



What is the PPSR?

The Personal Property Securities Register (PPSR) is the single, national online database of security interests in personal property in Australia.

Personal property generally includes all forms of property other than land, buildings and fixtures.

Buyers can check the PPSR to see if the valuable second-hand goods they want to buy are debt-free and safe from repossession. A search fee is \$2.00.

For a business selling on terms – such as retention of title or commercial consignment, or hiring or leasing out goods for longer terms – properly registering helps protect its interest, for instance should a customer not pay or go broke. A registration fee starts from \$6.00 for 7 years.

PPSR CASE STUDY 13/V2

Construction/leasing – Star Construction

Scenario – building company enacts ‘taking free’ rules for an excavator it hires ...

Concepts covered:

- searching the PPSR
- leasing
- taking free rules.

Star Construction Pty Ltd has won a contract to build a new public swimming pool.

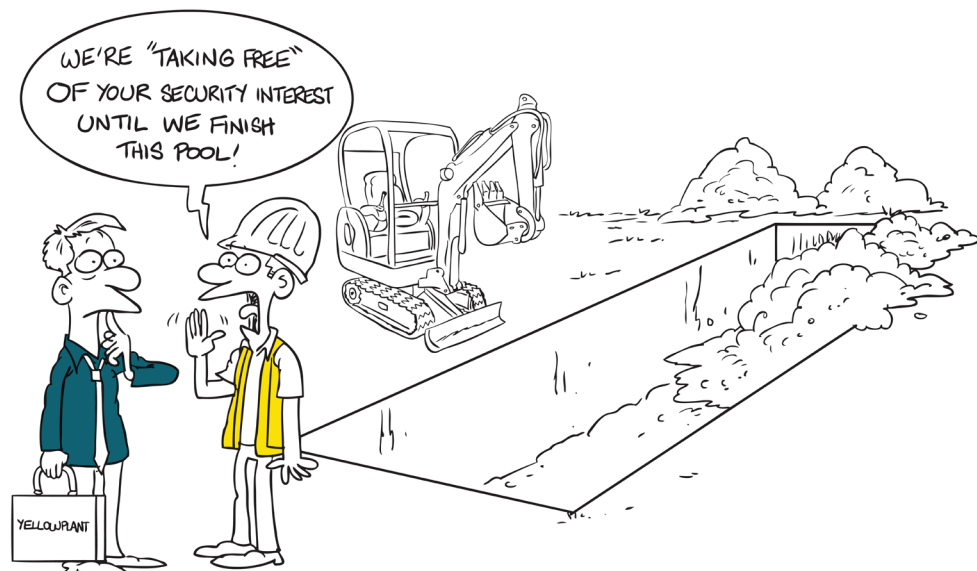
Chris, managing director of Star, approaches Yellowplant Pty Ltd to lease an excavator on a three-year hire.

The project is expected to take three years to complete.

Yellowplant is a well-known plant hire company used for major public and private projects.

Chris does not search the PPSR before entering into the lease and taking possession of the excavator on behalf of Star.

Chris knows that Yellowplant does not own any of its hire plant, but leases it on long-term finance lease arrangements.



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He does not know that the lease is through Fund-a-metal Finance, who permit Yellowplant to hire out the equipment.

Before Yellowplant takes delivery, Fund-a-metal always registers on the PPSR against the serial numbers of their financed equipment.

Yellowplant defaults on its instalments to Fund-a-metal, which serves notice on them to seize the financed equipment.

Fund-a-metal then demands the excavator back from Chris at Star Construction, but the project still has nine months to run and he needs the excavator to complete the project.

As the excavator is leased to Star in the 'ordinary course' of Yellowplant's business of leasing goods of that kind, Star can 'take free' of Fund-a-metal's 'security interest' (i.e. head lease) in the excavator.

However, Star cannot keep the leased excavator forever. It 'takes free' of Fund-a-metal's interest in the head lease, so that for the remaining period of the sublease it can use the excavator. After that, Fund-a-metal is entitled to recover it.

If this sounds like a scenario that could apply to your business, you might want to consider these things ...

- Make sure your registration is correct to maximise its enforceability.
- You need both an agreement (i.e. a contract) as well as a registration to effect personal property security law.

Tip

It is irrelevant that Chris from Star Constructions knew Yellowplant did not own its excavators and/or did not search the PPSR.

Chris can use the excavator to finish the job.

As of 20 May 2017, the minimum duration of PPS leases has been extended from more than one year, to **more than two years**. Leases of an indefinite term will not be deemed to be PPS leases unless and until they 'run' for a period of more than two years. This change does not affect agreements entered into before 20 May 2017.

This is a general scenario intended to provide typical examples.

This scenario is not legal advice about how the law applies to your particular business and dealings.

You may wish to seek professional advice from your accountant, financial adviser or lawyer.

For more information about the Australian Government's Personal Property Securities Register (PPSR) go to:

Website: www.ppsr.gov.au

Email: enquiries@ppsr.gov.au

Telephone: 1300 007 777