

## **EXPLANATORY STATEMENT**

### **Personal Property Securities (Fees) Determination 2018**

#### **Summary**

The *Personal Property Securities (Fees) Determination 2018* (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 2015*.

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.

#### **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. For example, the reissue of written search results are able to be accessed for free by the client and the contact centre was rarely used for this type of activity.

A Cost Recovery Implementation Statement (CRIS) is required for all cost recovery arrangements. A CRIS entitled 'Personal Property Securities Register' (PPSR CRIS) was developed in accordance with the Australian Government Charging Framework,

which incorporates the Cost Recovery Guidelines. The fees set out in this Determination are derived from the PPSR 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. For example certain activities, such as the issue of a copy of a verification statement, are very infrequent and often conducted online rather than through the contact centre. Other activities, such as “attach a document to a financing statement”, are no longer available and hence have been removed. This Determination provides for reductions in most fees compared with those fixed in the *Personal Property Securities (Fees) Determination 2015*. These reductions have broadly resulted from the following:

- increased search and registration volumes reducing the per unit cost
- decreased costs including delayed replacement of the PPSR system, and
- cessation of funding recovery for enhancements due to retained balance of this reserve.

## **Notes on Sections**

### **Section 1 – Name of Determination**

Section 1 provides for the citation of the Determination as the *Personal Property Securities (Fees) Determination 2018*.

### **Section 2 – Commencement and repeal of earlier determination**

The Determination commences on 1 August 2018. Commencement of the Determination ends the application of the *Personal Property Securities (Fees) Determination 2015*.

### **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.

This section also 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 “develop a special purpose report for Account Holders” or “maintenance of registrations”, 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 fees for the registration of a financing statement or a financing change statement reflect the full cost of delivery and include system storage of such information. Minor amendments to a registered financing statement will not incur fees, such as where a financing change statement:

- changes the end time to an earlier time
- removes a grantor (where multiple grantors exist), or
- amends a free text field.

The higher fees for some of the work (such as searches) 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.

### **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 on 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.

### **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 registered data, under subsection 176(1) of the Act. Section 6 of the Determination 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 the Commonwealth or a 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 public consultation process was undertaken involving the Department of Finance and external stakeholder groups in developing the CRIS upon which this Determination is based. The formal consultation period for the PPSR CRIS occurred between 11 April and 4 May 2018. Issues raised by stakeholders during the consultation period were considered in finalising the PPSR CRIS.

In raising awareness of the consultation of the PPSR CRIS, the Australian Financial Security Authority (AFSA):

- published the draft PPSR CRIS on the PPSR website ([www.ppsr.gov.au](http://www.ppsr.gov.au))
- publicised the draft PPSR CRIS in PPSR News, which is a blog with almost 5000 subscribers, and
- publicised the draft PPSR 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 confirmations from several industry bodies that they had no adverse comments.

AFSA also consulted with members of the Personal Property Securities Stakeholder Forum and the Personal Property Securities Operations Forum at a joint meeting. This meeting is made up of representatives from a wide variety of Australian peak industry bodies and national associations with an interest in the PPSR. No major areas of concern were raised by any of the stakeholders.

### **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 2018**

This Disallowable 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 Disallowable Legislative Instrument sets fees for access to the Personal Property Securities Register under the *Personal Property Securities Act 2009* (the Act). The 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 Disallowable Legislative Instrument replaces an earlier Legislative Instrument that had set fees since 1 July 2015. The fees are calculated on a cost recovery basis in accordance with the Australian Government Cost Recovery Guidelines.

### **Human rights implications**

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

### **Conclusion**

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

**The Hon Christian Porter MP**

**Attorney-General**