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MEDIA INFORMATION

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Hire industry's battle with the Personal Property Securities Act comes to an end

Australia's hire industry has finally seen 'a win for common sense' with the passing of new legislation to release the majority of the hire industry from the clutches of the Personal Property Securities Act 2009 (PPSA).

After more than five years of being tied up in red tape and where hire industry members have literally seen hundreds of millions of dollars of equipment seized and lost, both Houses of Federal Parliament have passed a Bill to fix what Bill proponent, Senator John ('Wacka') Williams called 'legalised theft'.

When proposing the changes in Parliament on 11 May, 2017, Senator Williams said: "This new legislation will amend the Act's definition of a PPS lease to ensure it captures only leases which are long enough to necessitate registration on the PPS Register to meet the Act's objectives. Leases with an indefinite term will require registration only once they have exceeded two years and the length of a fixed-term lease will require registration only if it is for a term of more than two years."

Key representative body for the hire industry in Australia, the Hire and Rental Industry Association (HRIA) CEO, James Oxenham said: "The changes to the Act will significantly cut down the scope of the 'PPS lease' definition and greatly reduce the number of hires that can be deemed to be PPSA 'security interests'.

"The PPSA will be amended so hires will only fall into the 'PPS lease' definition when:

- the agreed term of the hire and any options actually exceeds two years; or
- the hire actually extends for more than two years. The two-year threshold replaces the current one year period in the current PPSA.

"Critically, the proposed amendments will also remove hires 'for an indefinite term' from the PPS lease definition. A lease for an unspecified term will now not be caught unless and until it actually lasts more than two years."

The HRIA warned industry members the amendments to the legislation won't take the hire industry entirely out of the reach of the PPSA.

"The legislation will still catch any hire or similar arrangement which is in substance functioning as a security – such as a rent-to-buy or a deferred purchase agreement," Mr Oxenham said.

“PPSA will also still apply to finance leases written by the finance industry. And some hire agreements have been known to exceed two years. Those too, would still be caught.”

Under the PPSA, which came into effect January 2012, hire companies were required to register their ownership of assets for any hires that crossed a time threshold or were ‘indefinite in length’ (even a few minutes). Registration on the PPS Register was needed to protect the hire company from having that asset seized by receivers or liquidators if the customer of the hire business collapsed. As a consequence, many hire companies were forced to make security interest registrations against all their customers and sometimes to make separate registrations over many (even thousands) of assets per customer incurring registration fees and hours of administration to comply.

“If the hire company didn't register, or they filled in the complex registration form incorrectly or late, and a customer collapsed, the liquidator could and did then sell the hire assets and pay the proceeds to the creditors - even though the assets belonged to the hire company,” Mr Oxenham said.

“In cases where the hire company had taken a loan or lease to acquire those assets, the hire company still had to repay the finance even after the liquidator had sold them.”

Since the Act became law in January 2012, the HRIA and hire industry have been urging the government to remove the hire industry from the PPSA and permit hire companies to retain ownership of their assets even if a customer of the hire business collapsed.

“The HRIA and the hire industry Australia wide owes a huge debt of gratitude to Senator Williams for taking up our cause and helping us to get our voice heard at the right levels. We must also acknowledge our tireless committee of industry representatives, Tim Nuttall, Gary Kerr and our legal representative Oliver Shtein from Bartier Perry who put in many combined hours of unrelenting effort to help us seek relief from the draconian effects of the PPSA.”

While the legislation will be effective from 20 May 2017, the HRIA warns the amendments are not retrospective and will only apply to a lease or bailment of goods entered into after the commencement of the new definition.

For more information, the amendments are contained in the Personal Property Securities Amendment (PPS Leases) Bill 2017 which can be found at: www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5827

Royal Assent was granted on 19 May 2017 and changes in the Bill become part of the PPS Act from 20 May 2017.

Authorised and released by the Hire and Rental Industry Association Ltd.

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