

EXPLANATORY STATEMENT

Personal Property Securities (Fees) Determination 2015

Summary

The *Personal Property Securities (Fees) Determination 2015* (the Determination) is made under section 190 of the *Personal Property Securities Act 2009* (the Act) by the Attorney-General. It replaces the *Personal Property Securities (Fees) Determination 2013*.

The instrument determines the fees payable for the purposes of the Act. The Determination also specifies the kinds of arrangements for the payment of fees that may be approved by the Registrar of Personal Property Securities (the Registrar) under subsection 190(4) of the Act. The Determination does not list those matters that do not incur a fee.

Background

The Personal Property Securities Register (PPSR) is required to be established and maintained by the Registrar under the subsection 147(1) of the Act.

The PPSR is an electronic register that is publicly accessible through a user interface available at a website maintained by the Registrar 24 hours per day, 7 days per week. However, the Registrar can refuse access to, or suspend the operation of the PPSR, in whole or in part, where it is not practical to provide access (subsection 147(5)).

Transactions on the PPSR are conducted through the PPSR's online web user interface. Some users access the PPSR electronically through a business to government (B2G) interface.

A contact centre has been established that enables users to conduct some PPSR transactions by making an application through the contact centre. For example, a person may telephone the contact centre and request a search of the PPSR to be performed on their behalf. Some contact centre services that were offered under the previous fee determination have been very rarely utilised by PPSR users, who have conducted those transactions almost exclusively through the online interface or B2G channels. Those services are no longer available through the contact centre and the Determination reflects those changes.

A Cost Recovery Implementation Statement (CRIS) is required for all cost recovery arrangements. A CRIS entitled 'Personal Property Securities Register' was developed in accordance with the Australian Government Cost Recovery Guidelines. The fees set out in this Determination are derived from that CRIS.

The fees have been set based on the cost of operating the PPSR, including direct and indirect costs. Collecting the proposed fees is administratively efficient and inexpensive, with minimal manual intervention and cost.

Notes on Sections

Section 1 – Name of Determination

Section 1 provides for the citation of the Determination as the *Personal Property Securities (Fees) Determination 2015*.

Section 2 – Commencement and repeal of earlier determination

The Determination commences on 1 July 2015. Commencement of the Determination ends the application of the *Personal Property Securities (Fees) Determination 2013*.

Section 3 – Definitions

This section provides that the definition of *Act* is the *Personal Property Securities Act 2009*. Other words and expressions used in the Determination have the meaning given by section 10 of the Act.

The Determination provides a definition of contact centre. The contact centre can perform some PPSR transactions on behalf of users as an alternative to the user accessing the PPSR online. A small number of transactions on the PPSR, for example conducting a search of the PPSR as it appeared at an earlier point in time, can only be performed through the contact centre.

Part 2 Fees

Section 4 – Registration and search fees

The table in subsection 4 (2) sets out most of the fees payable under subsection 190(1) of the Act. The fees in the column headed 'Fee' apply to transactions on the PPSR requested by users through the web user interface or B2G channels. The fees in the column marked 'Contact centre fee' apply to transactions conducted on behalf of users who requested the contact centre to perform the transaction on their behalf. A notation of "N/A" at an entry in the table indicates that the service concerned is not available through that mode of access.

The higher fees for some of the work done through the contact centre reflects the additional cost of applications being made through the contact centre where manual handling and data processing is required. However, the searches expected to be undertaken most commonly; that is, search by grantor, serial number and registration number; attract the same fee whether undertaken online or through the contact centre (items 9, 10 and 11 of the table). By way of example, a person

wishing to search the PPSR by the vehicle identification number (VIN) of a second-hand car they are considering purchasing from a private seller will only be required to pay \$3.40 whether they perform the search on PPSR themselves online, or call the contact centre to have the search performed on their behalf.

The fees for the registration of a financing statement or a financing change statement increase in proportion to the length of time of the registration. Minor amendments to a registered financing statement will incur smaller fees than the initial registration of a financing statement.

Section 5 – Maintenance fees

Section 5 sets the fee payable when the Registrar provides notice to a secured party to pay a fee to maintain a registration within the PPSR, under subsection 168(1) of the Act. If the fee is not paid within 28 days of the Registrar giving notice, the Registrar may end the applicable registration through a financing change statement. Under subsection 190(6) of the Act, the Commonwealth cannot recover unpaid maintenance fees.

This fee was not included in *Personal Property Securities (Fees) Determination 2013* or earlier determinations. Since the enactment of the previous determination, the volume of registrations in the PPSR have increased substantially. As a result the Registrar will seek to exercise its powers under section 168 of the Act in order to maintain the veracity of the PPSR.

The PPSR CRIS upon which the fees in the Determination are based, in detailing cost recovery practices relating to the Registrar, indicates it is expected the vast majority of instances where a section 168 notice is issued in respect of a registration, the outcome would not be payment of the fee by the secured party to maintain the registration, but rather the registration by the Registrar of a financing change statement to end its effect after the period for payment expires. The mechanism is intended to be used to reduce the number of unnecessary, outdated registrations on the register. The Registrar has indicated its practice is not to issue notices for maintenance fees in relation to registrations that do not appear to be unnecessary or redundant.

The fee is not expected to generate significant revenue.

Section 6 – Reports by the Registrar

Item 2 of the table in section 4 of the *Personal Property Securities (Reports) Determination 2011* refers to a person requesting a report by the Registrar in relation to certain matters, under subsection 176(1) of the Act. Section 6 sets the fee payable for such a report, which will depend on the length of time taken to prepare the report calculated on a per hour basis. A report under section 6 is only available through the contact centre.

Section 7 – Remitting fees

Section 7 allows the Registrar to remit fees payable by a Commonwealth or State or Territory government under sections 4, 5 or 6. This is consistent with the cooperative arrangements set out in the Personal Property Securities Law Agreement 2008 between the Commonwealth and the States and Territories. Remission of fees payable by a government agency could occur, for example, where a government agency registers personal property that is the subject of a court order or proceeds of crime order under paragraph 148(c) of the Act.

Part 3 Arrangements

In addition to determining the fees for the purposes of the Act, the Minister may also, pursuant to subsection 190(2) of the Act, determine the kinds of arrangements that may be approved by the Registrar under subsection 190(4). If an arrangement for the payment of fees is approved by the Registrar, the requirement to pay the fee under the relevant section is taken to be satisfied. For example, under subsection 150(3) the Registrar will only register a financing statement if, among other things, the fee has been paid. If an arrangement for the payment of fees by a person has been approved by the Registrar, that person may pay the fee at a later time, in accordance with the arrangement, but will be treated as having satisfied the requirement to pay the fee at the time the application to register the financing statement was made.

Section 8 – Arrangement for monthly payment in arrears

Section 8 provides that the Registrar may approve a credit arrangement by which a person may pay for transactions conducted in the course of a month in arrears on the receipt of a monthly statement. The Registrar may approve a credit limit as part of the arrangement.

Section 9 – Arrangement for payment for reports

As the fee under section 6 of the Determination is only calculable once the report has been prepared, this section provides that an arrangement may be approved so that the fee does not become payable until an invoice has been received by the applicant.

Consultation

A formal consultation process was undertaken involving the Department of Finance and stakeholders in developing the CRIS upon which this Determination is based. The formal consultation period for the CRIS occurred between 18 February and 18 March 2015. Issues raised by stakeholders during the consultation period were used in finalising the CRIS.

In raising awareness of the consultation of the CRIS, AFSA:

- published the draft CRIS on the PPSR website (www.ppsr.gov.au);
- publicised the draft CRIS in PPSR News, which is a blog with almost 5000 subscribers; and
- publicised the draft CRIS through an e-mail to AFSA's broad stakeholder mailing list, which includes over 1300 stakeholders representing practitioners, financial counsellors and other interested parties.

AFSA received no significant expressions of concern throughout the consultation period. The feedback included positive confirmations of from several industry bodies that they had no comments.

The Australian Financial Security Authority also consulted with members of the Personal Property Securities Stakeholder Forum and Personal Property Securities Operations Forum at a joint meeting. These forums are made up of representatives from a wide variety of Australian peak industry bodies and national associations with an interest in the PPS. There was interest at this forum about how the Maintenance Fee would work. However, a discussion of the purpose of the fee, as outlined in section five above, was met with approval.

Regulatory Impact Analysis

The Determination has been assessed against *The Australian Government Guide to Regulation* as not requiring the production of a regulation impact statement.

Statement of compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

A Statement of compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is provided at **Attachment A** to this Explanatory Statement.

Attachment A

Statement of Compatibility with Human Rights

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

Personal Property Securities (Fees) Determination 2015

This Legislative Instrument 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 Legislative Instrument

This Legislative Instrument sets fees for access to the Personal Property Securities Register under the *Personal Property Securities Act 2009*. The Personal Property Securities Act provides a system for the creation, registration, priority and enforcement of security interests in personal property. This includes, for example, the use of a motor vehicle as collateral in the course of obtaining finance for it.

This Legislative Instrument replaces an earlier Legislative Instrument that had set fees since 1 July 2013. The fees are calculated on a cost recovery basis in accordance with the Australian Government Cost Recovery Guidelines.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

George Brandis QC

Attorney-General