

Imminent changes to the PPSA to provide relief for the hire industry

Your Association has been seeking action from the Government to protect the hire industry from the draconian effects of the *Personal Property Securities Act 2009* (Cth) (PPSA). We have had some success already in narrowing the definition of 'motor vehicle' and in getting hires of motor vehicles for fixed terms of more than 90 days but less than a year out of the grip of the Act. However, the legislation still applies automatically to indefinite hire and the time threshold for hires of more than a year remains problematic for many businesses.

The Association continued to lobby for change and got a good reception from Senator John 'Wacka' Williams who has helped advocate for the industry's cause. These efforts have now borne further fruit with the introduction into Federal Parliament in March, 2017 of a Bill containing proposed changes to the PPSA.

The changes 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' by falling into that definition.

The PPSA will we expect be amended so that 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 amendments won't take the hire industry entirely out of 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. PPSA will still apply to finance leases written by the finance industry. And some hire agreements have been known to exceed two years. Those would still be caught.

FAQs

When will this start to apply and what hires will it apply to?

We have been told the proposed amendments are not contentious and have broad support in Parliament and are likely to become law and commence sometime in May. Please note that unless and until that actually happens, there is no change to the PPSA.

The amendments are not retrospective and would only apply to hires entered into after the commencement of the new definition.

For all hires in place up to the date that new law starts, the current PPSA risks and registration requirements apply.

If this becomes law can I agree to hire for up to two years and not worry about the PPSA?

Yes – as long as the agreed hire term is not more than two years and the hire doesn't actually last more than two years.

If this becomes law, can I make indefinite hires without worrying about PPSA?

Yes – but only up to the point the hire looks set to exceed two years and see further below.

When should I register on the PPSR once this becomes law?

You should register:

- before you deliver the equipment if you think there is a real chance that the hire might go for two years including because it has a term of more than two years in the contract or because the customer may well need the equipment for that long.
- before 18 months pass from the date you delivered the equipment if the hire is lasting longer than you originally thought it might, and it might go for more than two years. The 18-month period is for technical reasons under the Corporations Act. When other changes to the Act are eventually made, as recommended by the 2015 Whittaker Report, this 18-month period should cease to apply and you will have up to two years.

What about my purchase money security interest (PMSI) priority if I hire for more than two years? I thought I had to have registered before I originally delivered the equipment to the hire customer in the first place to get PMSI priority?

As explained in the HRIA Guide to PPSA, to be sure of PMSI priority for your interest as against your customer's bank you do normally need to register as a PMSI before *delivery to the 'grantor'*. This will still apply where your hire is for a contractual period of more than two years.

However, if the agreed hire period is indefinite or if there are extensions, the better view is that your customer is not a 'grantor' until the hire actually turns into a PPS lease. This will only happen under the impending new changes when the hire has an agreed term of more than two years or it actually goes that long.

Before that point, the better view is that the customer is not a 'grantor' and the whole arrangement is outside PPSA. Based on that view you don't have to register before original delivery to get PMSI priority.

It is worth noting that when other changes to the Act are eventually made as recommended by the 2015 Whittaker Report the PMSI box on the PPSR will be removed.

If I look like I am going to get to the two years can I just take the equipment back for a short time and avoid PPSA?

No - that is not safe under the current one year threshold and it won't be safe once the two-year period applies.

The PPSA looks at the aggregate period of your customer's 'substantially uninterrupted possession'.

However, you might be able to swap in a different piece of equipment under a new and separate contract and stay outside PPSA.

Can I offer rent-to-buy or similar arrangements up to two years with customers and not worry about PPSA?

No – rent-to-buy and similar arrangements and anything which is equivalent to providing finance to your customer is always caught by PPSA regardless of how long the term is.

Will I need to change the hire agreement terms and conditions that I use?

This will need to be assessed on a case by case basis. Hire businesses using the current version of the Association's template terms should not need to change their terms. However, as most hire businesses will now be able to stay outside the PPSA even if they are offering hire for indefinite periods (as long as the threshold does not cross the new two-year mark) those businesses may wish for the sake of brevity to have no provisions in their contracts about PPSA except perhaps a provision capping any hire at two years.

Will the Association provide further guidance?

Yes – once the changes become law and commence the Association's guidance note on PPSA and standard form hire agreements for equipment and motor vehicles will be updated.

Further information

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