importance to the overriding of the substance of transactions by the PPSA requirement that all transactions that are in substance security interests are treated as security interests. The majority of the Advisory Committee also thought that limitations on the remedies should apply to all transactions, not just those relating to personal property securities, and that constraints on enforcement to protect consumers should apply only to consumers. It was thought that this was probably better done in a comprehensive statute dealing with remedies.

The Committee's consideration of this issue led to one of its members, Peter Blanchard (now Justice Blanchard) preparing a standardised regime for receiverships which is now incorporated in the *Receiverships Act 1993*.

EXTENSION OF PPSA

Simon Begg's suggestions for the extension of PPSA to cover security interests in other forms of property (such as land and ships, both of which have separate Torrens-style registers in New Zealand) and for a motor vehicle title system are of great interest. Certainly, as a matter of logic, it is hard to question any of Mr Begg's suggestions. I do, however, have a few comments on the New Zealand perspective on his suggestions.

Motor Vehicle Title System

New Zealand motorists often refer to their "ownership papers" which are, in fact, the certificate of registration issued under the *Transport (Vehicle and Driver Registration and Licensing) Act 1986*. A certificate is issued to the "owner" of the motor vehicle, which is defined in section 2 of the that Act as "the person lawfully entitled to possession of the motor vehicle" (except where the vehicle is subject to a short-term lease). The certificate of registration refers to the registration of the motor vehicle in the Register of Motor Vehicles which is operated by New Zealand Post Limited on behalf of the Secretary of Transport. This is a completely separate register from the MVSA Register.

The MVSA Register and the "Autocheck" system provide protection for a consumer who buys a motor vehicle which is subject to a security interest. The MVSA also provides an absolute protection for a consumer buying a motor vehicle from a dealer. However, the problem of the purchaser of a motor vehicle from a thief is not dealt with in the MVSA. That is the situation which would be most advantageously affected by a motor vehicle title system.

The MVSA has provision for the entry on the MVSA Register of details of stolen motor vehicles, so that a check with the Autocheck system will alert a potential buyer that the vehicle has been reported as stolen. However, I understand that this provision is not in regular use, so the potential protection for consumers does not arise in practice.

³⁷

Appendix C of NZLC R8.

Most Article 9 jurisdictions in the United States have separate motor vehicle title systems, which means that security interests in motor vehicles are dealt with by the motor vehicle title system rather than Article 9. In Illinois, for example, a certificate of title for a motor vehicle includes details of the owner of the motor vehicle and of any secured party. The purchaser of the motor vehicle cannot be registered as the new owner until the secured party's interest has been discharged or the secured party has consented to the transfer.

If a motor vehicle title system were instituted in New Zealand, however, there would probably still be a need to deal with the objectives of the *Transport (Vehicle and Driver Registration and Licensing) Act 1986*, which seeks to keep a record of the person responsible for the operation of the motor vehicle, responsible for the payment of licensing fees etc and liable for certain fines for illegal operation (eg parking) of the vehicle in certain circumstances. This may be especially problematic where the vehicle is owned by a finance company and leased to an individual. An ownership register would show the finance company as owner, but both MVSA and PPSA would treat the lease as a security interest, ie the same as the interest of a mortgagee of a motor vehicle where the mortgagor would be the registered owner under a title system.

New Zealand currently has two completely separate registers of motor vehicles, each of which is administered separately and which are not linked in any way. The cost of maintaining two separate registers must be high. And yet, we have no register which actually records the owner of the vehicle. The New Zealand Post register records the "person entitled to possession" while the MVSA Register simply records the existence of a security interest and the name of the secured party, but not the name of the person who granted the security interest.³⁸

A PPSA Register which allows for searching by reference to both the details of the motor vehicle and the name of the debtor will assist, but would not help a purchaser of a motor vehicle where there are no security interests at all but the vehicle has been stolen.

Probably the ideal solution would be to expand the New Zealand Post register so that it records both the owner and the party entitled to possession of the motor vehicle, and to have that register linked to the PPSA Register (or the MVSA Register if PPSA is never passed) so that a single search will provide to the searching party the name of the registered owner, and the details of security interests. As Mr Begg says in his paper, there would be no need to have an actual certificate of title, but a guaranteed search provision of the kind which is already included in MVSA³⁹ could operate.

Land

The current PPSA proposals in New Zealand would not deal with land at all, leaving all issues relating to security interests in land to be dealt with under the *Land Transfer Act 1952* and other statutes affecting land. The Advisory Committee followed the North American models in this regard and were guided principally by the need to deal with the immediate problem of securities over personal property and the desire not to broaden the problem to an extent which would hold up the essential PPSA reform.

Once the *Land Transfer Act* registries have been computerised, there would seem to be little reason why security interests in land could not be simultaneously registered on the debtor-based PPSA register and the *Land Transfer Act* registries, and accessible by one search. Until computerisation of the *Land Transfer Act* registries, however, the separation of the PPSA registries and those relating to land will probably need to continue. As Mr Begg points

³⁸ Sections 6, 7 and 11 of the MVSA.

³⁹ Sections 11 and 12 of the MVSA.

out, this may lead to some anomalies where priority results will differ if the collateral is land instead of personal property.

Ships

As already discussed, ships were excluded from the proposed PPSA because of the existence of a Torrens-type register under the *Shipping and Seamen Act 1952* (now replaced by the register created by the *Ship Registration Act 1992*). The New Zealand legislation is broadly similar to the Australian legislation described in Mr Begg's paper.

The proposal to internationalise shipping registers is one which seems logical and, given the nature of both ships and aircraft, one which would be welcomed by parties who provide very substantial funding facilities secured on ships or aircraft which are, by definition, moving from one jurisdiction to the other from day to day. However, given the nature of the ships and aircraft and the huge costs involved in purchasing or financing the purchase of them, there is obviously not a "consumer protection" problem like there is with motor vehicles.

Thus, it is likely that the proposal's logic will only lead to some practical steps when widespread abuse gives rise to sufficient concern on the part of the business community to nudge their governments towards this solution.