



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 \$3.40.

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 \$6.80 for 7 years.

PPSR CASE STUDY 7/V1

Motor vehicle hire – Heavy Hitter Haulage

Scenario – heavy vehicle hirer does not register indefinite lease on the PPSR ...

Concepts covered:

- hire and rental
- PPS leases
- bailments.

Hire company, Heavy Hitter Haulage (HHH) owns a huge fleet of commercial vehicles which it hires out for transporting, lifting and tipping.

Many of the vehicles are left with customers for varying periods for use on contracts, and HHH has long-standing relationships with established customers.

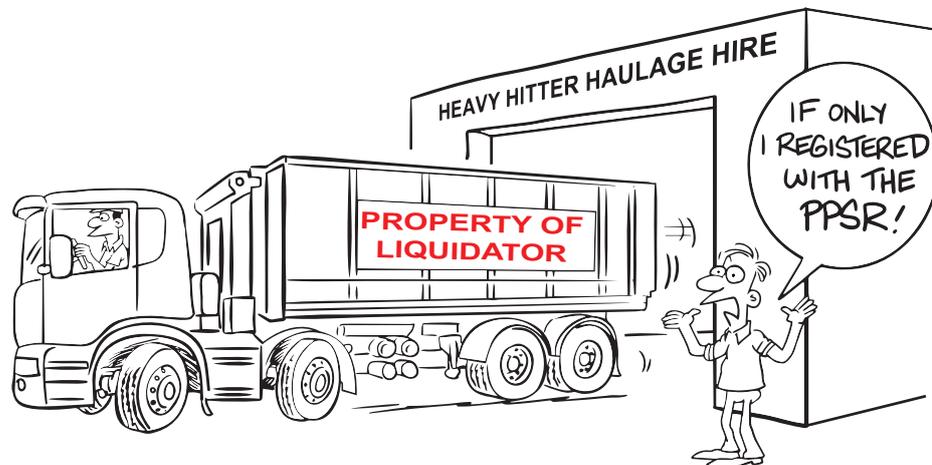
Roadrunner Pty Ltd runs a transport business servicing infrastructure projects and construction. Roadrunner often hires vehicles on HHH's standard terms and conditions, which include the statements ...

“ ... all vehicles must be hired for a minimum rental period of 48 hours and the daily rate for the type of vehicle applies during that period and thereafter.

Hirers may retain the vehicle thereafter and HHH will invoice fortnightly for continued use.

When the hirer wishes to return the vehicle and terminate the hire period, it must give one week's clear notice to HHH for fleet management purposes, and rent will be charged at the daily rate up to and including the date of return ... ”

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Roadrunner hires an extended haulage truck on the standard terms, and takes delivery of the truck, which it expects to need for about 2.5 years until completion of a road-making project.

Roadrunner later goes into liquidation just after two years after hiring the truck. The liquidator searches the register (PPSR) and finds nothing registered against the serial number of the extended haulage truck, or against Roadrunner's Australian Company Number.

HHH argues that it owns the truck and that according to the terms above, it did not need to register a security interest.

If this scenario could apply to your business, things you might want to consider are:

Although this situation could be viewed as 'just' a hiring arrangement, personal property law now covers leases or bailments that run for at least two years, or an indefinite period where the lessee's or bailee's possession extends for more than two years.

In this scenario, the standard terms and conditions are for an indefinite hire, and the hiring arrangement is either a lease or a bailment, since possession is given to Roadrunner in return for a rental charge for use of the vehicle.

Therefore:

- HHH should have registered the lease as a security interest on the PPSR
- HHH did not do so, and its interest in the heavy haulage truck is ineffective against the liquidator on behalf of Roadrunner
- the liquidator is entitled to keep or dispose of the vehicle
- HHH becomes an unsecured creditor and may only see a small portion of the sale proceeds, if any at all.

Tip

What matters is whether the terms and conditions, when in force, mean that it could last more than two years, in one of the ways stated above.

The result would have been the same if it had been for a six month fixed period but then on expiry, Roadrunner had continued to retain and pay rental on the truck for another 18 months.

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