



Australian Government
Attorney-General's Department

Deputy Secretary

Civil Justice and
Legal Services Group

14/2058-01

Mr Jason McNamara
Executive Director
Office of Best Practice Regulation
Department of the Prime Minister and Cabinet
1 National Circuit
BARTON ACT 2600

Dear Mr McNamara *Jason*

Single-stage Regulation Impact Statement – Application of the *Personal Property Securities Act 2009* to lease arrangements

I am writing in relation to the attached final single-stage Regulation Impact Statement (RIS) prepared by the Attorney-General's Department exploring a number of options for reducing the compliance costs for businesses in the area of personal property securities legislation.

I am satisfied that the final single-stage RIS (Attachment B) addresses the concerns raised in your letter of 6 March 2014. Specifically, the RIS incorporates changes to take account of the key points raised by the Office of Best Practice Regulation (OBPR). I have outlined the changes that have been made at Attachment A.

In light of the changes made to the RIS, I am satisfied that the final single-stage RIS now meets the Government's best practice regulation requirements. Accordingly, I submit the RIS to the OBPR for formal assessment.

Yours sincerely


David Fredericks

17 March 2014

Response to matters raised in OBPR letter of 6 March 2013

1. In response to concerns about the accessibility of the document, a table has been included early in the RIS setting out the circumstances in which certain leases will be deemed to be security interests for the purposes of the PPS Act. This is intended to assist the reader to understand the operation and practical effect of the deeming provisions and provide a reference point for the subsequent discussion of the impacts of each option.
2. An explanation of the treatment of leases that are not deemed to be PPS leases and are not otherwise security interests accordingly to the definition in the PPS Act is also included. This helps to explain the arrangements that will apply to leases if they are no longer deemed to be PPS leases as a result of one of the amendments explored in the RIS.
3. Technical terms (like lessor and lessee) have also been replaced wherever possible with terms more clearly identifying the parties involved, and any remaining use of technical terms has been supplemented with a description or example of the stakeholder affected.

Problem

4. The problem section of the RIS has been amended following suggestions from OBPR to help more clearly define the exact nature of the problem to be addressed by government action and outline the scope of the problem. This has included:
 - highlighting the confusion and administrative burden that the two different deeming provisions and relevant lease periods (90 days for serial numbered goods and 12 months for other goods) can create for hiring companies
 - explaining how the deeming provisions create a need for hire businesses to consider whether a general registration and serial number specific registration is necessary
 - better explaining that the protections offered by registration are dependent on the making of one or more registrations
 - including information on the size of the problem (and giving an appreciation of the number of instances in which stakeholders have raised issues regarding the operation of the deeming provisions in the Consultation section)
 - including a simple case study to illustrate the problem to be addressed by government action to assist the reader to understand the practical effect of the current deeming provisions, particularly to leases of 'serial numbered goods' where the leases involved are for 90 days or more.

Objectives

5. The objectives have been drafted more broadly as suggested to ensure that the status quo can be considered.

Options

6. Minor errors in the heading to Option 3 have been corrected.

Impact Analysis

7. The impact analysis has been amended to include a simple case study example under each option to give a reader a clearer understanding of the impacts of the problem and how each option, including the preferred option, addresses the problem.
8. The impact analysis has also been revised to better explain the practical effect of the options, including whether the options are likely to:
 - affect the terms, including price, on which certain short term leases of personal property may be offered
 - result in any unintended consequences for businesses or their customers
 - impact upon costs for third parties who are seeking to determine the nature of an interest in personal property, or
 - impact differently on stakeholders, such as hire businesses in certain sectors, or smaller hire businesses as opposed to larger hire businesses.
9. Where assertions are based on knowledge of the practices of business or information from stakeholders, those assertions have been clarified (for example, statements about a cautious approach to registration by some businesses, or the likely proportion of stock that is serial numbered goods).
10. As suggested, discussion of the preferred option in the conclusion now includes discussion of the compliance cost estimates, as well as information on the number of affected businesses and the estimated reduction in the number of registrations.
11. Amendments have also been made to confirm advice from affected stakeholders that there would be no transitional costs associated with the preferred Option and that any amendments would be made so as to apply only to leases entered into after any amendment and lease current registrations undisturbed.

Consultation

12. The RIS has been amended as required to include the specific statements set out in paragraph 7.86 of the Best Practice Regulation Handbook confirming the status of an options-stage RIS.
13. The consultation section has also been revised to include fuller responses to concerns raised by stakeholders, in particular the concerns of the Australian Motor Industry Federation, and to explain why an increase to the cost of bailments is considered unlikely.

Conclusion

14. The RIS has been amended to better explain that Option 3 is preferred because it provides the optimal balance between reducing compliance costs whilst also maintaining the utility of the Register.

Implementation and Review

15. The RIS includes information on how the preferred option will be implemented, including the use of application provisions so that any amendment is applicable only to future leases and leaves the treatment of existing leases undisturbed, and the use of delayed commencement

provisions to allow businesses to adjust to the new arrangements and for any necessary changes to be made to the Register.

16. The RIS also notes that the statutory review of the PPS Act which will be undertaken this year will provide a means of monitoring implementation of any amendment.