

Lessons on PPS Leases: what you need to know

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Key Points

- The Government has changed the current definition of PPS leases in the *Personal Property Securities Act 2009* (Cth) (**PPSA**), increasing the threshold for leases to be deemed to be “PPS leases”. This change was proposed in the *Personal Property Securities Amendment (PPS Leases) Bill 2017*, which passed the Senate on 11 May 2017 and commenced on 20 May 2017 as the *Personal Property Securities Amendment (PPS Leases) Act 2017* (**the Act**).
- Under the Act, owners of property or bailors entering into short term hire and leasing arrangements with a term of less than two years will no longer require registration on the PPSR to protect their property.
- The Act is a first step towards minimising the impact of the PPSA on small to medium businesses in Australia, and is considered a win for the short term hire and rental industry.

Introduction

The statutory review of the PPSA was completed and tabled before Parliament in March 2015 (**Report**). One of the more pertinent issues considered was the treatment of PPS leases, which is a complex area of Australian commercial law. Prior to the commencement of the Act there were various transactions that were capable of giving rise to a security interest, including certain leasing arrangements. This has led to much confusion in the short term hire and rental industry over how and why the PPSA extends to it.

The Act, which commenced on 20 May 2017, extends the minimum duration of PPS leases from more than one year, to more than two years. It also provides that leases of an indefinite term are not to be deemed as PPS leases unless and until they run for a minimum of two years. This change alleviates the confusion and regulatory burden on the short-term hire and rental industry – extending the minimum two year lease period will reduce the number of these businesses that will have to register their leases with the PPSR to ensure ‘perfection’ (explained in more detail below); only those longer term, high value hire and rental leases will be captured, which meets the PPSA’s policy objective.

What is it?

A PPS lease is a transaction which is deemed by the PPSA to create a security interest. Section 13 of the PPSA previously deemed a lease or bailment of goods for a term of more than one year as a PPS lease, regardless of whether or not it created a security interest ‘in substance’. The interest of the owner or bailor in these goods was therefore deemed to have a security interest in the property being leased or bailed, requiring registration on the PPSR for perfection of the security interest. Perfection is a technical term used in the PPSA which essentially means that the security interest will have priority and effectiveness, and can be enforced against the customer and third parties, where it is properly attached and registered on the PPSR.

The Act amends this definition by increasing the threshold for a PPS lease – a lease or bailment of goods will only be considered a PPS lease if it is for a term of **more than two years**, or of an indefinite term which exceeds two years.

Why is it happening?

Prior to the commencement of the Act, those PPS leases and bailment arrangements that fell within the one year period required registration on the PPSR. Failure to register meant that the owner of the goods would not have a perfected security interest and may have faced losing critical business assets altogether in circumstances of the insolvency of the customer lessee.

The Act results in significantly fewer hire and rental leases that are required to be registered on the PPSR. Businesses that engage in high volumes of short-term hire and leasing will therefore see a drastic reduction in their administrative requirements.

The Act also represents the first reform to be brought before Parliament following the Report. We are certainly encouraged by this positive step, and hope that the Government takes on more of the proposals suggested by the Report to improve the PPSA and make it easier for businesses and consumers to use their assets as security.

What next?

The Act does not apply retrospectively – that is, the Act only applies to a lease or bailment of goods after the commencement of the Act on 20 May 2017.

Any business which regularly enters into short-term hire or bailment arrangements as central to their operations should be very pleased with the changes to PPS leases; however, it is important that each individual leasing arrangement be considered to establish whether the PPSA will apply.

PLN Australia regularly advises clients on their obligations on the PPS regime in Australia as well as across the Pacific region including perfection, and priority disputes. Please contact **John Ridgway** or **Elizabeth Moran** to find out how these changes may affect your business.

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