

## EXPLANATORY STATEMENT

### Personal Property Securities (Migration Time and Registration Commencement Time) Determination

#### Summary

The *Personal Property Securities (Migration Time and Registration Commencement Time) Determination* (the determination) is made under section 306 of the *Personal Property Securities Act 2009* (the Act) by the Attorney-General.

The determination sets both the *migration time* and the *registration commencement time*.

#### Background

The Act provides that the Minister may determine the *migration time* and the *registration commencement time*. Although the Act was given the Royal Assent on 14 December 2009, the registration commencement time effectively marks its actual commencement (sections 310 and 315). For example, an application to register a financing statement in respect of a security interest may only be made at or after the registration commencement time. The repeal or amendment of certain Acts, including the *Corporations Act 2001* (Cth), is also contingent on the registration commencement time.

An exception to this arises in respect of the migration of certain interests in personal property from transitional registers, such as the ASIC Register of Company Charges, to the Personal Property Securities Register. The migration time is the time at which this process will commence. It must start at a time no less than 28 days before the day on which the registration commencement time occurs.

The determination of the migration time and registration commencement time was contingent on the delivery of a fully functioning Personal Property Securities Register. The Register is the centrepiece of personal property securities reform. In addition to the significant IT infrastructure that has been successfully developed to support the Register, a national contact centre and user support services have been developed with the Insolvency and Trustee Service Australia (which will assume ongoing responsibility for the operation of the PPS Register) in readiness for a commencement time of 30 January 2012.

#### Notes on Sections

##### Section 1 – Name of Determination

Section 1 provides for the citation of the Determination as the *Personal Property Securities (Migration Time and Registration Commencement Time) Determination*.

##### Section 2 – Commencement

Section 2 provides that the Determination commences on 21 November 2011.

### **Section 3 – Interpretation**

This section provides that the definition of *Act* is the *Personal Property Securities Act 2009*.

### **Section 4 – Migration time**

Section 4 specifies that the migration time is 21 November 2011.

### **Section 5 - Registration commencement time**

Section 5 provides that the registration commencement time is 30 January 2012.

## **Consultation**

Consultation with industry has been extensive involving the Department working closely with key stakeholders, including the banking and finance sector. A trial of data migration and pre-load of certain transitional security interests was conducted in June and July 2011. During the trial, all data from existing registers was migrated, with the exception of the ASIC Register of Company Charges, and all data from pre-load participants was loaded into the production environment for the PPS Register. The trial also confirmed the amount of time required for data migration and pre-load. All transitional registers have advised that they are ready to commence data migration as scheduled.

Another key element to the consultation was the design and execution of user acceptance testing of the PPS IT system with the participation of stakeholders. The participants included the Attorney-General's Department, banks and other financial institutions, information brokers and the Insolvency and Trustee Service Australia. Testing was successfully completed on 11 November 2011. The Department also undertook an assessment of overall readiness for the commencement of PPS reform, including that of Government as well as industry and other stakeholders.

## **Regulatory Impact Analysis**

The Office of Best Practice Regulation has previously advised that the personal property securities reforms do not require a Regulatory Impact Statement because the reforms do not involve compulsion and it will be a commercial decision whether businesses register. It is not designed to impose any additional compliance costs on business or individuals or have any adverse impacts on competition.

## **Legislative instrument**

The determination is made under subsection 306(5) of the Act. The determination is a legislative instrument, however, section 42 (Disallowance of legislative instruments) of the *Legislative Instruments Act 2003* does not apply to the determination.