

Does the PPSA apply to my business?

If your business:

- Rents, leases, dry hires, or wet hires equipment to its customers, or
- Provides equipment on bailment to its customers, or
- Provides/uses equipment as part of a service, or
- In any way parts with possession of its equipment

you will need to carefully assess your compliance with the PPSA or face the prospect of losing your equipment on the insolvency of a customer.

The PPSA requires all security interests to be registered. A failure to register a security interest can lead to the loss of the security as well as the loss of the equipment associated with it when the customer in possession of the equipment falls into insolvency.

Traditionally, the focus of attention has been on registering the *deemed* security interest which arises when there is a PPS Lease. A PPS Lease arises when:

- The agreed term of the hire is greater than two years; **or**
- The term of hire is less than two years but is automatically renewable or renewable at the option of either party, for a term that might exceed two years; **or**
- The term of hire is open-ended and continues for more than two years (but only after the two years has passed).

But there are other security interests which may require registration. These security interests arise irrespective of whether the equipment is a PPS Lease or even if the equipment is subject to a hire/rental or lease.

To help you assess whether your business has an exposure to the PPSA, the following questions should be considered. A 'Yes' response indicates the PPSA is likely to apply. We use a conservative period of 6 months, as time of possession is not the only determiner of whether the PPSA will have application

If it involves the PPSA involve us.

Question	Y/N
Do you pass possession of your equipment to your customer?	
Do you ever supply equipment under short term contracts that may be rolled over for further periods of time?	
Can your customer simply retain your equipment and have the term continue on a month-by-month basis?	
Is the customer required to obtain your specific written permission to extend the term?	
Do you ever supply equipment under the terms of an agreement drafted by your customer?	
Do you supply equipment to customers who are likely to on-hire or cross-hire the equipment to their customers as part of their usual business?	
Do you hire in equipment and cross hire the equipment to your customers?	
Do your terms and conditions of supply include: <ul style="list-style-type: none"> • A right to recover your equipment if your customer fails to pay you or breaches the terms of supply? • A positive statement you own the equipment and/or have a security interest in it? 	
Do you have a corporate asset protection structure in place (asset owning entity supplying the equipment to a related trading entity)?	
Does your business sell any goods/equipment on credit terms?	
Do you ever allow 'rent to buy', or options to buy arrangements?	

If you've answered 'Yes' to any of the questions, our short YouTube video explains the issues and your next steps and can be viewed by using this link:

<https://youtu.be/L0WapVP0G3M>

If you've got 'Yes' answers and your business **is not** PPS compliant, have us perform our **Impact Assessment**. We will confirm whether your business is exposed and discuss the benefits of compliance as well as the costs.

If you've got 'Yes' answers and **your business is** PPS compliant, have us perform our **PPS Assurance Review** to ensure you really are complying, most aren't.

And best of all, the service fee for either service is only \$220. Just contact

info@ppsadvisory.com.au

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Please note we are not lawyers; this is not legal advice, and you should seek confirming legal advice before acting.