



28 May 2012

Attention: Chief Executive Officer

PERSONAL PROPERTY SECURITIES ACT 2009 (Cth) – APPLICATION TO STATE RECORDS

This advice is issued to State and local government organizations to warn about the potential application of the *Personal Property Securities Act 2009 (Cth)* (PPSA) to State records.

You are no doubt aware that the PPSA regime commenced operation on 30 January 2012 and established a nationally uniform set of rules for the grant and enforcement of "security interests" in what the PPSA defines as "personal property".

Records fall within the PPSA's definition of "personal property". Consequently, in considering the impact of the PPSA on their operations, organizations should take into account their dealings and contractual arrangements with respect to State records. In particular, organizations should be aware that a "PPS lease" of State records may arise if they are actually or contracted to be under bailment to an entity outside the organization for more than 1 year. Bailment is a particular legal arrangement and can occur in a variety of circumstances including where State records are held by an organization's contractor or sub-contractor(s) for storage or for use in connection with service provision.

There are exceptions which apply under the PPSA so that many bailments of State records may ultimately not be subject to the PPSA. If, however, a bailment is subject to the PPSA and the necessary steps under the PPSA are not followed, this presents risk of loss of title to the relevant State records.

The SRO continues to liaise with relevant State Government agencies regarding an expedient solution to this matter. In the interim organizations should include their arrangements with State records when assessing the impact of the PPSA on their operations and should consider obtaining legal advice where necessary. State Government agencies do not need to seek such advice about their use of CUA 34504 or CUA 123499 managed by the Department of Finance.

For further information, please contact the State Records Office by email at sro@sro.wa.gov.au or phone 9427 3365.

Yours sincerely

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