

Parliamentary Joint Committee on Corporations and Financial Services

Attorney-General's Department

Hearing date: 13 December 2022

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Senator Deborah O'Neill and Senator Paul Scarr asked the following question:

CHAIR: Could you spell out the iterations of the interactions with the previous government, with regard to the implementation of recommendations and the drafting of legislation? Give us a sense of what you've been doing for the last 7½ years, prior to the change of government.

Ms Linacre: I can only refer you to our response to Senator Carr's question on notice in respect of it. We provided ongoing advice, as is the usual approach, over the course of that period.

CHAIR: I guess I want to see: is there a little bit of legislation done, or is there a lot of leg that's been prepared? It's seeing as 394—

Senator SCARR: I suspect you've done quite a bit of work in this area. Is that correct?

Ms Linacre: We have done a range of consultation over the course of the years. So in 2020—

CHAIR: Whatever you can provide us with, on notice, would be helpful, to give shape to that.

The response to the question is as follows:

In line with all portfolio matters, the department provided advice to the previous government on its proposed approach to responding to the Whittaker Review. The department has examined each of the 394 recommendations from the Whittaker Review in detail. The department also conducted several consultations on the Whittaker Review recommendations, including targeted consultations with sections of the finance industry in October 2020, agribusiness and agribusiness financiers in December 2020, and states and territories at officer level in February 2021. The department also conducted ongoing engagement with stakeholders regarding the operation of the PPS Act.

In 2015 and 2017 the *Personal Property Securities Act 2009* (PPS Act) was amended in response to four recommendations contained within the 2015 statutory review of the PPS Act (the Whittaker Review) relating to PPS leases, specifically recommendations 19, 21, 22 and 23.

Recommendation 19 recommended that paragraph 13(1)(e) of the definition of “PPS lease” be deleted. Paragraph 13(1)(e) of the PPS Act specified that leases or bailments of 90 days for collateral that may or must be described by serial number met the definition of a PPS lease. This amendment was in response to stakeholder concerns that businesses were finding the complexity of two rules covering different goods and different lease terms for PPS leases confusing and costly to deal with – specifically the 90 day threshold for serial number goods and the one year threshold for any other goods. Prior to the finalisation of the Whittaker Review, the Personal Property Securities Amendment (Deregulatory Measures) Bill 2014 was introduced into Parliament. Following the publication of the Whittaker Review, the *Personal*

Property Securities Amendment (Deregulatory Measures) Act 2015 was passed 18 June 2015 which repealed paragraph 13(1)(e).

Recommendations 22 and 23 recommended retaining the ‘one year’ threshold for PPS leases in section 13. This recommendation was not accepted and the definition was changed to increase the threshold for a PPS lease from one year to two years implemented by the *Personal Property Securities Amendment (PPS Leases) Act 2017*. This was done to alleviate concerns of the short term hire industry.

Recommendation 21 recommended that paragraph 13(1)(b) of the PPS Act be deleted, and the words “for an indefinite term or” be inserted at the start of paragraph 13(1)(d). This was to ensure that leases with an indefinite term will only be deemed PPS leases where the lessee retains possession of the collateral for more than two years. Paragraph 13(1)(b) previously provided that a lease of an indefinite term will be considered a PPS lease regardless of its actual term. This recommendation was accepted and implemented by the *Personal Property Securities Amendment (PPS Leases) Act 2017*.

The Australian Financial Security Authority (AFSA) has also implemented some administrative measures which address issues raised within the Whittaker Review. AFSA will provide further information on these measures in its submission to the Committee.