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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PERSONAL PROPERTY SECURITIES AMENDMENT (PPS LEASES) BILL 2017

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Attorney-General, Senator the Hon George Brandis QC)

PERSONAL PROPERTY SECURITIES AMENDMENT (PPS LEASES) BILL 2017

GENERAL OUTLINE

This Bill would amend section 13 of the *Personal Property Securities Act 2009* (the Act) to extend the minimum duration of PPS leases from more than one year, to more than two years. This Bill would also amend the Act to provide that leases of an indefinite term will not be deemed to be PPS leases unless and until they run for a period of more than two years.

This Bill would significantly reduce the regulatory impact which the Act is having on short term hire and rental businesses, the majority of which are small to medium enterprise. The hire and rental sector almost exclusively uses indefinite term leases which usually run for less than a week and rarely exceed a period of two years. Very few hire and rental industry related transactions would be caught by the amended provision due to the increased minimum duration. An amended section 13 of the Act would continue to appropriately capture longer term high value hire and rental industry leases. The amendments would not modify the operation of the Act in relation to leases which are in-substance security interests.

FINANCIAL IMPACT

No financial impact.

REGULATION IMPACT STATEMENT

A regulation impact statement is not required as the independent statutory review of the Act has undertaken an equivalent process.

www.ag.gov.au/consultations/pages/StatutoryreviewofthePersonalPropertySecuritiesAct2009.aspx

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Personal Property Securities Amendment (PPS leases) Bill 2017

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

This Bill will make minor changes to the regulation of a technical area of Australian commercial law. It will alter a deeming provision concerned with the duration of particular commercial arrangements with the consequence that certain steps need not be taken to protect such arrangements.

Human rights implications

The amendment will have no impact on specific provisions of any human rights instruments.

NOTES ON CLAUSES

Preliminary

Clause 1 – Short title

This clause provides for the short title of the Act to be the *Personal Property Securities Amendment (PPS leases) Act 2017*.

Clause 2 – Commencement

This clause provides for the commencement of each provision in the Bill, as set out in the table. Item 1 in the table provides that the whole of the Bill will commence on the day after the Act receives Royal Assent.

Clause 3 – Schedules

This clause provides that the Acts mentioned in the Schedules are to be amended or repealed as set out in applicable items of the Schedule concerned.

Schedule 1 – Amendments

GENERAL OUTLINE

A single schedule is included with the Bill. The amendments will modify section 13 of the Act so that a lease or bailment of goods is a PPS lease only if it is for a term of more than two years, or of an indefinite term which exceeds two years.

Personal Property Securities Act 2009

Item 1 — Paragraph 13(1)(a)

A PPS lease is a transaction which is deemed by the Act to create a security interest. Accordingly, a PPS lease must be registered on the Personal Property Securities Register (the Register) by a secured party to protect the priority position of the security interest against competing interests in the same collateral. Section 13 of the Act provides the meaning of a PPS lease and the various circumstances in which a lease is a deemed security interest. Paragraph 13(1)(a) of the Act provides that a lease or bailment of goods for a term of more than one year is a PPS lease.

Item 1 of Schedule 1 of the Bill would amend paragraph 13(1)(a) so that a lease or bailment of goods is only deemed to be a PPS lease if the transaction is for a defined term of more than two years.

Item 2 — Paragraph 13(1)(b)

Paragraph 13(1)(b) of the Act provides that a lease or bailment of goods for an indefinite term is a PPS lease. An indefinite term can be taken to mean a non-defined period of time, or having an open ended date of conclusion. Item 2 of Schedule 1 of the Bill would repeal paragraph 13(1)(b) so that a lease or bailment of goods with an indefinite term should not be deemed a PPS lease for the purposes of the Act.

Indefinite term leases should only become PPS leases in circumstances where they actually run for a period of time that would otherwise deem them a PPS lease (more than two years) if they were for a defined term.

Item 3 — Paragraph 13(1)(c)

Paragraph 13(1)(c) of the Act provides that a lease or bailment of goods for a term of up to one year that is automatically renewable, or renewable at the option of one of the parties, for a combined total of all of the terms exceeding one year, is a PPS lease. A lease or bailment which has been extended for these reasons will be considered a PPS lease as they logically exceed the relevant PPS lease term provided at paragraph 13(1)(a). Item 3 of Schedule 1 of the Bill would amend paragraph 13(1)(c) so that a lease or bailment of goods with consecutive terms exceeding two years would be deemed a PPS lease for the purposes of the Act.

A lease or bailment of goods would only be deemed a PPS lease if it is possible successive terms of the lease or bailment could exceed a period of more than two years. Previously the timeframe for determining whether a lease or bailment of goods was a PPS lease in these

circumstances was one year. The timeframe has been changed to align with the revised timeframe at Item 1.

Item 4 — Paragraph 13(1)(d)

Paragraph 13(1)(d) of the Act provides that a lease or bailment of goods for a term of up to one year, which exceeds a one year period of uninterrupted possession with the consent of the lessor, is a PPS lease after the lessee or bailee has possession for more than one year. Item 4 of Schedule 1 of the Bill would amend paragraph 13(1)(d) so that a lease or bailment exceeding a term of two years while retaining uninterrupted possession is a PPS lease, but only when the lessee or bailee has possession for more than two years. Item 4 of Schedule 1 of the Bill would amend paragraph 13(1)(d) so that it would also apply to leases and bailments with an indefinite term.

An indefinite term lease or bailment of goods would only be deemed a PPS lease if it runs for a period of time that would otherwise deem it a PPS lease if they were for a defined term. Previously the timeframe for determining whether a lease or bailment of goods was a PPS lease in these circumstances was one year. The timeframe has been changed to align with the revised timeframe at Item 1.

Item 5 — Paragraph 13(1)(d)

Item 4 of Schedule 1 of the Bill would amend paragraph 13(1)(d) so that a lease or bailment exceeding a term of two years while retaining uninterrupted possession is a PPS lease, but only when the lessee or bailee has possession for more than two years.

A lease for an indefinite term would not be a PPS lease until the lessee or bailee had possession of the goods for more than two years. Similarly, a lease or bailment of goods which exceeds an agreed term of two years, will become a PPS lease when it extends beyond the agreed timeframe and is longer than two years.

Item 6 — Application of amendments

It is not intended that the amendments apply to leases or bailments of goods which would have been deemed PPS leases prior to the commencement of the Bill. The Bill would only apply to a lease or bailment of goods after the commencement of the Bill. The Bill would apply to a lease or bailment of goods which give rise to a security interest regardless of whether or not they are subject to the terms and conditions of a contract or agreement which was entered into prior to the commencement time.