



PPSA and Purchasing a Motor Vehicle under Finance

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The information in this document is for general information only and cannot be relied on as a substitute for appropriate professional advice relevant to your specific circumstances.

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1. What is this guide about?

- 1.1. This guide reviews how the Personal Property Securities Act 2009 (Cth) or 'PPSA' impacts on the purchase of a motor vehicle using finance and what the parties must therefore do as a result.
- 1.2. Specifically this guide reviews when a so-called security interest must be registered on the Personal Property Securities Register or 'PPSR'.

2. What type of motor vehicle is covered by the PPSA?

2.1. A "motor vehicle" is defined to include:

- (a) a vehicle that is propelled by a motor and travels on land and either:
- (i) is capable of a speed of at least 10km/h; or
 - (ii) has one or more motors that have a total power greater than 200 watts; and

has any of the following:

- (i) a vehicle identification number (VIN);
- (ii) a chassis number;
- (iii) the manufacturer's number; and

does not run on rails, tram lines or other fixed paths;

AND

- (b) Personal Property that:
- (i) is capable of being towed by, or attached to, a motor vehicle travelling at a speed greater than 10km/h; or
 - (ii) is a piece of machinery or equipment that is equipped with wheels and designed to be attached to, or towed by, a motor vehicle; and

has any of the following:

- (i) a vehicle identification number (VIN);
- (ii) a chassis number;
- (iii) the manufacturer's number.

- 2.2. Cars, scooters, motor bikes, trucks, buses, tractors, earthmoving equipment, trailers, and caravans are motor vehicles provided they satisfy the conditions above.

3. The finance must attach to the motor vehicle

- 3.1 In order for the purchase of the motor vehicle to fall within the PPSA it must be purchased using finance - for example, the car is purchased from a dealer with finance provided by the manufacturer (eg a chattel lease or commercial hire purchase) or by loan from the buyer's bank.
- 3.2 The PPSA covers private individuals, companies and businesses buying motor vehicles using finance.

4. How and when does a financier register on the PPSR?

- 4.1 The financier registers its security interest against the buyer on the PPSR by completing the online form at www.ppsr.gov.au or via the Contact Centre.
- 4.2 To ensure maximum protection, if the vehicle is NOT inventory, the financier must register its security interest in the vehicle within 15 business days of the buyer taking possession of the vehicle.
- 4.3 If the vehicle is inventory, to ensure maximum protection, the financier must register its security interest in the vehicle before the buyer takes possession of the vehicle.
- 4.4 Specific legal advice should be sought in relation to what is inventory and to ensure that the relevant form is properly completed, at least until PPSA requirements become familiar.

5. How much does it cost to register on the PPSR?

- 5.1 The cost of registering a security interest over a vehicle online is \$7.40 to register a security interest on the PPSR with an expiry term of seven years or less. If the term is more than seven years but less than or equal to 25 years, the online cost of registration is \$37.00.

6. What happens if the financier has registered on the PPSR?

- 6.1 If the financier registers its interest in the vehicle, it gets a PMSI super-priority. This means the financier takes priority over all other interests in the vehicle, even earlier general security interests.
- 6.2 If the financier has registered its interest in the vehicle which the buyer has possession of, if the buyer, as an individual goes bankrupt, or, as a company has a liquidator appointed, the vehicle does NOT vest in the trustee in bankruptcy or liquidator. The vehicle vests in the financier.

7. What happens if the financier does not register on the PPSR?

- 7.1 If the financier does NOT register its interest in the vehicle under the PPSA, it cannot seize the goods on bankruptcy or liquidation and its only rights are as an unsecured creditor.

7.2 The financier's interest in the vehicle will also be defeated by any perfected (ie in effect, registered) security interest which covers the vehicle. So, a registered security interest over all the buyer's personal property will defeat the financier's interest.

7.3 If the financier has not registered within the required time, the financier loses the benefit of the PMSI super-priority, but still has a security interest and the default priority rules will apply - in that event, the earlier registered security interest takes priority.

8. How does the financier enforce their security interest?

8.1 The financier can enforce their security interest by seizing the motor vehicle under the security agreement from any party who has the motor vehicle and has a lower priority than theirs.

8.2 Once the financier has obtained possession of the motor vehicle, it can either keep it or dispose of it under a power of sale.

8.3 The enforcement provisions in the PPSA do not replace, but rather complement, other rights and remedies available. These additional rights may come from statutes, common law or equity.

8.4 The enforcement provisions do NOT apply where a receiver or receiver/manager has been appointed to deal with property under Part 5.2 of the Corporations Act (Cth).

8.5 In some situations, it may be difficult to seize the relevant goods. It may be more appropriate to make a written demand on the borrowing company and even to seek to wind up that company for statutory insolvency.

8.6 A financier may be liable if they take action against a motor vehicle when they have no legal right to do so. Accordingly, parties should always seek and rely on specific legal advice before they take or seek to defend any enforcement action.

For more information, please contact:

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