

EXPLANATORY STATEMENT

Issued by the authority of the Attorney-General

Personal Property Securities Amendment (Deregulatory Measures) Act 2015

*Personal Property Securities Amendment (Deregulatory Measures) Commencement
Proclamation 2015*

Subsection 2(1) of the *Personal Property Securities Amendment (Deregulatory Measures) Act 2015* provides that Schedule 1 commences on a day to be fixed by Proclamation.

The Act received the Royal Assent on 25 June 2015. All provisions of the Act, other than Schedule 1, commenced on 25 June 2015.

The purpose of the Proclamation is to fix 1 October 2015 as the day on which Schedule 1 to the Act commences.

The Act reduces the scope of application of the *Personal Property Securities Act 2009* to certain leasing transactions, thereby reducing the regulatory compliance burden on many small businesses in the hire and rental industry. Schedule 1 to the Act repeals paragraph 13(1)(e), which deems leases of serial numbered goods such as motor vehicles, aircraft, watercraft and other items, for a fixed term from 90 days up to one year, to be ‘PPS leases’ for the purposes of the Act. This means that businesses which frequently use fixed term leases of serial numbered goods of 90 days or more will no longer need to record these transactions on the Personal Property Securities Register.

The Proclamation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Proclamation commences on the day following registration.

Authority: Subsection 2(1) of the
*Personal Property Securities
Amendment (Deregulatory Measures)
Act 2015*

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PPSA Update for Hire Businesses - The 90 day 'PPS lease' is set to be abolished but plenty of pitfalls remain

The *Personal Property Securities Amendment (Deregulatory Measures) Act 2015* became an Act on 25 June, 2015 assented to by the Governor-General.

The amendment means that there will no longer be a lower 90 day threshold for the existence of a 'PPS lease' security interest. The 90 day threshold previously applied to 'serial number registrable' goods including motor vehicles (as defined in PPSA), aircraft and their engines and watercraft.

Once the amending Act takes effect, a uniform threshold of one year will apply to all kinds of hires of goods, whether or not the goods are of the serial number registrable kind.

Whilst the abolition of the lower 90 day time threshold for some goods is welcome for hire businesses who hire out serial number registrable kinds of goods, it is important to note:

- the amendment still awaits proclamation before taking effect. This should happen sometime in the next six months. Until then the current law applies.
- an 'indefinite' hire will still be a PPS lease from inception. So the PPSA will still catch very short term hires of even few days or hours if they don't have a contractually agreed end date of less than one year. It is likely that the indefinite hire concept will be taken out of the PPSA in due course but that reform is some time away and has yet to be formally proposed by Government.
- hires of more than a year will still be caught by PPSA as 'PPS leases' and we note that option periods are counted towards the one year.
- any hire that functions 'in substance' as a security interest will also still be caught by PPSA from inception - for example rent to buy or hire purchase arrangements.
- the amendment will only apply to transactions entered into after it commences.
- whilst the amendment will reduce the number of hires that give rise to 'PPS lease' security interests, it does not abolish the concept of serial number registration. So where there is a PPS lease or other security interest in respect of serial number registrable goods it is important to consider whether to make a serial number registration to gain the benefits of specific registration. Those benefits are mainly around protection against loss of ownership through a wrongful sale by a customer.

Further reform - a priority for the hire industry

The hire industry continues to press for the complete abolition of the PPS lease concept so that no typical hire would fall into the PPSA. Hires would only fall into PPSA if they otherwise qualify as a security interest in substance. Typical hires in the industry would not meet that test – because it would usually be satisfied only in finance-type transactions such as finance leases, instalment sales or hire purchase.

If the industry is successful in its submissions typical hire businesses would not have to worry about PPSA.

This question of PPSA and the hire industry is with the Government following tabling of the Whittaker Report in Federal Parliament in March this year. Unfortunately that report did not recommend changing the law in the way the industry has been urging.

The way that the Government responds to the Whittaker Report will be critical for the industry as it is likely to shape the scope of the legislation for some time to come. HRIA and EWPA has urged members to make known to their local member of Federal Parliament their concerns about the risks and expense they face which are caused by the Act. The responsible members of the Government are the Attorney-General George Brandis and the Parliamentary Secretary with responsibility for reduction of red tape, Christian Porter.