



PPSA Explanatory Note

Disclaimer: This document is only intended as a source of information to explain the PPSA clauses in our standard equipment hire agreement. It is not, nor is it intended to be, legal advice. We provide no warranty as to the accuracy of the information provided herein and accept no liability for any loss, claim or damage resulting from reliance on this information. General information in relation to the PPSA is available at www.ppsr.gov.au. For advice in relation to the PPSA that is specific to your circumstances, please contact your legal advisor.

Overview

The *Personal Property Securities Act 2009 (Cth)* (**PPSA**) is a law about [security interests](#) in [personal property](#), and governs the priority order of each security interest when multiple security interests are registered against the same personal property. This is particularly important in the event of bankruptcy or insolvency or a general dispute over ownership. Since the introduction of the PPSA, our ownership of the equipment we hire to you is no longer sufficient to ensure our right to recover that equipment.

Whilst the hire of equipment would not normally be thought of as a transaction creating a security interest, interests created by finance leases, hire or rental agreements, hire purchase arrangements and long-term operating leases (called 'PPS leases'), will be regarded as creating security interests if they satisfy the definition contained in the PPSA.

A hire agreement qualifies as a 'PPS lease' if it is for an indefinite term, a term of up to one year or more for most goods, or a term or terms of 90 days or more in the case of serial-numbered goods. Although many goods are marked by a manufacturer's number or other serial number, the only goods that may or must be registered by serial number are motor vehicles, watercraft and aircraft.

Accordingly, when we first enter into an equipment hire agreement with you, we must register the security interest arising from that hire agreement to preserve our priority to our equipment under the PPSA. Although registration is not compulsory, the general rule is that a registered security interest will have priority over an unregistered security interest. To avoid having to register every hire transaction as it occurs, each Hire Schedule together with your Account Application, our Equipment Terms of Hire and any Special Conditions we've agreed to, comprise the hire agreement between us. Items hired out to customers that are not able to be registered by serial number, such as our equipment, will require the customer's (ie. the grantor's) details to be included on the PPS Register (**PPSR**).

Following is a simplified explanation of the PPSA clauses in our Hire Agreement which assumes that the above has been read and understood.

| Clause | Clause summary | Brief explanation of clause |
|--------|---|--|
| 7.1 | States when the PPSA clause applies | As explained in the Overview above, the concept of a 'security interest' is central to the PPSA. Accordingly, Clause 7 applies to any 'security interest' arising from a Hire Agreement between you and us. |
| 7.2 | Our right to register our interest | To preserve our priority to our equipment under the PPSA, we must register the security interest arising from any Hire Agreement we enter into. This clause ensures that we are able to take that step and do anything else we need to do to protect our rights under the PPSA. |
| 7.3 | Our other rights in respect of our equipment remain | This clause confirms that our rights in respect of the equipment we hire to you are not limited to the PPSA. We may also have rights under other laws which we need to preserve. |
| 7.4 | Some provisions of Chapter 4 of the PPSA do not apply to our agreement | Chapter 4 of the PPSA contains many provisions that take away rights we had prior to the commencement of the PPSA. This clause provides that, where Chapter 4 applies, those provisions are "contracted out" of our agreement to, largely, preserve our rights as what they were before the PPSA commenced. Chapter 4 will only apply to PPS leases if they are 'in substance' security interests. It is likely that most hires will be |
| 7.5 | Our rights dealing with the equipment we hired to you | This clause asserts our rights to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any equipment we hired to you, not only under Chapter 4 of the PPSA if it applies, but also as additional and independent rights. |
| 7.6 | Waiver of right to receive notice of a verification statement | When we register a security interest we will receive a verification statement. Section 157(1) PPSA requires us to provide you with notice of the registration in the approved form unless you waive your right to receive that notice. Under this clause you agree to waive your rights to receive that notice. You may independently verify the registrations we hold at any time by undertaking a search of the PPSR, or you may ask us. |
| 7.7 | Mutual agreement not to disclose any underlying information | Section 275(1) provides that an "interested person" may request from us, where we hold a security interest in our equipment, a copy of the agreement that provides for the security interest and other related financial information. Under s 275(9) an "interested person" may be you, another person with a security interest in the equipment we hired to you, an auditor, an execution creditor or an authorised representative of any of these. However, s 275(6) allows us to refuse a request for this information provided we have both agreed in writing, prior to the security agreement being entered into, that we will not disclose the kind of information referred to in s 275(1). Whilst that is the primary purpose of this clause, it also ensures that claims can't be made if there is disclosure for reasons other than a s 275 request. |
| 7.8 | You must not lease, hire, bail or give possession ('sub-hire') of the Equipment to anyone else. | We are hiring equipment to you. As with all hires we must retain all title and rights in the equipment. This clause requires you to obtain our consent in writing before you lease, hire, bail or give possession of the equipment to anyone else. If we do consent, then the sub-hire must be documented in a form approved by us. This clause, whilst consistent with the position before the PPSA, is essential under the PPSA. |

| Clause | Clause summary | Brief explanation of clause |
|--------|---|--|
| 7.9 | You must provide us with information about a sub-hire | If we consent to you sub-hiring our equipment, it is essential under the PPSA, that you keep us reasonably informed about the sub-hire. |
| 7.10 | You must also register your security interest if you sub-hire | If we consent to you sub-hiring our equipment, it is essential under the PPSA, that you also register any security interest you may have in respect of the sub-hire. Just as we can lose our rights if we don't protect ourselves under the PPSA, so can you. If you do not perfect the security interest by registering your security interest on the PPSR and your sub-hire customer wrongfully sells it or it becomes insolvent, we risk losing title to that equipment for which we will hold you liable. This clause is intended to ensure you look after your (and our) position. |
| 7.11 | Power of attorney and costs recovery | Under the PPSA, our ownership of the equipment we hire no longer guarantees our right to recover our equipment. Therefore, in order to ensure that we do not lose our rights in our equipment, we require the right to 'step into your shoes' if you do not do what you should do under this agreement. If this becomes necessary, you are required you to pay the costs of any steps we need to take. Registration on the PPSR is inexpensive. Provided you don't prevent us protecting our position under the PPSA and you protect your own position in any sub-hire, we expect costs to be nominal. |